UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

CENTRAL OHIO GAMING VENTURES, LLC
D/B/A HOLLYWOOD CASINO-COLUMBUS

Employer

and Case 9-RD-126599

MELVIN BOWENS, AN INDIVIDUAL

Petitioner

and

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

Union

DECISION AND ORDER

I. INTRODUCTION

The Employer, a limited liability corporation, is engaged in the business of operating a casino at 200 Georgesville Road, Columbus, Ohio. On April 15, 2013, the Union was certified as the collective-bargaining representative of a unit of employees consisting of "all full-time and regular part-time armed and unarmed security officers, security/EMT's and Security/Dispatchers performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act, as amended, employed by the [Employer] at its Columbus, Ohio facility, excluding all office clerical employees, professional employees, supervisors as defined in the Act, as amended, and all other employees." (the Unit) The record evidence establishes that following the Union's certification as the bargaining representative of the Unit, the Union and the Employer negotiated a collective-bargaining agreement, a copy of which was received into evidence, covering the Unit.

The Petitioner filed a petition with the National Labor Relations Board (Board) under Section 9(c) of the National Labor Relations Act (Act) on April 15, 2014 seeking to decertify the Union as the exclusive collective-bargaining representative of the Unit. The Union and the Employer both assert that the petition is barred by the Board's "contract bar" doctrine. The Petitioner contends that there is no "contract bar" because the contract was not signed and finalized until after the petition was filed. For the reason set forth below, I have determined that a "contract bar" exists and I shall, therefore, dismiss the petition.

In reaching my determination on this issue, I have considered the record evidence as a whole, as well as the arguments made by the parties at the hearing and in their post-hearing briefs. In explaining how I came to my determination on this issue, I will first describe the parties' bargaining history, then set forth the applicable legal precedent and finally analyze the contract bar issue in relation to that precedent.

II. BARGAINING HISTORY

Following the Union's certification as the collective-bargaining representative of the Unit on April 15, 2013, the parties commenced bargaining for a collective-bargaining agreement (contract). The record reflected that by February 27, 2014, [1/] the parties had reached oral tentative agreements on the terms of a contract with the caveat that they would review the contract and reconvene to do some "clean-ups." The parties did not sign any agreement on that date. Upon reviewing the contract, the Employer brought up three additional issues: 1) the length of the contract; 2) concerns regarding how the union security clause would potentially impact and interact with Ohio Casino Control Commission staffing requirements; and 3) neutrality language.

By April 1, the Union and Employer agreed to extend the terms of the contract from 3 years to 4 years and provide a 2 percent wage increase for Unit employees in the fourth year. The parties also discussed, but chose not to amend, the union security clause. Thus, the only remaining issue was the neutrality clause. The parties continued to negotiate language about the neutrality clause until April 15.

On April 14, the Employer by email sent the Union a draft of the final language of the contract. The draft contract did not include a neutrality clause, but the Employer's proposed neutrality clause was included in the body of the email. The effective date for the contract was omitted.

The record reflects an exchange of emails between the Union and Employer on April 15. Also, as noted earlier, the instant petition was filed. At 12:14 pm on April 15, the Union sent the Employer an email accepting the Employer's April 14 proposed neutrality clause language. Attached to the union's email was a signature page for the contract containing the signature of a Union representative with authority to bind the Union to the contract. The record further reflects that the Duration of Agreement article contained in the contract provides that the, "Agreement dated April 15, 2014 shall continue in full force and effect without change until April 15, 2018." The Union's email requested that the Employer sign and return the contract that day.

Minutes later, at 12:16 pm on April 15, the Petitioner filed a petition seeking a decertification election. I have taken administrative notice that the Employer was not contacted by the Board about the petition until the morning of April 16.

At 12:17 pm on April 15, the Union by email to the Employer requested that the Employer return a signed signature page prior to 4:30 pm EST so that it could "cancel" future

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[1/] All dates hereinafter refer to 2014, unless stated otherwise.

unfair labor practice charges. At 4:57 pm that same day, the Employer responded by email to the Union, with courtesy copies to other individuals, stating:

> "Harold... **We have a deal.** (emphasis added) Whether Robin, Gene and I can get the word processing and signatures done today (all of us are travelling) is not likely. **Hopefully, this email suffices to evidence that our deal is done.** (emphasis added) It would be a rather hostile act to see charges filed under these circumstances...Carl."

The Employer later reaffirmed that the parties "have a deal" in an additional email on April 16, 2014.

The record testimony reflects that the Petitioner did not inform the Union or the Employer that it intended to file the petition prior to doing so. Rather, as noted above, the record reflects that the Employer did not find out about the petition until it was notified by the Board on April 16. The parties subsequently signed a final version of their collective-bargaining agreement that included the terms and conditions of employment agreed upon on April 15 with no substantial changes at the time of the hearing. Certain economic terms of the contract had not been implemented due to the Employer's payroll cycle. However, the Employer asserts that it intends to implement them retroactively to April 15.

III. LEGAL ANALYSIS

The sole issue presented is whether an agreement was reached between the Employer and the Union that constitutes a "contract bar" to the Petitioner's petition.

