

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

VERIZON ENTERPRISE DELIVERY, LLC¹

Employer

and

Case 07-RD-125769

BRET GROOMS, An Individual

Petitioner

and

**LOCAL 1106, INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO, CLC²**

Union

APPEARANCES:

Bret Grooms, of Whitmore Lake, Michigan, pro se.

DECISION AND DIRECTION OF ELECTION

The Employer provides communication services out of various locations throughout the country, including a facility located in Manchester, Michigan. Petitioner seeks to decertify the Union as the exclusive collective bargaining representative of all full-time and regular part-time communications technicians,³ data technicians, senior technicians-business/government, and material handler,⁴ employed by the Employer out of its facility located in Manchester, Michigan (the Unit). The Union asserts that the decertification petition was untimely filed, because it is barred by a signed contract

¹ The name of the Employer appears as amended at hearing.

² The name of the Union appears as amended at hearing and in conformity with its name on its official website.

³ Although the classification of communications technician was not stipulated as part of the bargaining unit during the hearing, the classification is outlined in the collective bargaining agreement's Wage Schedule A, and is thus included in the bargaining unit described herein.

⁴ The material handler job classification was added to the bargaining unit on May 4, 2012, by mutual written agreement of the parties, and is referenced in Wage Schedule C in the collective bargaining agreement.

extension to the collective bargaining agreement. The only issue in this proceeding is whether a contract bar exists.

As discussed below, based on the record and relevant Board law, I conclude that the Union has not satisfied its burden to prove that a contract bar exists.

I. ANALYSIS

A. Board Law

When a petition for an election is filed for a unit of employees covered by a collective bargaining agreement, the Board must decide whether the asserted contract exists in fact, and whether it constitutes a bar to the election. This is known as the contract bar doctrine. The doctrine is intended to balance the statutory policies of stabilizing labor relations and facilitating employees' exercise of free choice in the selection or change of a bargaining representative. *Direct Press Modern Litho, Inc.*, 328 NLRB 860 (1999), citing *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). The doctrine is Board created, not imposed by the Act or judicial case law, and the Board has considerable discretion to formulate and apply its rules. *Bob's Big Boy Family Restaurants v. NLRB*, 625 F.2d 850, 851, 853-854 (9th Cir. 1980). A contract can bar a representation election if it conforms to certain requirements. These basic requirements include that the contract be written, signed, and contain substantial terms and conditions of employment. *Young Women's Christian Assoc. of Western Mass.*, 349 NLRB 762, 766 (2007). A contract may serve as a bar to a representation election only for up to three years after its execution. *General Cable Corporation*, 139 NLRB 1123, 1125 (1962). The party asserting a contract bar bears the burden of proof. *Road & Rail Services, Inc.*, 344 NLRB 388 (2005).

As the Board noted in *South Mountain Healthcare & Rehabilitation Center*, 344 NLRB 375 (2005), "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." The effective date and the expiration date are material terms of the contract and must be apparent from the face of the contract, without resort to parol evidence. *Id.* 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. *Cooper Tire & Rubber Co.*, 181 NLRB 509 (1970). 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. *Id.*; *Union Fish Co.*, 156 NLRB 187 (1966). If it is necessary to examine the parties' "understanding" of the duration of a contract to determine its effective dates, the contract is not a bar. *Shen-Valley Meat Packers, Inc.*, 261 NLRB 958 (1982). See also, *South Mountain Healthcare*, supra at 376, fn 3, citing *Jet-Pak Corp.*, 231 NLRB 552, 552-553 (1977).

A contract which has no fixed term does not bar an election for any period. *Pacific Coast Ass'n of Pulp and Paper Manufacturers*, 121 NLRB 990, 994 (1958). Contracts with no fixed term include contracts of indefinite duration and extensions of expired agreements pending negotiations. A contract of indefinite duration is a contract without stated provisions for termination or which terminates on the occurrence of some event the date of which cannot be established with certainty before its occurrence. *W. Horace Williams Co.*, 130 NLRB 223, 224 (1961).

If a contract contains an automatic renewal provision, it may be automatically renewed unless either of the parties to the contract notifies the other of its desire to modify or terminate the contract. If such notice is not provided, the contract renews (or “rolls-over”) and constitutes a bar unless a petition is filed before the beginning of the insulated period. *ALJUD Licensed Home Care Services*, 345 NLRB 1089 (2005). The rule regarding the insulated period, enunciated by the Board in *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1000 (1958), provides that petitions filed during the 60-day (or other applicable) period immediately preceding and including the expiration date of an existing agreement are dismissed, regardless of whether the contract contains an automatic renewal provision, and regardless of the length of the renewal period. However, if notice is provided, renewal of the contract is “forestalled”, and any petition filed before a contract is reached is treated as if there were no automatic renewal clause. Any question of whether or not automatic renewal of a contract has been forestalled is considered only if the parties have not executed a new agreement during the 60-day insulated period. *Deluxe Metal Furniture*, 121 NLRB 995, 999, 1001 (1958).

