

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

**NORTH AMERICAN CORPORATION OF  
ILLINOIS**

**Employer**

**and**

**TEAMSTERS LOCAL UNION NO. 705**

**Petitioner**

**Case 13-RC-253792**

**and**

**PRODUCTION AND MAINTENANCE UNION,  
LOCAL 101**

**Intervenor**

**DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (“Act”), a hearing on this petition was conducted before a hearing officer of the National Labor Relations Board (“Board”) to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.<sup>1</sup> Following the hearing, the parties timely filed briefs with me.<sup>2</sup>

**I. ISSUES AND PARTIES’ POSITIONS**

The Petitioner seeks to represent a unit of production and maintenance and warehouse employees employed by the Employer at its facility in Glenview, Illinois. The only question presented in the instant case is whether the supplemental agreement between the Employer and Intervenor constitutes a contract bar to the petition. The Employer and Intervenor contend the agreement is a valid collective-bargaining agreement that bars processing of the petition. The

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<sup>1</sup> Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer’s rulings made at the hearing are free from prejudicial error and are affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The Petitioner and Intervenor are labor organizations within the meaning of the Act.
- d. The Petitioner seeks to represent certain employees of the Employer in the unit described in the petition it filed herein, but the Employer declines to recognize the Petitioner as the collective-bargaining representative of those employees.
- e. 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.

<sup>2</sup> The Intervenor did not attend the hearing but submitted an e-mail entitled “Petition,” dated January 13, 2020, which I have treated as its brief.

Petitioner maintains the supplemental agreement between the Employer and Intervenor does not meet the requirements of a collective-bargaining agreement and, therefore, does not serve as a bar under the Board's contract-bar doctrine.

## **II. DECISION**

As explained below, based on the record and relevant Board law, I conclude the Employer has not satisfied its burden to prove its supplemental agreement with the Intervenor constitutes a contract to bar processing the instant petition. Accordingly, I direct an election in the following appropriate unit:

Included: All full-time and regular part-time production and maintenance employees, warehouse employees, and lead persons in the project area employed by the Employer at its facility currently located at 2101 Claire Court, Glenview, Illinois.

Excluded: All superintendents, foremen, working foremen, salesmen, truck drivers, executive administrative employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

## **III. STATEMENT OF FACTS**

The pertinent facts are not in dispute. The Employer and Intervenor entered into a collective-bargaining agreement with effective dates from October 5, 2015 through October 4, 2020 ("original contract"). Around October 2017, the parties bargained over a supplemental agreement with an entered into date of November 2, 2017 ("supplemental agreement"), which primarily addressed employees' wages. However, the supplemental agreement referenced the original contract and extended the expiration date of the original agreement from October 4, 2020 to October 31, 2022.<sup>3</sup>

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<sup>3</sup> In relevant part:

1. The Company and the Union are parties to a collective bargaining agreement that covers the term from 2015 through 2020 (the "CBA"). All of the individuals whose terms and conditions of employment are covered by the CBA are referred to herein as the "Union Members".

2. Except as referenced in this Supplement Agreement, the CBA will be unchanged.

and

4.g. The term of the existing CBA will be extended by mutual agreement to reflect the agreed upon expiration date of "October 31, 2022". All references in the CBA will be revised to reflect this agreed upon extension of the expiration date.

4.h. The Parties agree and acknowledge that both Parties have fully satisfied any and all of its/their obligations to bargain the decision, amounts and/or impact of the compensation and benefits that are referenced in the CBA, as amended by this Supplemental Agreement, pursuant to all applicable state, federal, and local laws and Ordinances that are applicable to the Company as of the time of execution of this Supplemental Agreement.

#### IV. BOARD LAW

The contract-bar doctrine provides that once a contract is executed, no representation elections are permitted in the unit covered until the contract expires, up to a three-year limit. Representation petitions may be timely filed following the expiration of such contracts or during a 30-day “open period” between the 90th and the 60th day prior to their expiration date. *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000, 1001 (1962). To serve as a bar to an election, a contract must satisfy the following specific formal and substantive requirements. The contract must be: (1) reduced to writing; (2) signed by all parties prior to the filing of the petition; (3) contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship; (4) clearly encompass the employees involved in the petition; and (5) cover an appropriate bargaining unit. *Appalachian Shale Products Co.*, 121 NLRB 1160, 1162-1164 (1958). An existing collective-bargaining agreement constitutes a bar to an election within the unit covered by that agreement and precludes the filing of a petition for an election in that unit. Only fixed-term contracts will serve as a bar to a petition and only for a “reasonable duration,” which the Board has defined as up to three years. *General Cable Corp.*, 139 NLRB 1123, 1125 (1962); see also *General Dynamics Corp.*, 175 NLRB 1035, 1036 (1969).

