

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

PARAGON SYSTEMS INC.,

Employer,

Case 29-RC-229372

and

**NATIONAL LEAGUE OF JUSTICE AND
SECURITY PROFESSIONALS,**

Petitioner,

and

**SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 32BJ,**

Party-In-Interest.

**BRIEF OF PARTY-IN-INTEREST
SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 32BJ
IN OPPOSITION TO PETITIONER'S REQUEST FOR REVIEW**

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Preliminary Statement

Petitioner's Request for Review should be denied and Region 29's December 18, 2018 Decision and Order (the "Decision") dismissing the petition should be upheld because the successor bar bars an election. Paragon Systems, Inc., the employer in this case, has acknowledged that it is a successor employer and has engaged in collective bargaining with SEIU Local 32BJ, the incumbent union. Those negotiations were extensive and on-going at the time the petition was filed by the Petitioner, the National League of Justice and Security Professionals. The central importance of maintaining labor peace and industrial stability favor dismissing Petitioner's Request for Review and upholding the Decision.

Local 32BJ has represented the security officers at Federal Protective Services ("FPS") locations in Manhattan and the Bronx since October 2013 pursuant to a voluntary recognition agreement and through a series of collective bargaining agreements. On October 1, 2018, a new employer – Paragon Systems, Inc. ("Paragon" or the "Employer") – assumed the FPS account and became the employer of the Local 32BJ-represented guards. On assuming the account, Paragon hired the vast majority of the predecessor's employees at the locations and continued negotiations that had begun earlier with Local 32BJ regarding a new collective bargaining agreement. Under established precedent from the Supreme Court and the Board, Paragon is a successor employer. It has acknowledged its status as a successor by notifying Local 32BJ that it recognized the union as its employees' bargaining representative and by entering into collective bargaining negotiations with it.

The Board re-established the successor bar in *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011) ("*UGL*"), holding that it would apply for a reasonable period of time (of at least six months) in situations where the employer has abided by its obligation to recognize an incumbent

union, but a contract bar did not otherwise apply. The Board’s reasoning in *UGL* placed a premium on labor stability and allowing parties that are new to each other – a new employer and an incumbent union – time to reach an agreement. The same concern applies in this case and has been central to the decisions regarding the successor bargaining obligation since *NLRB v. Burns Int’l Security Services, Inc.*, 406 U.S. 272 (1972).

Moreover, Section 9(b)(3) of the National Labor Relations Act (the “Act”) does not prohibit the application of the successor bar, even though Local 32BJ is a mixed guard/non-guard union (hereinafter “mixed union” or “mixed guard union”). As recognized in *Burns Detective Agency, Inc.*, 134 NLRB 451 (1961), where the Board held that employers could voluntarily recognize mixed unions, Section 9(b)(3) merely prohibits the Board from certifying mixed unions. The decision in *Burns* and subsequent cases, including *Loomis Armored US, Inc.*, 364 NLRB No. 23, *slip op.* (2016), where the Board held an employer could not even after contract expiration withdraw recognition from a mixed union that had been voluntarily recognized, promote stability in bargaining relationships and industrial peace.

Here, where the Employer is not challenging its role as a successor, believes itself obligated to bargain with the incumbent union (Local 32BJ), and has engaged in intensive, good faith bargaining with that union, concerns for the stability bargaining relationships and industrial peace are especially prevalent. The Decision should accordingly be upheld, and Petitioner’s Request for Review denied, allowing the Employer and Local 32BJ to maintain a stable bargaining relationship and to have finality on behalf of the employees with respect to the terms and conditions of their employment.