B. Application of Board Law to this Case

In reaching the conclusion that a contract bar does not exist in this case, I rely on the following analysis and record evidence.

The Employer and Union were parties to a collective bargaining agreement (hereafter CBA), effective from March 27, 2011 through March 22, 2014. Article 1, Section 1, Term of Agreement, states that the CBA “shall remain in effect from year to year unless at least sixty (60) days prior to said expiration date either party gives written notice to the other of its desire to terminate or modify any or all of its provisions.” On December 30, 2013, the Employer sent a “Notice of Termination of Collective Bargaining Agreement” to the Union. In this letter the Employer indicated that it was notifying the Union of its intention to terminate the CBA effective on its expiration date, March 22, 2014. The Employer also indicated that it was prepared to bargain in good faith with the Union for a successor contract covering the Unit, and that it would await hearing from the Union to arrange a meeting to commence negotiations.

On March 21, 2014, the parties executed a Memorandum of Agreement (hereafter MOA) regarding an extension of the existing CBA. The MOA provides “[2.] The parties

agree that in view of their continuing negotiations toward a new Agreement, the existing Agreement expiring March 22, 2014 shall be **extended indefinitely**. Either party may terminate the Agreement by providing seven (7) calendar days written notice to the other party.” (emphasis added) In addition, the parties agreed that during the term of the extension, all terms and conditions of the existing CBA remained in full force.

There is no dispute that the Petitioner filed the instant decertification petition on April 2, 2014. There also is no dispute that the CBA did not automatically renew. Thus, April 2, 2014, is the operative date to determine whether a contract existed so as to serve as a bar to the processing of the instant petition. See *Deluxe Metal Furniture*, supra.

The MOA expressly reaffirms the long-term agreement. It does not, however, indicate a clear intent on the part of the contracting parties to be bound for a specific period. It states that the contract shall be extended indefinitely, and can be terminated by either party with seven days notice. Looking at the four corners of the documents related to this contract bar issue, it is clear that the collective bargaining agreement, scheduled to expire on March 22, 2014 was extended through a written MOA on March 21, 2014; and that the extension was to an indefinite and unspecified date. Because none of the terms on the face of the MOA show a fixed duration, employees and outside unions cannot know the appropriate time to file a petition. Accordingly, the instant petition was timely filed and there is no bar to the processing of the decertification petition. See *Pacific Coast Ass’n of Pulp and Paper Manufacturers*, supra; *W. Horace Williams*, supra.

CONCLUSIONS AND FINDINGS

Based on the foregoing discussion and on the entire record⁵, I find and conclude as follows:

1. The hearing officer’s rulings are free from prejudicial error and are affirmed.
2. 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 labor organization involved claims to represent certain employees of the Employer.
4. 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.

⁵ Neither the Employer or the Union participated in the hearing, and no briefs were filed in this proceeding.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All full-time and regular part-time communications technicians, data technicians, senior technicians-business/government, and material handler, employed by the Employer out of its facility located at 6680 Schnieder Road, Manchester, Michigan; but excluding all other employees, and supervisors and guards as defined in the Act.

Dated at Detroit, Michigan, this 9th day of May 2013.

(SEAL)

/s/ Terry Morgan

Terry Morgan, Regional Director
National Labor Relations Board, Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Electrical Workers, Local 1106. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. 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 strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have quit or been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure 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, which may be used to communicate with them. *Excelsior Underwear, Inc.* 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on

the list should be alphabetized (overall or by department, etc.). I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **May 16, 2014**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlr.gov,⁶ by mail, or by facsimile transmission at **313-226-2090**. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Posting of Election Notices

Section 103.20 of the Board's Rules and Regulations states:

a. Employers shall post copies of the Board's official Notice of Election on conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sunday, and holidays.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. [This section is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).]

⁶ To file the eligibility list electronically, go to the Agency's website at www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, select the option to file documents with the **Regional Office**, and follow the detailed instructions.

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

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 23, 2014**. The request may be filed electronically through the Agency's website, **www.nlr.gov**,⁷ but may **not** be filed by facsimile.

⁷ To file a Request for Review electronically, go to the Agency's website at **www.nlr.gov**, select **File Case Documents**, enter the NLRB Case Number, select the option to file documents with the **Board/Office of the Executive Secretary** and follow the detailed instructions.