An amendment or new collective-bargaining agreement entered into during the term of an original contract, which extends the expiration date of that original contract, will be deemed a premature extension. *Deluxe Metal Furniture Co.*, 121 NLRB 995 (1958); *Shen-Valley Meat Packers, Inc.*, 261 NLRB 958 (1982). Under such a premature extension, the proper time to file a rival petition is the 30-day open period between the 90th and 60th day prior to the three-year anniversary of the original contract. *New England Telephone*, 179 NLRB 531, 532 (1969); *Direct Press Modern Litho, Inc.*, 328 NLRB 860, 861 (1999) (citing *Auburn Rubber Co., Inc.*, 140 NLRB 919, 920 (1963); *Deluxe Metal Furniture Co.*, above at 1001). The rationale here is to afford employees who wish to change collective-bargaining representatives and outside unions who wish to represent the employees a reasonable measure of predictability in scheduling their organizational activities and campaigns.

The purpose behind the Board’s contract-bar policy is to achieve “a finer balance between the statutory policies of stability in labor relations and the exercise of free choice in the selection or change of bargaining representatives.” *Id.* at 860, quoting *Appalachian Shale*, above at 1161 (1958). See also *Union Fish Co.*, 156 NLRB 187, 191 (1965).

The Board has consistently held the legality of a contract asserted as a bar is to be determined from the face of the contract itself and extrinsic evidence will not be admitted. *Jet-Pak Corp.*, 231 NLRB 552 (1977); see also *Union Fish*, above. The Board’s rationale for limiting extrinsic or parol evidence is that the terms of the agreement must be clear from its face so employees and outside unions may look to it to determine the appropriate time to file a representation petition. *South Mountain Healthcare & Rehabilitation Center*, 344 NLRB 375 (2005), citing *Cooper Tire & Rubber Co.*, 181 NLRB 509 (1970).

The burden of proving the existence of a contract bar is on the party or parties asserting the contract is a bar. *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970).

## V. APPLICATION OF BOARD LAW TO THIS CASE

The record shows and the parties agree both the original contract and the supplemental agreement between the Employer and Intervenor were reduced to writing, signed by the parties prior to the filing of the instant petition, clearly encompass the employees involved in the petition, and cover an appropriate bargaining unit. The Employer and Petitioner both cite to *Shen-Valley Meat Packers, Inc.*, 261 NLRB 958 (1982) in support of their arguments for dismissing and processing the instant petition, respectively. The Employer maintains the supplemental agreement was a valid amendment to the original contract and satisfies the Board's contract-bar requirements. The Petitioner contends the supplemental agreement was effectively a wage reopener, which fails to contain the substantial terms and conditions of employment necessary to dismiss a petition, and, second, the Employer and Intervenor did not utilize a provision in the original contract to execute the supplemental agreement. *Id.* at 960.

### A. Substantial Terms and Conditions

The Board does not distinguish between new agreements, amendments, supplements, or extensions in applying its contract-bar rules so long as the document or documents purporting to be a collective-bargaining agreement contain substantial terms and conditions of employment. *Union Carbide Corp.*, 190 NLRB 191 (1971), citing *Santa Fe Trail Transportation Co.*, 139 NLRB 1513, 1514 (1962). However, the Board does not require that an agreement delineate completely every single one of its provisions in order to qualify as a bar. *USM Corp.*, 256 NLRB 996, 999 fn. 18 (1981) (cases cited). Wage reopeners alone are insufficient to reaffirm a collective-bargaining agreement and renew a contract bar. *New England Telephone*, above at 532 (1969); *Appalachian Shale*, above at 1163. Compare *Jackson Terrace Associates*, 346 NLRB 180, 181 fn. 3 (2005) (finding contract bar where parties had agreed to all noneconomic matters and had agreed to arbitrate economics).

The record shows the language in the supplemental agreement, particularly Sections 1, 2, and 4(g) and (h), expressly reaffirmed the original contract but modified its wages. While the Board in *Shen-Valley* noted the difference between the parties' contract reopener and their previous wage reopeners, it did not foreclose the possibility of a contract bar where, as here, the original contract does not contain specific provisions for reopening either the entire agreement or only wages. See also *Southwestern Portland Cement Co.*, 126 NLRB 931, 933 (1960).

Accordingly, I find the supplemental agreement constituted more than a mere wage reopener.

### B. Fixed Duration

Both an effective date and an expiration date are material terms that must be apparent from the documents purporting to be a contract in order to bar the processing of a petition. *South Mountain Healthcare*, above at 375, 376 fn. 3 (citing *Cind-R-Lite Co.*, 239 NLRB 1255, 1256 (1979); *Jet-Pak Corp.*, above at 552-553). A contract which has no fixed term does not bar an election for any period. *Pacific Coast Assn. of Pulp & Paper Mfrs.*, 121 NLRB 990, 993 (1958).

