

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

SPECTRUM SECURITY SERVICES, INC.

Employer

And

Case 21-RC-257498

**LAW ENFORCEMENT OFFICERS SECURITY
UNIONS LEOSU, LEOS-PBA**

Petitioner

and

**INTERNATIONAL UNION, SECURITY POLICE
& FIRE PROFESSIONALS OF AMERICA SPFPA
& ITS AMALGAMATED LOCAL 003**

Intervenor

DECISION AND ORDER

On March 4, 2020, Law Enforcement Officers Security Unions LEOSU, LEOS-PBA (the Petitioner) filed a petition seeking to represent a unit of all full-time and regular part-time detention officers performing guard duties as defined in Section 9(b)(3) of the Act employed by Spectrum Security Services, Inc. (the Employer) in Los Angeles and Orange Counties. There are approximately 53 employees in the petitioned-for unit. On March 6, 2020, International Union, Security Police & Fire Professionals of America SPFPA & its Amalgamated Local 003 (the Intervenor), the incumbent union that currently represents the employees in the petitioned-for unit, intervened in the proceeding.

On March 13, 2020, a hearing regarding the petition was held before a Hearing Officer of the National Labor Relations Board (the Board).¹ All parties participated in the hearing and reached written stipulations that were received by the Hearing Officer regarding: commerce facts and the Board's jurisdiction;² the Section 2(5) labor organization status of the Petitioner

¹ The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

² The parties stipulated, and I find, that the Employer, Spectrum Security Services, Inc., a California corporation, with its principal offices located in Jamul, California, and a branch located in Santa Ana, California, performing services under a federal government contract at various locations within the state of California, is engaged in the business of providing detention, transportation, and security services to the federal government. During the past 12 months, a representative period, the Employer derived gross revenues in excess of \$500,000, and during the same period of time, purchased and received, at its California facilities, goods valued in excess of \$50,000, directly from points located outside the state of California. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.

and the Intervenor and their qualification to represent the unit within the meaning of Section 9(b)(3) of the Act;³ and the classifications which should be included in any bargaining unit found appropriate (Board Ex. 2).⁴

I have considered the evidence and arguments presented by the parties, and for the reasons described below and based on the record as a whole, I conclude that there is a valid collective-bargaining agreement in effect between the Employer and the Intervenor which bars the petition in this matter. As there is no question concerning representation, I am dismissing the petition.

I. ISSUE AND POSITION OF PARTIES

The parties presented one principal issue at the hearing. The issue is whether there is a valid collective-bargaining agreement between the Employer and the Intervenor that bars the election petition in this case.

The Petitioner argues that there is no contract bar because there is no valid collective-bargaining agreement between the Intervenor and the Employer. The Petitioner contends that the Intervenor's Constitution and Bylaws, which allows membership ratification of its contracts, nullified the collective-bargaining agreement reached between the Intervenor and Employer, before the Petitioner filed the instant petition. The Petitioner relies on *Hertz Corporation*, 304 NLRB 469, 469 (1991), in which the Board held that if the parties agreed to submit their negotiated contract to a ratification vote, their contract could not become effective until the agreed condition precedent of ratification had been satisfied. The Petitioner argues that because the Unit here did not ratify the collective-bargaining agreement reached between the Employer and the Intervenor, there is no valid contract, and thus there is no contract bar to an election.

The Employer and the Intervenor counter that they executed, signed, and dated a valid collective-bargaining agreement on February 26, 2020, which is effective from March 1, 2020, through February 28, 2023, setting forth specific terms and conditions of employment for Unit employees, including wage increases effective on March 1, 2020. There is no record evidence that the Employer and the Intervenor agreed that ratification was required for this collective-bargaining agreement. To the contrary, this collective-bargaining agreement indicates that it is "effective immediately" and constitutes the "Final Settlement Agreement" reached during negotiations. The instant petition was filed on March 4, 2020, seven days after this collective-

³ The parties stipulated, and I find, that the Petitioner and Intervenor are labor organizations within the meaning of Section 2(5) of the Act and are qualified to represent the unit within the meaning of Section 9(b)(3) of the Act.

⁴ The parties stipulated, and I find, consistent with the Certification of Representative that issued in Case 21-RC-021177, that the following unit is an appropriate unit within the meaning of Section 9(b) of the Act (the Unit):

Included: All full-time and regular part-time detention officers employed by the Employer in Los Angeles and Orange counties;

Excluded: All other employees, office clerical employees, professional employees, captains, lieutenants, sergeants, corporals, and supervisors as defined in the Act.

bargaining agreement was executed. The Employer and the Intervenor therefore argue that this petition is untimely and should be dismissed.

II. FACTS

On January 25, 2010, in Case 21-RC-021177, the Intervenor was certified as the exclusive collective-bargaining representative of the Unit employed by the Employer. On March 28, 2017, the Intervenor entered into a collective-bargaining agreement with the Employer for employees in the Unit, effective from March 1, 2017, to February 29, 2020 (expired CBA). Specifically, this expired CBA provides:

ARTICLE 29 DURATION

29.1 Except as otherwise provided herein, this Agreement becomes effective on March 1, 2017 and shall continue in force and effect until midnight February 29, 2020 and from year to year thereafter, unless either party receives written notice from the other party, not less than sixty (60) days, nor more than ninety (90) days, immediately prior to the expiration date, of its intention to amend, modify or terminate this Agreement.