Facts

On October 28, 2013, FJC Security Services (“FJC”) entered into a recognition agreement with Local 32BJ based upon a voluntary card check where Local 32BJ demonstrated majority support among FJC employees at FPS locations in the Greater New York City area. See Decision, at 3.¹ FJC provided security services at the various FPS government locations, including locations in the Manhattan and the Bronx at issue in this case. *Id.*

FJC and Local 32BJ entered into a series of successive collective bargaining agreements covering the FPS officers, effective April 1, 2014 through March 31, 2017, and effective April 1, 2017 through March 31, 2017. See Decision, at 3. Each of the agreements between FJC and Local 32BJ for the FPS guards were “Rider Agreements,” which modified and supplemented the parties’ existing master collective bargaining agreements. *See Id.*

On or about June 1 2018, FPS selected Paragon to replace FJC as the security provider at locations in Manhattan and the Bronx, and Paragon entered into a contract with the FPS. See Decision, at 4. Paragon’s award provided that it would commence operations as the FPS security contractor effective October 1, 2018 (FJC would remain the security contractor through September 30). *Id.*

In early-June 2018, after it was notified of its award, Paragon issued a memorandum announcing a job fair at which FJC’s FPS employees could apply for a job with Paragon. See Decision, at 4. The memorandum also advised employees that Paragon intended to set the initial terms and conditions of their employment and would not abide by the terms of the FJC-Local 32BJ collective bargaining agreement then governing their employment. *Id.*

¹ The Decision clearly and thoroughly states the facts, which Local 32BJ repeats here in summary form for ease of reference.

The jobs fairs were held in New York City on June 22 and June 25. *See* Decision, at 4. Paragon required employees to complete employment applications, provide other pre-employment paperwork, such as I-9 forms and consents to submit to criminal background checks, and to transfer their weapons licenses to Paragon from FJC. *Id.* At the job fairs, Paragon also issued offer letters to the incumbent employees, advising them of their initial terms of employment. *See* Decision, at 5.

On or about August 15, 2018, before it commenced operations at the FPS locations, Paragon met with representatives of Local 32BJ in New York City. *See* Decision, at 5. At that meeting, the parties discussed Paragon's process for hiring employees and the collective bargaining agreement, including issues related to health care, wages and employee discipline. *Id.* Paragon made it known that its recognition of Local 32BJ depended on its hiring a majority of its predecessor's employees, which would not formally occur until it commenced operations on October 1. *Id.* The parties also discussed how to structure their anticipated contractual relationship, with Local 32BJ proposing that Paragon follow the same structure as FJC, where it would sign a master collective bargaining agreement and a separate rider agreement covering the FPS work. *Id.*, at 5-6. Throughout those and subsequent discussions, Paragon never stated or otherwise indicated that it would not engage in collective bargaining with Local 32BJ or that it would not recognize Local 32BJ. *Id.*, at 11-12.

Local 32BJ and Paragon continued to discuss a collective bargaining agreement by phone and email in the weeks following their in-person meeting. *See* Decision, at 6. Local 32BJ provided Paragon with draft agreements, including a proposed collective bargaining agreement and a memorandum of agreement pursuant to which Paragon would assume FJC's rider agreement for the FPS locations. *Id.*

On October 1, 2018, Paragon commenced working as the security contractor at the FPS locations, and hired a majority of the incumbent employees. *See* Decision, at 5. Local 32BJ and Paragon continued their collective bargaining negotiations following the commencement of Paragon’s operations at the FPS locations. Those negotiations extended through November 7, 2018, the date of the hearing in this case, though as of that date the parties had reached a compromise on what had been the main sticking point in negotiations, the scope of recognition by Paragon of Local 32BJ at subsequently acquired, non-FPS accounts. Decision, at 7.

The December 21, 2018 Decision and Order

The Decision held that the successor bar applies in this case and requires the dismissal of the petition. It further held that Section 9(b)(3) of the Act does not preclude the application of the successor bar to a mixed guard/non-guard union. A successor employer exists where there is “substantial continuity” between the predecessor and successor employers and where the successor hires a majority of the predecessor’s employees. In those circumstances, the successor is obligated to recognize and bargain with the incumbent union. Decision, at 7. The Regional Director found that here there was no dispute by the Petitioner or the Employer that the Employer is a successor. Decision, at 10. Paragon took over the predecessor’s work as a security contractor at FPS locations and hired a majority of its predecessor’s employees at those locations. Paragon further acknowledged its status as a successor by engaging in collective bargaining with Local 32BJ. *Id.*