In *South Mountain Healthcare*, above, the Board declined to find a contract bar when the parties' memorandum of agreement contained at least four possible effective dates: the date the

union signed the MOA, the date the employer signed the MOA, the effective dates of benefit contributions, and the effective date of the first wage increase.

Similarly, the instant record reveals several potential effective dates for the supplemental agreement. The supplemental agreement does not identify a fixed-term on the front of the document or explicitly provide an effective date for the agreement. The beginning of the agreement states it was “entered into” on November 2, 2017. The agreement was signed by the Employer on November 6, 2017 and by the Intervenor on November 7, 2017. Further, the effective date for minimum starting wage rates was July 1, 2017 and wage increases were to take effect “Oct. 2017”<sup>4</sup> while the third-shift differential rate was to take effect January 1, 2018. The supplemental agreement also provided for ratification as a condition precedent (see Sec. V.C., below) to which no evidence was presented when, if any, ratification occurred. Lastly, Section 2 of the supplemental agreement states, “Except as referenced in this Supplement [sic] Agreement, the CBA [original contract] will be unchanged.” Article 23 Section 2 of the original contract states, “Revisions agreed upon or ordered shall be effective as of October 5, 2015 or October 5 of any subsequent contract year.” Thus, the supplemental agreement is ambiguous as to the effective date of the agreement.

Without setting forth an explicit effective date for the entire supplemental agreement, a petitioner or rival union cannot readily discern from the face of the document, including the referenced original contract, the open period for timely filing a representation petition. *South Mountain Healthcare*, above; see also *Pennsylvania American Water Co.*, 2019 WL 656297 (2019) denying review of Case 06-RC-218527.

Accordingly, I find the supplemental agreement fails to establish an unambiguous effective date and, therefore, does not constitute a contract that would serve as a bar under the Board’s contract-bar doctrine.

### **C. Ratification of Agreement**

When, as a condition precedent, a written agreement between an employer and union is made subject to ratification by a union’s membership, then the agreement is not a contract bar unless it is ratified before a representation petition is filed. *Merico, Inc.*, 207 NLRB 101 (1973); *Appalachian Shale*, 121 NLRB at 1162-1163; *American Broadcasting Co.*, 114 NLRB 7, 7-8 (1956) (citing *Westinghouse Electric Corp.*, 111 NLRB 497, 498-500 (1955)). Compare *Aramark Sports & Entertainment Services*, 327 NLRB 47 (1998) (despite failure to ratify, finding no bar when contract did not contain explicit provision requiring ratification). Parol evidence on this issue is not relevant. *United Health Care Services*, 326 NLRB 1379 (1998) (citing *Merico*, above); *Gate City Optical Co.*, 175 NLRB 1059, 1061 (1969). It does not matter if the parties have implemented the terms of the alleged contract. *Waste Management of Maryland, Inc.*, 338 NLRB 1002, 1003 (2003), citing *Branch Cheese*, 307 NLRB 239 (1992). In such circumstances, a report to the employer the contract has been ratified is normally sufficient to bar a petition. *Swift & Co.*, 213 NLRB 49 (1974).

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<sup>4</sup> When read in conjunction with the original contract, this could mean October 5, 2017; however, no specific date is listed in the supplemental agreement.

Here, Section 5 of the supplemental agreement provides for ratification as a condition precedent. Specifically:

The Parties agree that this Supplemental Agreement is not effective and binding on either Party (or the Union Member) until and unless the terms are ratified and approved by authorized representatives of the Union, authorized representatives of the Union Members and the Company. The individuals who sign this Agreement on behalf of each party represent and acknowledge that he/she/it/they are authorized to enter into this Supplemental Agreement.

The record contains no evidence the supplemental agreement was ever ratified by any of the listed parties. Accordingly, I find the Employer has not overcome its burden to establish the supplemental agreement constitutes a bar to the instant petition.

## **VI. CONCLUSION**

Based upon the entire record in this matter and in accordance with the discussion above, I direct an election in the following unit:

Included: All full-time and regular part-time production and maintenance employees, warehouse employees, and lead persons in the project area employed by the Employer at its facility currently located at 2101 Claire Court, Glenview, Illinois.

Excluded: All superintendents, foremen, working foremen, salesmen, truck drivers, executive administrative employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

## **VII. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Teamsters Local Union No. 705 or Production & Maintenance Union Local 101.

### **A. Election Details**

The election will be held on February 10, 2020 from 2:00 p.m. to 3:30 p.m. and 6:30 p.m. to 7:30 p.m. at the Distribution Center Break Room of the Employer's facility.

### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending **January 10, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an 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 that 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 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.

### **C. Voter List**

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be received by the regional director and the parties by **January 21, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or .docx) or a file that is compatible with Microsoft Word (.doc or .docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

**D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting, and likewise shall be estopped from objecting to the non-distribution of notices if it is responsible for the non-distribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

**RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: January 16, 2020

/s/ Peter Sung Ohr

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