

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

In the Matter of

PARAGON SYSTEMS, INC.

Employer

and

UNITED GOVERNMENT SECURITY  
OFFICERS OF AMERICA,  
INTERNATIONAL UNION

Intervenor

and

INTERNATIONAL UNION, SECURITY,  
POLICE AND FIRE PROFESSIONALS  
OF AMERICA

Petitioner

Case 01-RC-172541

**DECISION AND ORDER**

The International Union, Security, Police and Fire Professionals of America (SPFPA or Petitioner) seeks to represent security officers employed under a contract between Paragon Systems, Inc. (Employer) and the United States Government's Department of Homeland Security (DHS). Although the Employer provides security services throughout New England, the petitioned-for unit is comprised solely of security officers who work throughout the Commonwealth of Massachusetts. The petitioned-for employees are currently represented by the United Government Security Officers of America, International Union (UGSOA or International or Intervenor) under a collective-bargaining agreement effective from December 16, 2013 through December 16, 2016 (the 2013-2016 agreement). The sole issue in this case is whether that agreement is a bar to the petition. The Petitioner takes the position that there is

no contract bar because the collective-bargaining agreement was not signed by all parties to it. In particular, the agreement was signed by a representative of the Intervenor's International but not its Local 273 (herein the Local or Local 273), despite the fact that both the International and the Local are parties to the contract. The Intervenor contends that the petition is barred by the contract because the International president signed it in her dual capacities as International representative and trustee for the Local.

For the reasons set forth below, I find that the 2013-2016 agreement constitutes a bar to the petition filed by SPFPA, and that that the petition is therefore untimely filed. Accordingly, I am dismissing the petition under the Board's contract bar doctrine.

This petition in this case was filed under Section 9(c) of the Act. 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; 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; that the Petitioner is a labor organization within the meaning of the Act; and that a question affecting commerce exists concerning the representation of certain employees of the Employer.

## **I. FACTS**

The Employer provides security services to agencies of the US Government, including DHS and the Federal Protective Service. It employs security personnel at various facilities located throughout Massachusetts, including the O'Neill, JFK, and McCormack Federal Buildings in Boston. The 2013-2016 contract between the Employer and the UGSOA names both Local 273 and the International as parties to the contract. It is undisputed that only the International, by its president, Desiree Sullivan, signed the contract.

### **a. The 2013 Negotiations and Trusteeship**

In late 2013,<sup>1</sup> the Employer and UGSOA began meeting to negotiate a collective bargaining agreement, as the Employer had taken over the DHS contract in about June. On December 17, International President Desiree Sullivan sent a letter to Local 273 and its president, stating that the Local was being placed into trusteeship, effective immediately, "in accordance with [Articles VII and X] of the International Constitution." In the letter, Sullivan requested that the Local forward to the International Office all its financial records, minutes of meetings, and other property of the Local. The letter makes no mention of the

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<sup>1</sup> All dates are in 2013 unless otherwise noted.

designation of a Trustee. Two days later, on December 19, Sullivan signed the 2013-2016 collective-bargaining agreement. Under her signature appears the following: Desiree Sullivan, President, UGSOA International. There is no signature line for a Local 273 representative.<sup>2</sup> The parties to the contract are the Employer, UGSOA's International, and Local 273.

According to the Intervenor, the International filed appropriate paperwork with the US Department of Labor (DOL), formally placing Local 273 in trusteeship.<sup>3</sup> After the hearing concluded, at the agreement of the parties and the Hearing Officer, the Intervenor submitted completed Forms LM-15A and LM-16, purporting to demonstrate that (a) the trusteeship was filed with DOL, and (b) International President Sullivan was appointed Trustee. Sullivan signed both forms as Trustee on June 17, 2014, six months after the trusteeship was imposed. The forms indicate that the trusteeship commenced on December 17, and terminated on May 28, 2014.<sup>4</sup>

b. The Relevant Provisions of the Intervenor's Governing Documents

Article X of the UGSOA International's Constitution sets forth the process by which a local union can be placed into trusteeship. In particular, Article X, Section 2(a) requires:

*If a trusteeship is imposed, the International President shall appoint a Trustee, who shall administer the affairs of the [local union] during the trusteeship.*

Section 2(b) further provides:

*The Trustee shall take immediate charge of the affairs of the chartered body, and shall have the right, upon demand, to all assets and records for the period that he or she is in charge, to be held in trust for the benefit of the members of the [local union].*

Finally, Section 2 of Article X describes the effect of trusteeship on the local union:

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<sup>2</sup> The contract was apparently ratified by the membership of Local 273, as required by the Local's Constitution and By-Laws, but there is no record evidence regarding when or how this occurred.