The Decision also found that Section 9(b)(3) of the Act does not prevent the application of the successor bar where the incumbent union admits both guards and non-guards. Decision, at 8. Relying on long-standing Board law, the Decision noted that Section 9(b)(3) “prohibits the Board from *certifying* a mixed guard/nonguard union as a representative of a guard unit” but

does not preclude an employer from voluntarily recognizing a union. *Id.* (citing *Burns Detective Agency*). It noted that in *Stay Security*, 311 NLRB 252 (1993), the Board held that Section 9(b)(3) does not prevent the application of the contract bar to collective bargaining agreements between an employer and a mixed guard/non-guard union. Decision, at 8. The Board in *Stay Security* concluded that the interest of the Act in promoting labor stability is furthered by protecting agreements during the contract bar period, even in the context of a mixed guard union. Decision, at 8-9. Following the principles laid out in *Stay Security*, in *Loomis* the Board held that an employer that has voluntarily recognized a mixed guard union as the representative of its guard employees may not unilaterally withdraw recognition upon contract expiration without demonstrating loss of majority support. Decision, at 9.

Following the holdings in those cases, the Regional Director correctly determined that the successor bar applies in this case, even if Local 32BJ is a mixed guard union, finding that applying the successor bar is consistent with the Act's interest in promoting labor stability. That interest is heightened where, as here, the Employer has engaged in bargaining with Local 32BJ, all the while understanding itself as bound as a successor to recognize and bargain with the incumbent union. Decision, at 9-10. Further, the Region noted that "in both the recognition and successorship situations, the employer has incurred the recognitional obligation by a voluntary act, either by extending recognition after ascertaining that a majority supports the union or by hiring a sufficient number of a predecessor's employees to constitute a majority and thereby incurring a bargaining obligation set out in *NLRB v. Burns Security Services*, 460 U.S. 272 (1972)." Decision, at 9 n.18.

The Region also addressed and dismissed Petitioner's argument that the successor bar should not apply because Local 32BJ did not demonstrate anew its majority support and because

Paragon did not issue a letter of recognition to Local 32BJ. It found that under *Burns*, the presumption of continuing majority support continues, even in the successorship context and even if the incumbent union was voluntarily recognized rather than certified. Decision, at 11. Where the presumption of continued majority support exists, “the incumbent union is not required to demonstrate majority status.” Decision, at 11. That conclusion is consistent with *Loomis*’s holding that absent an actual loss of majority support, an employer must continue to recognize a mixed guard union. Decision, at 11.

Finally, the Region dismissed as factually unsupported Petitioner’s argument that Local 32BJ and the Employer’s continuing negotiations over the scope of recognition in a collective bargaining agreement meant that there was no recognition. The Region found that Local 32BJ and Paragon *had* agreed to recognition for the petitioned-for unit, though they had not yet reached agreement on recognition of other units of employees that Paragon may acquire in the future. Decision, at 12.

Standard of Review

Pursuant to NLRB Rules and Regulations § 102.67(c), a Request for Review of a Regional Director’s decision regarding a representation petition will be granted “only where compelling reasons exist therefor.” Specifically, Board review may be granted only on one of the following grounds:

- (1) That a substantial question of law or policy is raised because of:
 - (i) The absence of; or
 - (ii) A departure from, officially reported Board precedent.
- (2) That the regional director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.
- (3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.

- (4) That there are compelling reasons for reconsideration of an important Board rule or policy.

NLRB Rules and Regulations § 102.67(c). Petitioner's Request for Review implicates only subsection (1)(i), as to its argument that application of the successor bar to a mixed guard union is unsupported by Board precedent.

Argument

Petitioner challenges the Decision on the grounds that the successor bar should not apply to this case because Local 32BJ is a mixed guard/non-guard union. For the reasons stated in the Decision and below the Board should affirm the Decision and deny Petitioner's Request for Review.

