

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 31

PARAGON SYSTEMS, INC.

Employer

and

UNITED GOVERNMENT SECURITY OFFICERS OF  
AMERICA, INTERNATIONAL UNION (UGSOA)

Petitioner

and

INTERNATIONAL UNION, SECURITY POLICE, AND  
FIRE PROFESSIONALS OF AMERICA (SPFPA)

Intervenor

Case 31-RC-126224

**DECISION AND ORDER**

Paragon Systems, Inc. (Employer)<sup>1/</sup> is engaged in providing security services to the Federal Aviation Administration (FAA) at its Air Route Traffic Control Center (ARTCC) facility in Palmdale, California. On April 9, 2014, the United Government Security Officers of America, International Union (Petitioner or UGSOA), filed a petition in Case 31-RC-126224 seeking to represent a guard unit composed of security officers employed by the Employer at the Palmdale ARTCC facility located at 2555 East Avenue P, Palmdale, California. International Union, Security Police, and Fire Professionals of America (Intervenor or SPFPA) is the incumbent union and currently represents the petitioned-for unit. There are approximately 10 employees in the bargaining unit.

---

<sup>1/</sup> The correct legal name of the Employer appears as stipulated by the Petitioner and the Intervenor at the hearing, and is consistent with the Employer's completed Questionnaire on Commerce Information.

On April 16, 2014, a hearing was held on the referenced petition. The Petitioner and the Intervenor fully participated in the hearing. The Employer did not make an appearance at the hearing, but it provided a completed Questionnaire on Commerce Information, of which the Hearing Officer took administrative notice and admitted into evidence as Board Exhibit 2. I have considered the evidence and arguments presented by the parties.<sup>2/</sup>

The sole issue to be decided is whether the petition should be dismissed because, as the Intervenor contends, the "successor bar" doctrine set forth by the Board in *UGL-UNICCO Service Company*, 357 NLRB No. 76 (2011) bars the processing of the petition and a question concerning representation does not exist. The Petitioner contends that no such bar exists because more than a reasonable amount of time has passed during which the Employer and the Intervenor have failed to agree on an initial collective-bargaining agreement.

For the reasons described below, I conclude that the successor bar doctrine is applicable in this case and, thus, there is no question concerning representation. Accordingly, I shall dismiss the petition.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Upon the entire record in this proceeding, I find:

**I. HEARING OFFICER RULINGS:** The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

**II. JURISDICTION:** I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter.<sup>3/</sup>

---

<sup>2/</sup> The parties were afforded the opportunity to file briefs. I have carefully considered the briefs of the Petitioner and the Intervenor. The Employer did not file a brief.

<sup>3/</sup> The Employer's completed Questionnaire on Commerce Information, as well as Stipulated Election Agreements in Cases 05-RC-119929 (approved by the Acting Regional Director of Region 5 on

**III. LABOR ORGANIZATION:** The Petitioner and the Intervenor stipulated, and I find, that they both are labor organizations within the meaning of Section 2(5) of the Act and claim to represent certain employees of the Employer.

**IV. APPROPRIATE UNIT:** The Petitioner and the Intervenor stipulated, and I find, that the following employees of the Employer constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All full-time and part-time security officers performing security duties for Paragon Systems, Inc., at Air Route Traffic Control Centers (ARTCC), located at 2555 East Avenue P, in Palmdale, California.

**EXCLUDED:** All other employees, office clerical employees, professional employees, and supervisors as defined in the Act, as amended.

## **I. FACTS**

### **A. The Employer recognized the Intervenor and made changes to bargaining unit employees' initial terms and conditions of employment**

On February 1, 2012, the Intervenor entered into a nation-wide collective bargaining agreement effective until January 31, 2015, with the Whitestone Group, Inc. On March 9, 2012, the Intervenor and the Whitestone Group entered into a site-specific addendum to the collective bargaining agreement covering employees employed at the Palmdale ARTCC facility. On approximately July 1, 2012, G4S Government Solutions, Inc. assumed operations of the Palmdale ARTCC facility. The Intervenor then entered into a “bridge agreement” with G4S Government

---

January 10, 2014) and 05-RC-120515 (approved of the Acting Regional Director of Region 5 on January 27, 2014), which were admitted into evidence as Board Exhibits 3 and 4, respectively, contain the Employer’s commerce information. Those documents reflect that the Employer, Paragon Systems, Inc., is an Alabama corporation engaged in the business of providing security services to agencies of the United States government, including the Federal Aviation Administration in the state of California. During the past 12 months, a representative period of time, the Employer, in conducting its business operations described herein, provided services to the United States Government valued in excess of \$50,000. Based on the foregoing and the record as whole, I find that at all material times the Employer has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Solutions, Inc. on October 1, 2012, effective until September 30, 2013.<sup>4</sup> Thereafter, the Employer assumed operations of the facility from G4S Government Solutions effective October 1, 2013.

