UNITED GOVERNMENT SECURITY OFFICERS OF AMERICA INTERNATIONAL UNION AND ITS LOCAL 823

Petitioner

and

INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA) AND ITS LOCAL NO. 830

Intervenor

DECISION AND DIRECTION OF ELECTION

United Government Security Officers of America International Union and its Local 838 (the Petitioner) has petitioned to represent a unit (the Unit) of full-time and regular part-time detention officers, armed detention officers, and armed transportation officers employed by Akima Global Services, Inc. (the Employer) at the Immigration and Customs Enforcement (ICE) Detention Center in Florence, Arizona (the Florence Detention Center).

A hearing concerning the petition was held before a Hearing Officer of the National Labor Relations Board (the Board). The sole issue in dispute is whether there is any bar to the processing of the petition. The Petitioner contends that there is no bar; the incumbent union, International Union, Security, Police and Fire Professionals of American (SPFPA) and its Local No. 830 (the Intervenor), contends that there is a contract bar; and the Employer takes no position.

1 I grant the parties’ joint motion to amend the petition and other formal documents to correctly reflect the names of the parties set forth above to the extent they do not already do so.
The parties were given the opportunity to present evidence and to state their respective positions on the record at the hearing, and the Petitioner and the Intervenor filed post-hearing briefs. Having carefully considered all evidence and arguments presented by the parties, I have determined that there is no bar to processing of the petition, and I am therefore directing an election.

I. STATEMENT OF THE FACTS

The Intervenor was certified to represent a unit of full-time and regular part-time detention officers, and armed transportation officers employed by Asset Protection & Security Services, LP (Asset Protection) and Ahtna Technical Services, Inc. (Ahtna) at the Florence Detention Center on March 9, 2010.

The most recent collective-bargaining agreement between the Intervenor and Asset Protection and Ahtna covering these employees expired in June 2019. Following the expiration of that agreement, the Intervenor and Asset Protection entered into a collective-bargaining agreement covering the employees that had effective dates of July 1, 2020 through June 30, 2021. The agreement between the Intervenor and Asset Protection provided that it would be binding upon “all parties, their successors and assignees” and that “in the event of a sale or transfer of the business of the employer, or any part thereof, the purchaser or transferee [would] be bound by [the] agreement.”

Before the expiration of the agreement between the Intervenor and Asset Protection, the Employer was awarded Contract No. 70CDCR20D00000004 to provide security services at the Florence Detention Center and became the employer of the employees in the Unit effective December 1, 2020.

The Intervenor presented testimony that “most” of the Unit employees employed by Asset Protection were hired by the Employer, though the Intervenor presented testimony that it has filed an unfair labor practice charge alleging that the Employer unlawfully refused to hire some employees. However, no party presented figures showing the precise number or percentage of employees employed by the Employer who were previously employed by Asset Protection.

After hearing that the Employer had been awarded the contract, on September 17, 2020, the Intervenor sent the Employer an email proposing that the Employer assume the agreement between the Intervenor and Asset Protection and requesting to discuss the transition. That same day, the Employer responded by email that it was unwilling to adopt the existing agreement and preferred to set its initial terms of employment and negotiate a bridge agreement.

On October 19 and November 8, 2020, the Intervenor asked the Employer by email to send a proposed bridge agreement for its consideration. In response, the Employer asked by email to schedule dates to begin negotiations for the bridge agreement. Negotiations for the bridge agreement apparently took place, but the dates and other details are not set forth in the record.

On November 22, 2020, the Intervenor’s Recording Secretary emailed the Intervenor’s Local President and the Unit employees a copy of a proposed bridge agreement. The Recording
Secretary explained that the agreement was “an extension to an existing contract beyond the period of performance, or a new, short-term contract awarded to an incumbent contractor to bridge the time until a new contract can be negotiated.” The email instructed the Local President to distribute bridge agreement to the Unit employees for ratification, with an assurance that subsequent negotiations for a new collective-bargaining agreement would begin in the summer of 2021.

On November 25, 2020, the Intervenor advised the Employer that the bridge agreement had been ratified. Subsequently, on November 28, 2020, the Intervenor and the Employer executed the bridge agreement, which had effective dates of December 1, 2020 through December 31, 2021. The bridge agreement’s preamble says:

Since the [Intervenor] represented the incumbent’s employees working at the project the [Employer] recognizes the Union as the exclusive bargaining representative of such employees and subject to the provisions below agrees to comply with all the terms and conditions of the existing Collective Bargaining Agreement (economic and non-economic terms) between the [Intervenor] and the incumbents [Employer], which became effective July 1, 2020 through June 30, 2021 except as modified below.

The bridge agreement then provided:

This Bridge Agreement is effective December 1st, 2020, and shall remain in effect through December 31, 2021, during which time all provisions of the above referenced Collective Bargaining Agreement between the incumbents, and the Union shall remain in full force and effect, except as provided to the contrary herein. The no-strike and no-lockout provisions of the Agreement adopted by the parties pursuant to this Bridge Agreement shall remain in effect throughout the duration of this Bridge Agreement.

Thus, most of the provisions of the collective-bargaining agreement between the Intervenor and Asset Protection remained in full force and effect, with the exception of certain enumerated modifications.