I. The Decision's Application of the Successor Bar Was Correct and Should Be Upheld.

Region 29 correctly found that the petition should be dismissed because a successor bar applies. In *UGL*, the Board held that an incumbent union enjoys a presumption of majority of support for a "reasonable time" after a new employer begins bargaining with it. The purpose of any bar is to allow "a bargaining relationship once rightfully established . . . to exist and function for a reasonable period in which it can be given a fair chance to succeed." *UGL*, 357 NLRB at 803 (internal quotations omitted). Moreover, the successor bar applies where an employer has voluntarily recognized a Union. *See Lamons Gasket Co.*, 357 NLRB 739 (2011); *see also UGL* (noting that voluntary recognition bar "was a fixture of Board law for more than 40 years . . .").

In reestablishing the successor bar, the Board reasoned that the same considerations that apply to the recognition bar apply in the successor-employer context. Specifically, it identified the successor bargaining relationship as a new relationship between an employer and a union,

similar to the new bargaining relationship that exists when a union is voluntarily recognized. It concluded that the parties should be provided with a “reasonable chance to succeed” in forging that new bargaining relationship. *UGL*, 357 NLRB at 806. *See also Lamons Gasket*, 357 NLRB at 744 (remedial bargaining orders, voluntary recognition and successorship “share the same animating principle: that a newly created bargaining relationship should be given a reasonable chance to succeed before being subject to challenge.”); *see also SMI/Division of DCX-CHOL Enterprises, Inc.*, 365 NLRB No. 152 (2017) (affirming application of successor bar and holding that union entitled to a six-month period of bargaining with the successor employer); *Empire Janitorial Sales & Services*, 364 NLRB No. 138, *slip op.* (2016) (finding successor bar); *Jamestown Fabricated Steel & Supply, Inc.*, 362 NLRB No. 161, *slip op.* at 1 fn. 1 (2015) (same).

The stability of bargaining relationships and industrial peace were central to the Supreme Court’s decisions in *Burns* and *Fall-River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27 (1987). In *Burns*, the Court held that an employer, which hired a majority of its predecessor’s employees and succeeded its predecessor by about four months after the incumbent union had been certified, had an obligation to bargain with the union. It noted that though the obligation to bargain does not compel the parties to reach an agreement, it promotes industrial peace. *Burns*, 406 U.S. at 282. In *Fall-River*, the Court concluded that the “overriding policy of the NLRA is ‘industrial peace.’” *Fall-River*, 482 U.S. at 34 (quoting *Brooks v. NLRB*, 348 U.S. 96, 103 (1954)). An incumbent union therefore enjoys a presumption of majority support so that it may “concentrate on obtaining and fairly administering a collective-bargaining agreement without worrying that, unless it produces immediate results, it will lose majority support and will be decertified.” *Id.* at 34. The Court explained that “[d]uring a transition between employers, a union is in a peculiarly vulnerable position,” lacking a formal relationship with the new

employer, being uncertain of the new employer's plans, while also attempting to protect members' terms and conditions of employment established with the predecessor employer. *Id.* at 35.

Those considerations about labor stability and industrial peace weigh in favor of the application of the successor bar to the unique circumstances of this case where the Employer is not challenging recognition and was engaged in negotiations with the incumbent union at the time it became the successor. Local 32BJ represented the employees at the FPS locations and was party to a collective bargaining agreement covering those employees at the time Paragon became the successor employer. Paragon hired a majority of its predecessor's employees and succeeded FJC as the security contractor at FPS locations. *See* Decision, at 10.

Industrial stability and the bargaining relationship between Paragon and Local 32BJ would be threatened by allowing a challenge to continue while they negotiate a new agreement. Moreover, the Employer in this case engaged in bargaining with Local 32BJ, recognizing its obligations as a successor; disrupting that bargaining to hold an election here would be destabilizing not only to Local 32BJ but to the employees and the Employer. In applying the successor bar in this case, the Region correctly emphasized the importance of protecting the stability of collective bargaining relationships. Decision, at 9.

