

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

**MOUNTAIRE FARMS, INC.,** )  
 )  
       **EMPLOYER,** )  
 )  
**AND** )  
 )  
**OSCAR CRUZ SOSA,** )  
 )  
       **PETITIONER,** )  
 )  
**AND** )  
 )  
**UNITED FOOD AND COMMERCIAL** )  
**WORKERS UNION, LOCAL 27,** )  
**UNITED FOOD AND COMMERCIAL** )  
**WORKERS INTERNATIONAL UNION,** )  
**AFL-CIO** )  
 )  
       **UNION.** )

**Case No.: 05-RD-256888**

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**BRIEF OF *AMICUS CURIAE* LOCAL UNION 304 OF  
THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS**

Interested *Amici* Local Union 304 of the International Brotherhood of Electrical Workers (“Local 304”), by counsel, pursuant to the Board’s June 23, 2020 “Notice and Invitation to File Briefs”, hereby file their *Amicus* Brief in support of the Board retaining contract bar doctrine as it currently exists, and states as follows:

**I. SUMMARY OF ARGUMENT**

Local 304 is in a unique position to attest to the importance of maintaining the *status quo* of contract bar doctrine. Local 304 is the largest International Brotherhood of Electrical Workers Local Union in the state of Kansas. They

represent over 2000 workers spread out over the state. These workers operate under 18 different contracts. Local 304 is actively engaged in ongoing efforts to organize workers both in existing contracts and unorganized workers seeking representation.

## **II. BACKGROUND**

Local 304 has been in existence since 1933. During its inception 83 years ago, the Local has organized thousands of workers in many areas, including multiple classifications in the electrical and gas utility, line construction, government services, and municipality. During this time there have been both representation and decertification elections, and Local 304 believes that the contract bar doctrine as it stands serves to establish a fair system for both employers and organized labor.

*Hexton Furniture Co.*, 111 NLRB 344 (1955) states the contract bar rules “have become an established part of the law of labor relations. They received the approval of Congress when it amended the Act in 1947, and have been ‘as it were, written into the statute.’”

It goes on to state that “The Board will not entertain a representation petition seeking a new determination of the employees bargaining representative during the middle period of a valid outstanding collective bargaining agreement of reasonable duration.” *Id.* at 344.

Local 304 fully supports and agrees with contract bar having to be lawful and valid. Contracts are worth nothing if they are not bargained in good faith with the

cares and concerns of both employees and management considered, debated, and fully agreed upon. This Local has seen contract negotiations drag on for months in order to come to an agreement that was beneficial for both parties.

It is imperative for the Board to maintain contract bar doctrine due to the protections that it provides both parties. Speaking from the labor side, it would be disastrous for any union local to attempt to do what it does on a daily basis, which is to protect the rights of the workers it represents and administer the terms of a contract, while at the same time facing representation elections in a contract that is in force and fully valid. This would weaken a local's ability to properly represent the employees who put their trust and livelihood into partnership with the union.

In looking at the management side, would it not be more difficult to run a company on a day-to-day basis if there is constant bickering and struggle between employees and management, or an uncertainty on contract language or who actually represents the workers?

Contract bar is the optimum way to keep all parties moving forward. Once a contract has expired, if workers are not pleased with the representation that they have received from the union that they chose to represent them, then they can elect a new representative body. There are steps outlined for this process. They came together to vote for the union, and have the right to vote for a new representative. Workers also chose to accept the terms and conditions of the contract that they work under. They

do this by voting. They should be held to the terms and time limits of the proposal they voted to accept. This is the democratic process at its core. When we vote to elect leaders, we do not have the option to change our minds halfway through the term, we wait until it is time to vote again. If we are unhappy, change occurs then.

In *Paragaon Products Corp.*, 134 NLRB 662 (1961), the Board set out the three instances where a contract will not bar the processing of a petition because of an unlawful union-security provision: “We now hold that only those contracts containing a union-security provision which is clearly *unlawful on its face*, or which has been found to be unlawful in an unfair labor practice proceeding, may not bar a representation petition. A clearly unlawful union-security provision for this purpose is one which by its express terms clearly and unequivocally goes beyond the limited form of union-security permitted by Section 8(a)(3) of the Act, and is therefore incapable of lawful interpretation.”

It goes on to say that: “Such unlawful provisions include (1) those which expressly and unambiguously require the employer to give preference to union members (a) in hiring, (b) in laying off, or (c) for purpose of seniority; (2) those which specifically withhold from incumbent nonmembers and or new employees the statutory 30-day grace period; and (3) those which expressly require as a condition of continued employment the payment of sums of money other than ‘periodic dues and initiation fees uniformly required’.”

Local 304 operates in a right to work state, where no one is required to become a union member to secure employment. The union must have a membership density of approximately 80% of all covered employees. This is a result of proper representation of employees, and good relations with the management. Local 304 agrees with having lawful contracts that do not violate any of the above listed provisions, and prides itself on its long-standing agreements, the oldest stretching back to 1938. This would not be possible without the relationships established over the years that are based on good faith and shared vision.

**III. THE CURRENT CONTRACT BAR DOCTRINE MUST BE MAINTAINED BY THE BOARD.**

In all aspects of the labor and management dynamic, all that is wanted is a fair playing field. Local 304 believes that the current contract bar doctrine provides that fair playing field.

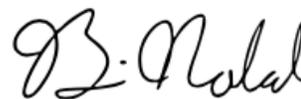
**IV. CONCLUSION**

Local 304 respectfully requests the Board maintain current contract bar doctrine.

Dated: October 7, 2020

Respectfully Submitted,

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**ATTORNEYS FOR  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing was e-filed with the NLRB's Executive Secretary and served via electronic mail on the following parties or counsel this 7<sup>th</sup> Day of October, 2020:

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