<sup>3</sup> In its brief, the Intervenor asserts that the Department of Labor "approved" the trusteeship, but offers no evidence to support that assertion.

<sup>4</sup> Michael Leblanc, the UGSOA International's DHS vice president and Local 273 Business Agent, and the only witness to testify at the hearing, stated the trusteeship ended sometime in 2014.

*(c) When a trusteeship is imposed, the officers of the [local union] shall be suspended from office and their functions shall pass to the Trustee, who may delegate such functions ....*

*(e) The autonomy of the [local union] shall be suspended during the period of the trusteeship, except that a membership vote shall be held to ratify collective bargaining agreements and increase dues for the Local Union.*

The Constitution and By-Laws of UGSOA Local 273 address the requirements for executing a collective bargaining agreement. Specifically, Article XII provides in its entirety:

*No collective bargaining agreement shall be effective until ratified by a majority of the members actually voting on same at a regular or specially called meeting, and is signed by the International Union. No Union Official may negotiate or enter into any agreement individually, nor without the majority of the membership actually voting on the same at a regular or specially called meeting, and it being duly signed by the International Union.*

## **II. ANALYSIS AND CONCLUSION**

The sole issue presented is whether the 2013-2016 collective bargaining agreement constitutes a contract bar to the SPFPA's petition.

In order to constitute a bar to a representation petition, an agreement must be written, signed before the rival petition is filed, contain the substantial terms and conditions of employment, encompass the employees involved in the petition, and cover an appropriate unit. *Seton Medical Center*.<sup>5</sup> The purpose of the contract bar doctrine is to achieve a reasonable balance between the statutory policies of stability in labor relations 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*.<sup>6</sup>

It is undisputed that the contract in this matter contains terms and conditions of employment, encompasses the employees involved in the petition, and covers an appropriate unit. The sole issue in this proceeding is whether the contract was signed by all parties, as required under *Appalachian Shale*:

*[A] contract to constitute a bar must be signed by all the parties before a petition is filed and that unless a contract signed by all the parties*

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<sup>5</sup> 317 NLRB 87 (1995), citing *Appalachian Shale Products*, 121 NLRB 1160, 1161 (1958).

<sup>6</sup> 187 NLRB 517 (1970).

*precedes a petition, it will not bar a petition even though the parties consider it properly concluded and put into effect some or all of its provisions. Id. at 1162.*

The Board has repeatedly held that a contract signed by a party's authorized agent may constitute a bar to a petition.<sup>7</sup>

The Petitioner contends that the 2013-2016 contract was signed by only two of the three parties to the agreement, and therefore does not meet requirements for a contract bar as set forth in *Appalachian Shale*. The Intervenor asserts that the local union was in trusteeship when the contract was signed, and that International President Sullivan signed the contract on behalf of both entities.<sup>8</sup> The Employer did not appear at the hearing and has not taken a position on the contract bar issue.

The undisputed parties to the contract at issue are the Employer, the International, and the Local. Although the Board has held that e-mails and other informal documents indicating offer and acceptance may constitute a signed agreement,<sup>9</sup> the requirement that all parties must sign the agreement has remained unchanged in the nearly six decades since *Appalachian Shale* was decided.<sup>10</sup> Thus, it is clear that when a local union and its international are both named parties to a contract, both must sign the agreement for it to constitute a bar to a representation petition. *Crothall Hospital Services*.<sup>11</sup>

The Board has not squarely addressed the issue presented here: whether a purported trustee of a local union is necessarily signing on behalf of the local in the absence of an express indication on the face of the agreement that she is doing so. Nevertheless, the unique facts of this case support a finding that the 2013-2016 contract is a bar to the petition filed by SPFPA.