On February 26, 2020, before the expiration of the expired CBA, the Intervenor and the Employer executed, signed, and dated a Memorandum of Agreement (MOA). The MOA consists of attached and initialed tentative agreements on wages, benefits, and other terms and conditions of employment, for a 3-year term for the period of March 1, 2020, through February 28, 2023, including wage increases effective on March 1, 2020. In the MOA, the Intervenor and the Employer agree that each party had equal opportunity to present proposals during contract negotiations, and the Intervenor will incorporate the MOA in a final form on or before March 15, 2020, and provide electronic copies to the Employer.

The Employer and Intervenor agreed to the following duration of the MOA:

ARTICLE 29: DURATION

29.1 Except as otherwise provided herein, this Agreement becomes effective March 1, 2020 and shall continue in force and effect until midnight February 28, 2023 and from year to year thereafter, unless either party receives written notice from the other party, not less than sixty (60) days, nor more than ninety (90) days, immediately prior to the expiration date, of its intention to amend, modify or terminate this Agreement.

On March 4, 2020, the Petitioner filed the petition in this case.

III. ANALYSIS

A. The Contract-Bar Doctrine

The Board's contract-bar doctrine prevents the processing of a petition during the term of an existing collective-bargaining agreement that is 3 years or less in length, unless the petition is filed within a "window period" of 60 to 90 days before the contract's expiration. *Hexton Furniture Co.*, 111 NLRB 342 (1955); *General Cable Corp.*, 139 NLRB 1123 (1962); *Deluxe Metal Furniture Co.*, 121 NLRB 995 (1958).

When a petition is filed for a representation election among a group of employees who are alleged to be covered by a collective-bargaining agreement, the Board must decide whether the agreement exists. If the agreement exists, and fulfills certain requirements, it is deemed to bar a petition that is filed outside the allotted window period. The party asserting that a contract is a bar to an election bears the burden of proof to demonstrate that the contract was fully executed, signed, and dated prior to the filing of the petition by the petitioner. *Roosevelt Memorial Park, Inc.*, 187 NLRB 517, 518 (1970).

To serve as a bar to a petition, a contract must contain: (1) substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship; (2) an effective date and an expiration date; and (3) signatures of parties involved. *Southern Mountain Healthcare & Rehabilitation Center*, 344 NLRB 375, 375 (2005), citing *Cind-R-Lite Co.*, 239 NLRB 1255, 1256 (1979); *Appalachian Shale Products Co.*, 121 NLRB 1160, 1163 (1958). The terms of the agreement must be clear on its face so that employees and outside unions may look to it to determine the appropriate time to file a representation petition. *Southern Mountain Healthcare & Rehabilitation Center*, 344 NLRB 375, 375 (2005), citing *Cooper Tire & Rubber Co.*, 181 NLRB 509, 509 (1970).

The contract-bar doctrine does not require a "formal final document." It can be satisfied by a group of informal documents as long as they lay out substantial terms and conditions of employment and have party signatures. *Waste Management of Maryland*, 338 NLRB 1002, 1002 (2003). The crucial consideration is whether the parties affix their signatures to a document that ties together their negotiations, by either spelling out the contract's specific terms, or referencing other documents that do so. *Seton Medical Center*, 317 NLRB 87, 87 (1995), citing *Georgia Purchasing, Inc.*, 230 NLRB 1174, 1174 (1977). If a new agreement embodies new terms and conditions of employment or incorporates by reference the terms and conditions of the long-term contract, it can be sufficient to establish a contract bar. *Southwestern Portland Cement Company*, 126 NLRB 931, 933 (1960); *Santa Fe Trail Transportation Company*, 139 NLRB 1513, 1514 fn 2 (1962).

The Board exercises flexibility regarding the forms of documents that may establish a contract sufficient to establish a bar. For example, in *Georgia Purchasing*, the Board determined that an exchange of telegrams between the parties containing wage increases, and the duration of the contract, were sufficient to establish a contract bar. The telegrams in that case embodied previous negotiations between the union and the employer and incorporated the prior contract

between the parties. As such, the Board deemed that the telegrams “charted the continuing contractual relationship between the parties with adequate precision.” *Id* at 1175.

In contrast, if an agreement appears to be limited only to narrow provisions such as wages, the agreement will not constitute a bar. *Appalachian Shale Products Co.*, 121 NLRB at 1163. The Board looks at whether an agreement “charts with adequate precision the course of the bargaining relationship” before finding the existence of a bar. *Id.*

B. The Intervenor Met Its Burden.

Contrary to the Petitioner’s assertions, I find that there is a valid collective-bargaining agreement between the Employer and the Intervenor. The MOA was signed by the Employer and the Intervenor, and clearly demonstrates their intention to continue their bargaining relationship. The MOA sets forth specific wages and other substantial terms and conditions of employment for the Unit. An employee or third-party union that read the MOA, including the Duration clause at Article 29.1, could determine the appropriate dates to file a petition, as well as the wages and other terms and conditions of employment that govern the employees in the Unit.