Prior to assuming control of operations, the Employer issued offers of employment to all of the bargaining unit employees. The record contains evidence of one such offer, which was made to an employee on July 22, 2013. The letter offering employment to bargaining unit employees contained changes in terms and conditions of employment. For example, the wage rate that the Employer offered was \$23.77 per hour, rather than the \$29.46 per hour paid by G4S Government Solutions. The letter also offered employees a fringe benefit allowance of \$3.59 per hour, with any excess allowance funds allocated to the employee's 401(k) plan; G4S Government Solutions had provided a fringe benefit allowance of \$4.10 per hour and the option for employees to receive excess allowance funds in cash. The offer of employment letter also referenced the ability of the United States Government to terminate employees' employment and referenced Employer-sponsored health insurance plans, an Employer-sponsored 401(k) plan, Employer break policies, paid sick day and holiday eligibility requirements, pre-employment interviews, training requirements, drug tests, and at will employment, which terms differed from the terms and conditions of employment under the predecessor collective bargaining agreement.

The Intervenor's West Coast Regional Director informed the Employer's Regional Project Manager on approximately July 25, 2013, that pursuant to the Contract Service Act, the Employer was obligated to honor the wage and fringe benefit allowances offered by G4S Government Solutions. Upon assuming operations, the Employer provided employees with the G4S Government Solutions wage and fringe benefit rates, but these were the only terms and conditions of employment that the parties addressed at that time. Thus, the other terms and conditions of

---

<sup>4/</sup> The bridge agreement provided that GS4 would abide by the terms and conditions of the existing collective bargaining agreement between SPFPA and the Whitestone Group with several specific changes.

employment announced by the Employer in its offers of employment, including those that had changed, were implemented when the Employer commenced operations on October 1, 2013. The Intervenor's West Coast Regional Director testified that the Intervenor provided the predecessor collective bargaining agreements and applicable "bridge agreement" to the Employer sometime in August 2013. The Intervenor appears to have provided these documents based upon a mistaken assumption that the Employer intended to adopt the predecessor collective bargaining agreements.

After the Employer assumed operations at the Palmdale ARTCC facility on October 1, 2013, the Intervenor's Local 3 President sent the Employer's Regional Project Manager an email on October 20, 2013, attempting to pursue a grievance regarding a supervisor performing bargaining unit work. The Employer's Regional Project Manager responded later that day, stating that the Employer would not attempt to interpret another entity's collective bargaining agreement. The next day, October 21, 2013, the Employer's Regional Project Manager sent another email stating, "To clarify, as this CBA was between another contractor and the union, we are not recognizing it at this time, except where required by the Contract Service Act."

### **B. Negotiations between the Employer and the Intervenor for an initial Collective Bargaining Agreement**

Although the Employer assumed operations at the Palmdale ARTCC facility on October 1, 2013, there is no evidence that the Intervenor took any steps towards negotiating a new collective bargaining agreement with the Employer until December 2013.<sup>5/</sup> On December 10, 2013, the Employer's Director of Labor Relations sent the Intervenor's Region 3 Vice President an email

---

<sup>5/</sup> I take administrative notice that the Intervenor filed charge 31-CA-116522 on November 5, 2013, alleging that the Employer violated Section 8(a)(1) and (5) of the Act by assigning bargaining unit work to a supervisor. On January 14, 2014, I approved a request by the Intervenor that the charge be withdrawn. Although the Intervenor notes in its Brief that the parties did not hold bargaining sessions during the pendency of the unfair labor practice charge, the record does not contain testimony or other evidence concerning what, if any, effect the pendency of the Charge had on the process of negotiations.

attaching a template of a collective bargaining agreement.<sup>6/</sup> The Director of Labor Relations' initial email indicated that he and the Intervenor's Region 3 Vice President had spoken about this template "the other day."

The Intervenor's Region 3 Vice President sent the Intervenor's West Coast Regional Director an internal email attaching his "counter proposals so far to the template (the Director of Labor Relations) sent" on January 29, 2014. However, the record does not reflect that any counter proposals were provided by the Intervenor to the Employer prior to the in-person negotiations in mid-March.

The Intervenor and the Employer commenced face-to-face bargaining at the Los Angeles International Airport Hilton Hotel on March 18 and 19, 2014.<sup>7/</sup> During that bargaining session, the parties exchanged proposals and concluded bargaining on the majority of non-economic issues. Economic issues were not discussed. The Intervenor's West Coast Regional Director testified that the parties were bargaining "from the ground floor" regarding non-economic issues, and that any similarities between the eventual collective bargaining agreement and its predecessor agreement would be "mere happenstance" because "there's only so many ways to slice an orange."

