

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

In the Matter of

PARAGON SECURITY SYSTEMS

Employer

and

UNION GOVERNMENT SECURITY  
OFFICERS OF AMERICA, INTERNATIONAL  
UNION (USGOA) AND ITS LOCAL 353

Petitioner

and

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

Intervenor/Union

Case 01-RC-125863

AMERICAN EAGLE PROTECTIVE  
SERVICES

Employer

and

UNION GOVERNMENT SECURITY  
OFFICERS OF AMERICA, INTERNATIONAL  
UNION (USGOA) AND ITS LOCAL 353

Petitioner

and

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

Intervenor/Union

Case 01-RC-125865

## **DECISION AND ORDER**

American Eagle Protective Services and its subcontractor, Paragon Security Systems (Employer) contracts with the Department of Homeland Security to provide security services for certain Federal facilities in Connecticut, Massachusetts and Rhode Island. International Union, Security Police and Fire Professionals of America (Union) represents the armed and unarmed security officers working at these Employer facilities (the Unit). The Employer is a successor to C&D Security, which previously contracted with the Federal government to provide the same security services until October 1, 2013. Union Government Security Officers of America, International Union and its Local 353 (Petitioner) filed the instant petitions seeking to represent the Unit. The Union, contrary to the Petitioner, contends that the petitions should be dismissed based on the Board's "successor bar" doctrine. The Employer did not appear at the hearing and did not take a position on this issue.

For the reasons set forth below, I find that a successor bar precludes further processing of the petitions, and I shall dismiss them.

This case arises out of petitions filed under Section 9(c) of the National Labor Relations Act, as amended (the Act), which were consolidated by Order dated April 10, 2014. The parties were provided an opportunity to present evidence on the issues raised by the petition at a hearing held before a hearing officer of the National Labor Relations Board (the Board). I have the authority to hear and decide this matter on behalf of the Board under Section 3(b) of the Act. I find that the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction<sup>1</sup>; the Petitioner and the Union are labor organizations within the meaning of the Act; and no question affecting commerce exists concerning the representation of certain employees of the Employer.

### A. **FACTS**

Prior to October 1, 2013, C & D Security held the contract to provide security services for various Federal facilities in Connecticut, Massachusetts and Rhode Island. As noted above, the Union represents the security officers working at those facilities. The Union (and its affiliated Local 691) and C & D

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<sup>1</sup> Although the Employer did not appear at the hearing, I note that both American Eagle Protective Services and Paragon Security Systems have previously stipulated that they are Employers engaged in commerce within the meaning of Section 2(6) and 2(7) of the Act. See, e.g., Case Nos. 18-RC-110165 (American Eagle Protective Services Corporation), 05-RC-124427 (Paragon Systems, Inc) and 05-RC-119929 (Paragon Systems, Inc.).

Security were parties to a collective bargaining agreement, which was effective from March 1, 2011 until February 28, 2014.

The sole witness at the hearing was the Union's Vice President for Region 1, Mark Crawford, who is responsible for negotiating contracts and handling grievance and arbitrations within a geographic area that includes the Unit at issue. According to Crawford, in July 2013, the Union learned that the contract then held by C & D Security was open for bids, and that in August or September 2013, he learned that the Employer was awarded the contract to replace C & D Security effective October 1, 2013.

After the Employer took over the security operations on October 1, 2013, Crawford made at least three attempts to contact the Employer to determine who would be the individual responsible for dealing with the Union. The Union received no response from the Employer until November 26, 2013, when Crawford was informed that the Employer designated Roman Gumul as its labor relations point of contact. In October 2013, Local Union officials were informed that the Employer implemented new initial terms and conditions of employment that differed from their previous terms and conditions of employment under C & D Security. It appears that during the period of time when Crawford was trying to contact the Employer to initiate negotiations, Local Union officials also independently attempted to contact the Employer and negotiate with the Employer about changes to terms and conditions of employment.<sup>2</sup> There is no evidence that the Employer responded to the Local Union's request to bargain over these changes. Although Crawford did not testify to a specific date or conversation, Crawford learned sometime in the Fall of 2013 that the Employer hired more than 51% of the predecessor C & D Security employees and would recognize the Union.

In December 2013, Crawford contacted Gumul to request bargaining over an initial contract. Gumul stated he was not available until January 2014. During this conversation, Crawford asked Gumul if the Employer would assume the predecessor's collective bargaining agreement until negotiations for a new contract were complete. Gumul declined. Crawford then contacted Gumul in late January 2014 and arranged for the parties first bargaining session on February 13 and 14, 2014. Because of a snowstorm, the parties conducted these negotiations via conference call with Gumul, Crawford and the Union's bargaining committee, which consisted of Local Union officials. The parties discussed the Employer's initial proposal and reached some tentative agreements. Thereafter, although the record is not entirely clear, additional negotiation dates appear to have been set for February 26, March 13 and April 26, 2014. No meeting occurred on February 26 and the March 13 negotiation meeting was canceled.

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<sup>2</sup> Without the International's assistance or knowledge, the Local Union also filed unfair labor practice charges against the Employer regarding these changes. These charges were withdrawn prior to the hearing.

On about April 4, further negotiations were scheduled for April 10, 11 and 12. Also on April 4, the Petitioner filed the instant petitions seeking to represent the Unit. On April 10, the Employer and Union met for negotiations, attended only by Employer representative Laura Hagen and Crawford. Crawford testified that during that meeting, the parties reached a tentative agreement for an initial contract, which was subsequently signed by Employer representative Ray Agrinzone.