Petitioner’s claim that the MOA required ratification by the Unit to be a valid collective-bargaining agreement is not supported by long-standing Board case law or by the record evidence. The Petitioner relies upon Article XIX Contracts and Negotiations, Section 2(c) of the Intervenor’s Constitution and Bylaws, as follows:

(c) After the initial contract, all contracts shall be submitted to the Local Union involved for ratification by a majority vote of members in good standing present and voting at a duly noticed meeting. At the discretion of the Local Union or Unit, the ratification may be by a majority of mail ballots provided to eligible members with a copy of the tentative agreement or summary information at their last known address. In the event that a Local Union or a Unit rejects a contract, or any supplement thereof, such rejection shall constitute an authorization to declare a strike in accordance with Article XXXVII.

The Petitioner cites *NLRB v. Borg-Warner Corporation*, 356 U.S. 342, 349 (1958), in support of its position that although the MOA was executed by both parties, the MOA could not become effective until the condition precedent of ratification had been satisfied. According to the Petitioner, because the Intervenor conducted a ratification vote which was rejected, the MOA was invalid and there is no contract bar.

In the seminal case, *Appalachian Shale Products Co.*, the Board stated that “only where the written contract itself makes ratification a condition precedent to contractual validity shall the contract be no bar until ratified.” 121 NLRB at 1162. The Board further explained, “in all cases where the question of prior ratification depends upon an interpretation of a provision for prior ratification in a Union’s constitution or bylaws, as distinguished from the incorporation of an express provision in the contract, the contract will constitute a bar.” *Id.* at 1162-63. The Board restated its prior ratification rule as follows:

Where ratification is a condition precedent to contractual validity by express contractual provision, the contract will be ineffectual as a bar unless it is ratified prior to the filing of the petition, but if the contract itself contains no express provision for prior ratification, prior ratification will not be required as a condition precedent for the contract to constitute a bar.

Id. at 1163. In the present case, regardless of Petitioner's reliance upon the ratification process pursuant to the Intervenor's Constitution and Bylaws, there is no express provision in the expired CBA nor in the MOA requiring prior ratification by the Unit for the Employer and the Intervenor to enter into a valid contract constituting a bar. I also note that Article XIX Contracts and Negotiations, Section 2(e) of the Intervenor's Constitution and Bylaws undermines the Petitioner's position that ratification is a condition precedent to a valid contract, stating, "(e) All contracts shall be effective upon execution by duly authorized representatives of the Union." The Petitioner's argument regarding prior ratification is thus unpersuasive and unsupported by the totality of the record evidence.

Contrary to the Petitioner's claims, the Intervenor met its burden to demonstrate a contract bar. The record demonstrates that on February 26, 2020, the Employer and the Intervenor executed the MOA, a valid collective-bargaining agreement setting forth the wages and terms and conditions of employment for employees in the Unit, including wage increases effective on March 1, 2020. This MOA is effective from March 1, 2020, through February 28, 2023. The instant petition was filed on March 4, 2020. There is no express provision in the MOA requiring prior ratification by the Unit for the Employer and the Intervenor to enter into a valid contract constituting a bar. Based on the foregoing and the record as a whole, I find that there was a valid contract between the Intervenor and the Employer at the time the petition was filed.

C. The Petition Is Untimely.

As discussed above, when a collective-bargaining agreement has a duration of 3 years or less, a petition is only timely if filed during a 30-day "window period" of more than 60 days, but less than 90 days before the agreement's expiration date, or at any time following the expiration date. *Leonard Wholesale Meats*, 136 NLRB 1000 (1962). Here, the record evidence establishes that the Employer and Intervenor are parties to the MOA, a valid collective-bargaining agreement, effective from March 1, 2020, through February 28, 2023. As the petition in this case was filed on March 4, 2020, it was not filed during the applicable "window period," and predated the MOA's expiration date. Accordingly, based on the foregoing and the record as a whole, I find the petition is untimely, and must be dismissed.

IV. ORDER

The petition is hereby dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by April 8, 2020.

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, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.⁵ 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.

Dated: March 25, 2020



William B. Cowen, Regional Director
National Labor Relations Board, Region 21
US Court House, Spring Street
312 North Spring Street, 10th Floor
Los Angeles, CA 90012

⁵ On October 21, 2019, the General Counsel (GC) issued Memorandum GC 20-01, informing the public that Section 102.5(c) of the Board's Rules and Regulations mandates the use of the E-filing system for the submission of documents by parties in connection with the unfair labor practice or representation cases processed in Regional offices. The E-Filing requirement went into immediate effect on October 21, 2019, and the 90-day grace period that was put into place expired on January 21, 2020. Parties who do not have necessary access to the Agency's E-Filing system may provide a statement explaining the circumstances, or why requiring them to E-File would impose an undue burden.