The Intervenor's West Coast Regional Director estimated that the parties reached agreement on approximately 50% of all contractual issues on March 19, 2014. He also testified that some of the issues about which the parties are bargaining are complex, including government supremacy (the right of the contracting government agency to remove employees without Union recourse to the grievance process), discharge, discipline, management rights, strike, and walk out provisions. He

---

<sup>6/</sup> The Employer's Director of Labor Relations attempted to send the template to the Intervenor's Region 3 Vice President in an email on December 10, 2013, but failed to include the attachment to the email. He sent the template on December 11, 2013, after the Intervenor's Region 3 Vice President notified him of the oversight.

<sup>7/</sup> The Intervenor's West Coast Regional Director explained in his testimony that the parties primarily focused upon bargaining for another bargaining unit on March 18, 2014, and focused on the Palmdale ARTCC bargaining on March 19, 2014.

further testified that the parties are not at impasse on any issues. This is the only bargaining session that the Intervenor and the Employer have held as of the date of the hearing and, as of the date of the hearing, no further bargaining sessions had yet been scheduled.

## II. DISCUSSION

### A. The successor bar doctrine

In *UGL-UNICCO Service Company*, 357 NLRB No. 76 (2011), the Board restored the "successor bar" doctrine, which had been discarded in *MV Transportation*, 337 NLRB 770 (2002). Under the successor bar doctrine, as previously enunciated in *St. Elizabeth Manor, Inc.*, 329 NLRB 341 (1999), when a successor employer acts in accordance with its legal obligation to recognize an incumbent representative of its employees, the previously chosen representative is entitled to represent the employees in collective bargaining with their new employer for a reasonable period of time, without challenge to its representative status. The Board noted in *UGL-UNICCO* that "a bar creates a *conclusive* presumption of majority support for a defined period of time, preventing any challenge to the union's status, whether by the Employer's unilateral withdrawal of recognition from the union or by an election petition filed with the Board by the employer, by employees, or by a rival union." 357 NLRB No. 76, slip op at p.3. The Board further explained in *UGL-UNICCO* that its doctrines barring the processing of representation petitions and an employer's unilateral withdrawal of recognition from a union are well established in labor law, based on the principle that "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." *Id.*, citing *Franks Bros. Co. v. NLRB*, 321 U.S. 702, 705 (1944).

Although the Board in *UGL-UNICCO* reinstated the successor bar doctrine, it modified *St. Elizabeth Manor* by defining a “reasonable period of bargaining.” Thus, in situations where the employer expressly adopted the predecessor’s terms and conditions of employment, the reasonable period of bargaining would be six months measured from the date of the first bargaining meeting. However, in situations where, as here, the employer did not expressly adopt the predecessor’s terms and conditions of employment, the reasonable period of bargaining would be a minimum of six months and a maximum of one year, measured from the date of the first bargaining meeting between the union and the employer.” 357 NLRB 76, slip op. at p.9. In defining a “reasonable period of bargaining” in cases in which the employer does not expressly adopt the predecessor’s terms and conditions of employment, the Board relied upon its decision in *Lee Lumber & Building Material Corp.*, 334 NLRB 399 (2001), where the Board defined a reasonable period of bargaining in the context of remedying an unlawful refusal to recognize and bargain with an incumbent union. In *Lee Lumber*, the Board adopted a multifactor analysis to determine whether or not a reasonable period had elapsed. It held:

The factors we will consider in determining whether the initial six month insulated period should be extended are: (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 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 impasse.

334 NLRB at 402. In *UGL-UNICCO*, the Board noted the determination in *Lee Lumber* that the burden is on the General Counsel to prove that a reasonable period for bargaining had not elapsed after six months and concluded that “[t]he burden of proof will be on the party who invokes the ‘successor bar’ to establish that a reasonable period of bargaining has *not* elapsed.” 357 NLRB No. 76, slip op. at p.9.

**B. The petition was filed prior to the expiration of the six-month minimum reasonable period of bargaining**

Addressing the commencement date for measuring the period of bargaining in this case, the Petitioner contends that the relevant bargaining period began on July 22, 2013, when the Employer first offered employees terms and conditions of employment that differed from those of the predecessor employer. If the July 22, 2013 date is used as the starting point, then more than six months had elapsed at the time the Petitioner filed its petition on April 9, 2014. The Intervenor asserts that the relevant bargaining period commenced on March 18 or 19, 2014, the date of the first face-to-face bargaining meeting regarding this bargaining unit. Using those dates, less than one month of bargaining had elapsed at the time of the filing of the petition. The Intervenor bases its position on the literal language of *UGL-UNICCO*, where the Board held that the "reasonable period of bargaining" will be "a minimum of six months and a maximum of one year, **measured from the date of the first bargaining meeting** between the union and the employer" (Emphasis added).