Under the Board's "contract bar" doctrine, the existence of a collective-bargaining agreement prior to the filing of a representation petition, may preclude, or bar, a Board representation election involving employees covered by the contract if such a contract exists and conforms to certain requisites. The purpose of the Board's contract-bar doctrine is to achieve a reasonable balance between the frequently conflicting aims of industrial stability and employee freedom of choice. The burden of proving a contract bar is on the party asserting the existence of the bar. *Roosevelt Memorial Park*, 187 NLRB 517 (1970).

For a contract to serve as a bar to an election the contract must: (1) be written; (2) be signed by the parties; (3) contain substantial terms and conditions; (4) cover the employees in the unit; and (5) be applicable to the appropriate unit. *Appalachian Shale Products, Co.*, 121 NLRB 1160 (1958). It is undisputed that the purported contract in this matter contains substantial terms and conditions of employment, clearly encompasses the employees involved in the petition, and covers an appropriate unit.

At issue is whether the parties had reached a written and signed contract before the filing of the instant petition. As an initial matter, I note that a contract executed on the same day that a petition is filed with the Board bars an election provided the contract is effective immediately or retroactively, and the employer did not have actual notice at the time of its execution that a petition had been filed. See, *Santa Fe Trail Transportation Co.*, 139 NLRB 1513, 1514 fn. 3 (1962). Here, the record is clear that neither the Union nor the Employer had notice of the

petition before it was filed. The Union signed the contract before the petition was filed, and the Employer accepted the Union's offer to enter into the contract without knowledge that the petition had been filed. Additionally, based on the "Duration of Agreement" language contained in the contract that the Union offered and the Employer accepted on April 15, it was effective immediately. Therefore, the contract meets this timeliness requirement.

The Board's requirement that the parties reach a written and signed contract "does not mean that contracts must be formal documents or that they cannot consist of an exchange of a written proposal and a written acceptance." *Pontiac Ceiling & Partition Co.*, 337 NLRB 120, 123 (2001). The documents relied on to meet those requirements, however, must set out the terms of the agreement and leave no doubt that they amount to an offer and acceptance of those terms. *Branch Cheese*, 307 NLRB 239 (1992); *Georgia Purchasing, Inc.*, 230 NLRB 1174 (1977).

Based on Board precedent, the Union's offer and the Employer's acceptance of a collective-bargaining agreement via email warrants a finding of contract bar. In a case similar to this one, the Board found that the written offer and acceptance of a contract by the exchange of telegrams between the parties was sufficient to bar an election based on a petition filed after the parties had reached agreement. *Georgia Purchasing, Inc.*, 230 NLRB 1174 (1977). In *Georgia Purchasing*, the union sent the employer a telegram detailing the terms of the agreement that had been reached except for one provision to which the parties had not agreed. Following receipt of the telegram, the union and employer orally agreed to the remaining term. The employer then sent the union a telegram confirming "the renewal of the collective bargaining agreement" effective retroactively under the terms of the union's telegram. A written memorandum memorializing the parties' agreement was not signed until after a decertification petition was filed. The Board concluded that the written offer and acceptance by telegram was sufficient to bar the petition.

The rationale in *Georgia Purchasing* is applicable here. Instead of a telegram, the Employer sent the Union a proposed contract via email. Although the contract was missing one provision regarding a neutrality clause, the neutrality clause language was included within the body of the email. The Union, in turn, agreed by email to all provisions sent by the Employer and added effective dates into the contract; with the date of commencement being April 15. This constituted the Union's full offer. The Employer's response (on April 15, 2014) that the parties had a "deal" constitutes an acceptance of the contract. The Employer's acceptance was signed by its General Counsel and negotiator via electronic signature and it is clear that the Employer thereby accepted the Union's offer of the previously agreed-upon provisions, the neutrality clause, and the effective dates. (Compare, *Waste Management of Maryland*, 338 NLRB 1002 (2003) and *Branch Cheese*, supra, where multiple offers were on the table, and the records were unclear as to which offer was being accepted.) In contrast to *Waste Management of Maryland* and *Branch Cheese*, in this matter there is no doubt as to the terms the Employer accepted.

However, as previously noted, the record reflects that the Employer at the time of the hearing had not implemented all of the terms of the contract. Whether the parties have implemented the terms of the contract is not relevant to determining whether the contract serves to bar the petition. *Branch Cheese*, 307 NLRB 239, 240 fn. 4 (1992); *Appalachian Shale Products*, 121 NLRB 1160, 1162 (1958).

IV. CONCLUSION

Based upon the entire record in this matter, including the briefs and arguments of the parties, I conclude:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby 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 in this case.

3. The Union is a labor organization within the meaning of Section 2(5) of the Act.

4. No 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 based on the untimeliness of the petition filed herein.

V. ORDER

The Petition in the matter 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 p.m., EDST on **May 28, 2014.** *The request may be filed electronically through the Agency's website, www.nlrb.gov, [2]/ but may not be filed by facsimile.*

Dated at Cincinnati, Ohio this 14th day of May 2014.

Matthew T. Denholm, Acting Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

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[2]/ *To file the request for review electronically, go to www.nlrb.gov, select* ***File Case Documents****, enter the NLRB Case Number, and follow the detailed instructions.*