Paragon's decision to hire a majority of its predecessor's employees at the FPS locations was also a voluntary decision. *See* Decision, at 9 and n. 18. In *St. Elizabeth Manor*, 329 NLRB 341, 342-43 (1999), the Board stated that "In both initial recognition and successorship situations, the employer has incurred a recognitional obligation by a voluntary act, either by extending recognition to a union after ascertaining, demonstrated majority support or by hiring a sufficient number of a predecessor's employees to constitute a majority and thereby incurring a

bargaining obligation” Of course, under *Burns*, a successor employer is empowered to set the initial terms and conditions of employment and to choose whether to hire the predecessor’s employees. *Burns*, at 280. The Supreme Court in *Fall-River Dyeing & Finishing Co. v. NLRB*, 482 US 27, 41 (1987), affirmed the voluntary nature of an employer’s decision to continue in its predecessor’s business and to hire incumbent employees, in stating:

Thus, to a substantial extent the applicability of *Burns* rests in the hands of the successor. If the new employer makes a conscious decision to maintain generally the same business and to hire a majority of its employees from the predecessor, then the bargaining obligation of § 8(a)(5) is activated.

Fall-River Dyeing, 482 U.S., at 41.

Here, Paragon made a voluntary decision to engage in the same business at the same location as the predecessor. It also made a voluntary decision to hire the incumbent employees. To that end, Paragon engaged in an intensive effort to recruit and hire employees. It held a job fair on two dates in June 2018, more than three months before it took over the work at the FPS locations. *See Decision*, at 5. At the job fairs, Paragon advised employees that their possible employment depended on passing various pre-employment screenings, such as drug tests, attending training programs, and meeting other weapons and contract-requirements standards. *Id.* It further advised that Paragon intended to set all terms and conditions of employment without regard to the predecessor’s collective bargaining agreement. *Id.* Finally, the Region determined that the period of time in which Local 32BJ and the Employer engaged in bargaining, measured from October 1, 2018 (the date the Employer commenced bargaining) to the date the petition was filed on October 15, 2018, was well within the reasonable time period for

bargaining protected under *UGL*.² Decision, at 12. Petitioner does not challenge that holding in its Request for Review.

Additionally, contrary to Petitioner's argument, Paragon's status as a successor, with a union's presumption of majority support, does not depend on a written recognition agreement with Local 32BJ. Under *Burns*, the bargaining obligation depends on substantial continuity between the predecessor and successor employer and does not rely on a recent certification. See *Fall River*, 482 U.S. at 41. See also Decision, at 11 (citing *Concord Services, Inc.*, 301 NLRB 821 (1993); *White Westinghouse Corp.*, 229 NLRB 667 (1977); *Virginia Sportswear, Inc.*, 226 NLRB 1296, 1300 (1976)).

The analysis of whether an employer is a successor turns on whether substantial continuity exists between the predecessor and successor. Here, there is no question that such substantial continuity exists as Paragon engaged in the same business in the same locations and with a vast majority of its predecessor's employees. Further, Paragon's General Counsel, Ms. Hagan, testified at the hearing that it is the Employer's view that its recognition of Local 32BJ was required by law, both necessitated and demonstrated through its hiring of a majority of the incumbent employees and entering into negotiations. See Decision, at 10. The hearing record also contained "no record evidence indicating that Paragon and Local 32BJ did not agree that the unit of employees covered by the agreement with FJC . . . should remain the same" Decision, at 11-12. The only dispute regarding recognition, immaterial to this case, was the scope of Paragon's recognition of Local 32BJ at account locations that might be acquired in the future. Decision, at 12.

² In *UGL*, the Board "refined the successor bar doctrine by defining the 'reasonable period of bargaining' in which the incumbent union would be protected from challenge." Decision, at 8. That reasonable period of bargaining is a minimum of six-months but can extend up to one year. *UGL*, at 808-809.