Section 8(d) of the Act sets forth the mutual obligation of an employer and the representative of its employees to bargain collectively by meeting at reasonable times and conferring in good faith with respect to wages, hours, and other terms and conditions of employment. Based on the literal wording of *UGL-UNICCO*, Section 8(d) of the Act, and longstanding Board law, the Intervenor's argument that the date of the first bargaining meeting was March 18, 2014, the first face-to-face meeting, is persuasive.

The Board has long held that "it is elementary that collective bargaining is most effectively carried out by personal meetings and conferences of the parties at the bargaining table. Indeed, the Act imposes this duty to meet." *U.S. Cold Storage Corp.*, 96 NLRB 1108, 1108 (1951), *enfd.* 203 F.2d 924 (5th Cir. 1953), *cert. denied* 346 U.S. 818 (1953). An employer's obligation to meet and

bargain with the labor organization, which is the bargaining representative of its employees, is not satisfied by merely inviting or demanding written proposals in advance of any face-to-face negotiations. *Fountain Lodge, Inc.*, 269 NLRB 674 (1984), citing *U.S. Cold Storage Corp.*, 203 F.2d at 928.

Here, the Employer did not expressly adopt the predecessor's terms and conditions of employment. To the contrary, it established its own in terms and conditions of employment, which it announced in its initial offers of employment.<sup>8/</sup> As a result, the minimum period of bargaining is six months to one year based upon the *Lee Lumber* analysis. I find that the minimum six-month period had not elapsed from the first face-to-face bargaining meetings on March 18 and 19, 2014, as of the time of the filing of the petition on April 9, 2014.<sup>9/</sup> Moreover, even if the Employer had expressly adopted the predecessor's terms and conditions of employment, the minimum six-month period has not yet elapsed, and the petition would still be premature.

I note that even construing the commencement of "bargaining" as the exchange of proposals outside of a face-to-face setting, the parties had not bargained for six months when the Petition was filed. The first proposal (referred to by the parties as a "template") was submitted to

---

<sup>8/</sup> The fact that the Employer thereafter met its obligation to comply with the Contract Service Act by maintaining the wage and fringe benefit rates of the predecessor does not negate the fact the Employer failed to expressly adopt the terms and conditions of the predecessor where, as here, there were other differences in the terms and conditions of employment.

<sup>9/</sup> Although the question of an extension of the six-month minimum period for bargaining is rendered moot by the filing of the petition less than six months from the commencement of bargaining, I note that several of the *Lee's Lumber* factors adopted by the Board in *UGL-UNICCO* would weigh in favor of an extension of the six-month minimum period. While a predecessor collective bargaining agreement exists, the Intervenor's West Coast Regional Director testified that the parties are bargaining "from the ground floor" regarding non-economic issues. Some of the issues subject to bargaining, most notably the "government supremacy" provision, appear to entail a degree of complexity. The Petition was filed less than one month after the sole in-person bargaining session, and the parties are not at impasse on any issues. The only factor that does not appear to weigh in favor of an extension of the six month minimum period is the progress made by the parties towards an agreement. While the Intervenor's West Coast Regional Director estimated that the parties had reached agreement on approximately 50% of issues, some of the more complex and contentious issues may remain pending, particularly economic issues.

the Intervenor by the Employer via email on December 11, 2013, less than four months prior to the filing of the Petition.

I reject the Petitioner's contention that the relevant date for the commencement of the successor bar period is July 22, 2012, the date when, according to the Petitioner, the Intervenor should have been aware that the Employer did not intend to honor the predecessor collective bargaining agreement. Such an interpretation is inconsistent with the Board's holding in *UGL-UNICCO* that the six-month period is "measured from the date of the first bargaining meeting."<sup>10/</sup>

### III. CONCLUSION

Based on the above, I conclude that the petition here is untimely because it was filed during the period of a successor bar. Therefore, a question concerning representation does not exist and I am dismissing the Petition.

### 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 14<sup>th</sup> Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by **May 15, 2014**. *The request may be filed electronically*

---

<sup>10/</sup> I also note that unequivocal notice of the Employer's intentions regarding the predecessor collective bargaining agreement was not given to the Intervenor until the Employer's Regional Project Manager sent an e-mail to the Intervenor's Region 3 President on October 21, 2013, stating, "[t]o clarify, as this CBA was between another contractor and the union, we are not recognizing it at this time, except where required by the Contract Service Act." The date of that e-mail, October 21, 2013, is also within the six-month period preceding the filing of the petition.

through the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>11</sup> / but may not be filed by facsimile.

Signed at Los Angeles, California, this 1st day of May, 2014.



---

Mori Rubin  
Regional Director  
National Labor Relations Board – Region 31

---

<sup>11</sup> / To file the request for review electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.