At the outset, it is clear that Local 273 was placed in trusteeship on December 17, two days before the contract was signed by UGSOA International president Sullivan. Although the letter did not name a Trustee as required by the International Constitution, it can be inferred from the documentary evidence that

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<sup>7</sup> See, e.g., *Pharmaseal Laboratories*, 199 NLRB 324 (1972); *Aptos Seascope Corp.*, 194 NLRB 540 (1971).

<sup>8</sup> The Intervenor also takes the position that, under Local 273's Constitution and Bylaws, the International may sign on behalf of the Local even in the absence of trusteeship. In support of this argument, the Intervenor cites the Constitution language quoted above. In finding that the contract was properly signed by representatives of all parties, I do not rely on this language, which merely provides that the International, *as well as* the Local, must sign all collective bargaining agreements.

<sup>9</sup> See, e.g., *Pontiac Ceiling & Partition Co.*, 337 NLRB 120, 123 (2001).

<sup>10</sup> See, e.g., *DePaul Adult Care Communities*, 325 NLRB 681 (1998); *Crothall Hospital Services, Inc.*, 270 NLRB 1420 (1984).

<sup>11</sup> 270 NLRB 1420 (1984), citing *Filtration Engineers, Inc.*, 98 NLRB 1210 (1952).

Sullivan was, in fact, the Trustee for the Local. First, in her December 17 letter, Sullivan requested all the Union's financial records, a right afforded only to the Trustee under Article X, Section 2(b) of the International's Constitution. Second, Sullivan is expressly named as the Trustee for Local 273 in the Intervenor's DOL filings. Although they were not signed until June 2014, the LM-15A and LM-16 nevertheless evidence the International's intent that Sullivan act as Trustee for the Local.<sup>12</sup>

Concurrent with the imposition of trusteeship on Local 273, all its officers were suspended, and the powers of the Local were transferred to the Trustee. As a result, as of December 17, no representative of Local 273 had the authority to bind the Local by signing the collective-bargaining agreement. Only the Trustee could act on the Local's behalf during the period of trusteeship. Thus, it can be inferred that Sullivan was signing as the *de facto* Trustee for Local 273, notwithstanding the absence of such language on the face of the contract. To conclude otherwise would leave Local 273 without a representative authorized to bind it to the collective-bargaining agreement, a result clearly at odds with the objective of stability in labor relations.

The Petitioner argues that, in determining whether all parties signed the agreement as required by *Appalachian Shale*, I am constrained by the language within the four corners of the document and precluded from considering extrinsic evidence. In support of this argument, the Petitioner cites *Jet Pack Corp.*,<sup>13</sup> which dealt with the question of whether a contract with an arguably unlawful union security clause was a bar to an election petition. In *Jet Pack*, as well as the cases cited therein, the Board affirmed that it would not consider extrinsic evidence to determine whether a contract provision was unlawful, as such inquiries were within the purview of unfair labor practice proceedings. Thus, the Board concluded, it would rely only on the language contained within the contract to apply the contract bar doctrine.

Here, in contrast, the extrinsic evidence supporting a finding that the 2013-2016 agreement is a bar to the petition is unrelated to the legality of the agreement itself. Rather, the December 17 letter creating the trusteeship and the later-drafted DOL forms are merely uncontroverted evidence regarding the legal status of one of the parties to the contract. In this regard, the extrinsic evidence does not present any of the "dangers normally present in a non-adversary representation hearing," and does not violate any of the proscriptions set forth in *Paragon Products*.<sup>14</sup> Therefore, I find it appropriate to consider the effect of the trusteeship on the purported defect in the collective bargaining agreement.

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<sup>12</sup> The Petitioner correctly notes the absence of record evidence demonstrating that the forms were actually filed with DOL. Whether or not they were filed, however, the completed forms clearly indicate the International's intent in naming Sullivan as Trustee.

<sup>13</sup> 231 NLRB 552 (1977).

<sup>14</sup> 134 NLRB 662 (1961).

As the 2013-2016 contract may serve as a bar, and as the petition was filed during the term of that contract, I find that the petition must be dismissed.

**ORDER**

IT IS HEREBY ORDERED that the petition is dismissed.

**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 **April 28, 2016**. 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:** April 13, 2016



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