## B. THE SUCCESSOR BAR DOCTRINE

A successor is an employer that takes over all or part of a business operation from another company, continues the operation without substantial change, and hires as a majority of its workforce employees who worked for the predecessor. Successor employers are obligated to bargain with the union that represented their predecessors' employees, but are ordinarily not required to adopt their predecessors' union contracts. *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 41-42 (1987); *NLRB v. Burns International Security Services*, 406 U.S. 272, 278-279 (1972).

In *UGL-Unicco Service Company*, 357 NLRB No. 76 (2011), the Board announced that it was restoring the successor bar doctrine.<sup>3</sup> The Board stated that it sought to provide unions with a reasonable period of bargaining in which their majority status cannot be challenged following a change in the identity of the employer, and that this doctrine seeks to appropriately balance the goals of bargaining stability and employee free choice. Pursuant to the successor bar doctrine articulated by the Board in *UGL-Unicco*, successor recognition of a union that represented the employees of a predecessor employer operates as a bar to the filing of a decertification petition or a petition for certification by a rival union for a "reasonable period of bargaining." Where the successor expressly adopts the bargaining unit's existing terms and conditions of employment as the starting point of negotiations, the reasonable period of bargaining, during which a petition is barred, is deemed to be six months. If the successor changes employee terms and conditions of employment prior to bargaining, however, the reasonable period for bargaining is a minimum of six months and a maximum of one year, depending on the circumstances. The bar in either situation is measured from the date on which the successor employer and the union first meet to begin negotiations. *Id.*, slip op. at 8-9.

The Board further held in *UGL-Unicco* that in determining the period of the successor bar after a successor changes employees' terms and conditions of employment, the Board considers the following factors: (1) whether the parties are bargaining for an initial contract; (2) the complexity of the issues being

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<sup>3</sup> The Board had previously announced a successor bar doctrine in *St. Elizabeth Manor, Inc.*, 329 NLRB 341 (1999), but the Board overruled *St. Elizabeth Manor* in *MV Transportation*, 337 NLRB 770 (2002).

negotiated and 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 bargaining and how near the parties are to concluding an agreement; and (5) whether bargaining is at impasse. The burden is on the party that invokes the successor bar doctrine to show that a reasonable period for bargaining has not elapsed. *UGL-Unicco Service Company*, supra at 9-10. See *Lee Lumber & Building Materials Corp.*, 334 NLRB 399 (2001), enfd. 310 F.3d 209 (D.C. Cir. 2002).<sup>4</sup>

### C. ANALYSIS AND CONCLUSION

The Employer was awarded the contract for Federal security services and hired former C & D Security employees as a majority of its workforce. Therefore, it is a successor employer. If the Employer had simply adopted C & D Security's contract with the Union as the starting point in bargaining, the successor bar would have lasted for six months. However, the Employer made initial changes in employee terms and conditions of employment at the time of the takeover on Oct. 1, 2013. Accordingly, the successor bar will last for a "reasonable period of bargaining," between six months and one year from the time the Employer and Union commenced bargaining.

Although the Employer took over operations on October 1, 2013, bargaining did not begin until February 13, 2014. As the petitions were filed on April 4, 2014, less than two months after bargaining began, the minimum six month period for bargaining has not expired pursuant to the Board's standard in *UGL-Unicco*. Since the minimum six month period of bargaining has not yet expired, I do not need to determine whether a reasonable period of bargaining (between six months and one year) has expired based on the five factors cited by the Board in *UGL-Unicco*, supra, and *Lee Lumber*, supra. In this regard, the five factors are applied only after the minimum six-month insulated period has expired.

In light of the Board's decision in *UGL-Unicco*, supra, there is no merit to the Petitioner's claim, citing *St. Elizabeth Manor*, supra, that the standard to be applied in a successorship situation is whether a reasonable period of time to bargain has expired calculated from the date the Employer took over operations on October 1, 2013, or from the date the Local Union attempted to bargain with the Employer over changes to terms and conditions of employment (although there is no evidence as to when the Local's communications took place). There is similarly no merit to the Petitioner's claim that the Union's purported lack of diligence in contacting the Employer and scheduling bargaining prior to February 13, 2014, and its purported disregard of the Local Union officials' requests for assistance prior to that date, should result in the six-month period commencing at a date earlier than February 13, 2014. In this regard, the record does not support

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<sup>4</sup> These are the same factors used in defining a reasonable period for negotiations following an unlawful refusal to bargain, as set forth in *Lee Lumber*.

the Petitioner's claim that the Union showed a lack of diligence in commencing bargaining, as it appears that the Employer was more culpable for the delay than the Union. More importantly, by clearly and unequivocally stating in *UGL-Unicco* that the successor bar is measured from the date on which the successor employer and the union first meet to begin negotiations, the Board left no room to challenge the bona fides of the parties' actions in deciding when to commence successor contract negotiations.

Accordingly, I find that there is a successor bar to the instant petitions and I shall therefore dismiss the petitions.<sup>5</sup>

#### 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 May 15, 2014. The request may be filed electronically through the Agency's website, [www.nlr.gov](http://www.nlr.gov), but may not be filed by facsimile.

DATED: May 1, 2014

/s/Jonathan B. Kreisberg

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<sup>5</sup> It should be noted that to the extent the Union and Employer reached agreement on a contract, the Board in *UGL-Unicco* also held that where (1) a first contract is reached by the successor employer and the incumbent union within the reasonable period of bargaining during which the successor bar applied, and (2) there was no open period permitting the filing of a petition during the final year of the predecessor employer's bargaining relationship with the union, the contract-bar period applicable to election petitions filed by employees or by rival unions will be a maximum of 2 years, instead of 3. *UGL-Unicco*, supra, slip op. at 13-14.