II. Section 9(b)(3) of the Act Does Not Prohibit Application of the Successor Bar to a Mixed Guard/Non-Guard Union.

In the Decision, Region 29 rejected – correctly – Petitioner’s contention that Section 9(b)(3) of the Act prohibits application of the successor bar to a mixed guard/non-guard union. Section 9(b)(3) merely provides that a mixed union cannot be *certified* by the Board as the representative of guards (“no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership . . . employees other than guards.”). The Decision noted that it is well established that the proscription in Section 9(b)(3) against certification “does not preclude an employer from *voluntarily recognizing* a mixed guard/non-guard union as the representative of a guard unit.” Decision, at 8. *See also Burns Detective Agency*, 134 NLRB at 452 (Section 9(b)(3) “precludes the Board from certifying a labor organization as the representative of employees in a guard unit if such labor organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards”); *Stay Security*, 311 NLRB 252 (holding that contract between a mixed guard/non-guard union acts as a contract bar).

In *Burns Detective Agency*, the Board held that an employer that has voluntarily recognized a mixed guard union may not withdraw recognition during the contract period. *See* 311 NLRB at 453. In doing so, the Board noted that Section 9(b)(3) could have been written, had Congress intended to do so, to declare a unit inappropriate if the representative labor organization admitted both guard and non-guards, much like it prohibits the Board from find an appropriate unit that includes both. *Id.* at 452. In *Stay Security*, as noted in the Decision, the Board affirmed the viability of *Burns Detective Agency*, and held that a collective bargaining agreement between a mixed guard union and an employer bars an election petition filed by a rival union. *Stay Security*, 311 NLRB at 252 (“It was not the purpose of Section 9(b)(3) to

relieve an employer during the contract period from its collective-bargaining agreement with a union which it voluntarily recognized even if that union would not qualify under Section 9(b)(3) for certification.”). There, the Board stated that Section (9)(b)(3) and *Burns Detective Agency* are not inconsistent with each other in that 9(b)(3) is “grounded in a concern about the protection of certain property rights of an employer,” which concern is ameliorated when an employer voluntarily recognizes a mixed union. *Stay Security*, 311 NLRB at 252. By applying the contract bar, the Board reasoned that it was recognizing the employer’s right to voluntarily recognize a mixed guard union and acknowledging the “importance of stability in collective bargaining agreements.” *Id.*, at 253.

In *The Wackenhut Corp.*, 348 NLRB 1290 (2006), the Board reaffirmed guards’ Section 7 right to organize with a mixed union and that guards possess the same rights as non-guard employees. Further, the Board affirmed the ALJ’s conclusion that though Section 9(b)(3) prohibits certification of a mixed union, it does not prevent guards from joining mixed unions since “[g]uards are employees within the meaning of Section 2(3) and possess the same rights as nonguard employees under Section 7.” *Id.* at n. 2 and 1297 (internal quotation marks omitted). *See also Brink’s, Inc.*, 272 NLRB 868, 870 (1984) (the Act’s prohibition on certification of a mixed union does not prohibit an employer from voluntarily recognizing a mixed union as the representative of a guard unit); *Velez v. Puerto Rico Marine Management, Inc.*, 957 F.2d 933 (1st Cir. 1992) (mixed guard/non-guard unions have the right under Section 7 to organize guards and an employer of such guards may voluntarily recognize a mixed union as their collective bargaining representative); *NLRB v. White Superior Division*, 404 F.2d. at 1103 (“[i]f guard employees do join a union which also represents non-guards, their membership is not unlawful,

and in fact an employer may, if it wishes, recognize such a union for purposes of collective bargaining”).

In *Loomis*, the Board held that an employer of security guards that has voluntarily recognized a mixed union violates Sections 8(a)(5) and (1) by withdrawing recognition of the union even if there is no collective bargaining agreement in place. The Board noted that the certification limitation in Section 9(b)(3) of mixed unions originated from Congress’s concern over guard’s potential conflicted loyalties if asked to discharge their duties with respect to non-guard members of their union. *See Loomis*, 364 NLRB at 4. But that concern is alleviated where a mixed union is voluntarily recognized because the employer has presumably concluded that no conflict actually exists or that any conflict is outweighed by the advantages of entering into a bargaining relationship with the mixed guard union. *Id.* To that end, the Board stated: “The fundamental purpose of the 9(b)(3) prohibition of Board certification of mixed-guard unions in guard units . . . is to permit employers to decide for themselves whether to recognize and bargain with such unions.” *Id.* at 5. Permitting employers to withdraw recognition of a mixed union in the absence of a collective bargaining agreement would destabilize collective bargaining relationships and “undermine a central purpose of the Act.” *Id.* at 6

In applying *Loomis* to this case, the Region noted the importance the Board has historically placed on the stability of collective bargaining relationships, even in the context of mixed guard unions that have been voluntarily recognized. *See* Decision, at 9 (“In light of . . . the Board’s interest in, and policy in support of, the principle that a newly created bargaining relationship should be given a reasonable chance to succeed before being subject to challenge . . .”). The importance of stability in bargaining relationships is heightened in this case where the Employer has acknowledged its obligation as a successor to bargain with the

incumbent union and both the Employer and the incumbent union made extensive progress in negotiating an agreement prior to the petition being filed. Specifically, by the time the petition was filed on October 15, 2018, Local 32BJ and Paragon had engaged in bargaining for a period of about two months, starting even before Paragon formally took over operations at the FPS locations from its predecessor, which occurred on October 1, 2018. *See* Decision, at 12. Those negotiations included discussions regarding health care and retirement benefits, an employee option to collect as wages monies that would otherwise go to health care, language concerning disciplinary matters, and the scope of the Employer's recognition of Local 32BJ with respect to future units. *See* Decision, at 6-7. Moreover, the negotiations included exchanges of draft agreements between Local 32BJ and Paragon, including a proposed master collective bargaining agreement, an Employee Free Choice Procedure, and an assumption agreement that sought to bind Paragon to its predecessor's collective bargaining agreement. *See* Decision, at 6. The parties subsequently exchanged other draft agreements that modified the recognition language in the master collective bargaining agreement and continued to discuss Paragon's desire to include its own disciplinary-related language rather than the language proposed by Local 32BJ. *See* Decision, at 7. At the time the hearing closed in this matter, Paragon and Local 32BJ had reached a compromise regarding recognition, reflected in a draft agreement proposed by Local 32BJ on October 31, 2018. Decision, at 7.

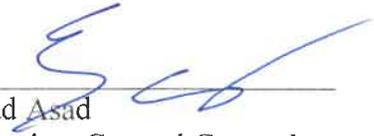
In sum, Section 9(b)(3) does not pose an obstacle to the application of the successor bar in this case. That conclusion is heightened here where the Employer has acknowledged its bargaining obligations as a successor and both the new employer, Paragon, and Local 32BJ had engaged in extensive negotiations prior to the filing of the petition.

Conclusion

The Petitioner's Request for Review should be dismissed and the Decision and Order upheld. Section 9(b)(3)'s prohibition of the certification by the Board of a unit of guards where the union represents guards and non-guards does not prohibit the application of a successor bar. The stability of the bargaining relationship, of additional importance in this case due to the extensive negotiations between Local 32BJ and Paragon, should not be placed in jeopardy.

Dated: New York, New York
January 16, 2019

Respectfully submitted,



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Associate General Counsel

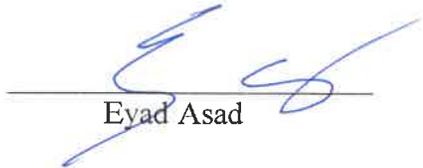
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Certificate of Service

I hereby certify that a copy of Brief of Pary-In-Interest Service Employees International Union, Local 32BJ In Opposition to Petitioner's Request For Review, was served on this 16th day of January, 2019, via electronic mail, on the following parties:

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