The Intervenor presented testimony that it initially had agreed to a bridge agreement rather than a new “complete” collective-bargaining agreement because the Employer had declined to accept the terms of the Intervenor’s collective-bargaining agreement with Asset Protection. Moreover, the Intervenor understood that the first year of the Employer’s service contract with ICE, or its “initial performance year,” limited the Employer with regard to what economic and other agreements it could make. Thus, the Intervenor believed that its ability to fully negotiate a 3-year collective-bargaining agreement with wage increases at that time was constrained.

Subsequently, in about July 2021, in anticipation of the “initial performance year” expiring in December 2021, the Intervenor requested to commence bargaining for a “complete” 3-year collective-bargaining agreement with the Employer. At that point, the Intervenor believed, the Employer would be able to submit equitable adjustment modifications to its service
contract with ICE. Towards this end, the Intervenor wanted to complete bargaining so that the Employer could submit an agreed-upon collective-bargaining agreement to ICE for its review before the end of the calendar year.\(^2\)

However, the parties found their bargaining sessions constrained by COVID-19 restrictions and local protocols, including inter-state travel limitations, and the parties were unable to meet in person until September 13 to 15, 2021. Thereafter, on September 20, 2021, the Intervenor and the Employer entered into a new 3-year collective-bargaining agreement covering the Unit with effective dates of October 1, 2021 through December 31, 2024.

The Intervenor conceded that the start date of the collective-bargaining agreement commenced before the end date of the bridge agreement and explained that it intended the bridge agreement to be in effect only until its expiration date or when a new contract was negotiated, whichever occurred first. Moreover, the Intervenor testified that it wanted the new collective-bargaining agreement to coincide with the federal government’s budget fiscal year which commences on October 1: this would also afford the Employer time to present the terms of the new collective-bargaining agreement to its client ICE for its review well before the December 1 contract year. Finally, the Intervenor believed it “prudent” to effectuate the new collective-bargaining agreement shortly after it was agreed upon and ratified in September 2021. No explanation or basis for this belief was provided, however.

The Intervenor presented testimony that certain provisions in this collective-bargaining agreement differed from those in the bridge agreement with regard to wages, benefits, grievance/arbitration, health and welfare, insurance, and the inclusion of a discipline “matrix” establishing certain standards of employee conduct similar to a matrix maintained by the Employer in its Florida operations. Among other things, the collective bargaining agreement provides that the wages to take effect as of December 2021 are the same as those provided in the bridge agreement that were to take effect on that date, and that, thereafter, 3% wage increases would become effective in October 2022, 2023, and 2024.

The petition was filed on October 26, 2021, during the period between 60 and 90 days before the expiration of the bridge agreement (October 2 to 31, 2021).

II. ANALYSIS

A. Relevant Legal Precedent

The Board will find an employer to be a successor employer, obligated to bargain with its predecessor’s incumbent Union, when there is “substantial continuity” of the employers’ business operations and a majority of the successor’s employees were employed by the predecessor. See *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 42-44, 46-47 (1987). However, a successor employer is not required to adopt its predecessor’s collective-bargaining agreement with the incumbent union, and, except where it is perfectly clear that the successor intends to retain all unit employees, a successor can set initial terms and conditions of

\(^2\) The Employer declined to provide a copy of its current service agreement with ICE.

In successorship situations, the Board applies a “successor bar” to the processing of a petition “in those situations where the successor has abided by its legal obligation to recognize an incumbent union, but where the ‘contract bar’ doctrine is inapplicable, either because the successor has not adopted the predecessor's collective-bargaining agreement or because an agreement between the union and the successor does not serve as a bar under existing rules.” *UGL-UNICCO Service Co.*, 357 NLRB 801, 808 (2011). The successor bar precludes processing of a petition for a reasonable period of post-recognition bargaining, ranging from 6 to 12 months, depending on the circumstances, including: (1) whether the parties are bargaining for an initial contract; (2) the complexity of the issues being negotiated and of the parties' bargaining processes; (3) the amount of time elapsed since bargaining commenced and the number of bargaining sessions; (4) the amount of progress made in negotiations and how near the parties are to concluding an agreement; and (5) whether the parties are at impasse.” *Id.* at 808-809, citing *Lee Lumber & Building Material Corp.*, 334 NLRB 399, 402 (2001).

In situations where an employer and a union have entered into a collective-bargaining agreement, the Board will apply a “contract bar” to the processing of a petition during the term of the agreement, but for no longer than 3 years, and, during that period, will dismiss all representation petitions except those that are filed during the open period from 60 to 90 days before expiration of the agreement. *Mountaire Farms, Inc.*, 370 NLRB No. 110, slip op. at 1 (Apr. 21, 2021), citing *General Cable Corp.*, 139 NLRB 1123, 1125 (1962), and *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000, 1001 (1962).

To bar the processing of a petition, an agreement must be reduced to writing, must be signed by all parties prior to the filing of a petition, and must contain substantial terms and conditions of employment sufficient to stabilize the bargaining relationship. *Appalachian Shale Co.*, 121 NLRB 1160, 1162-63 (1958).

An agreement with no fixed term will not bar the processing of a petition. *Pacific Coast Association of Pulp & Paper Manufacturers*, 121 NLRB 990, 993 (1958); *McLean County Roofing*, 290 NLRB 685, 686 fn. 5 (1988). Thus, a temporary agreement, which is to be effective until a complete and final agreement can be negotiated, will not bar the processing of a petition. *Bridgeport Brass Co.*, 110 NLRB 997, 998 (1955). This is true even where the temporary agreement is to be effective until a fixed date, or until a new collective-bargaining agreement is reached, whichever is sooner. *Crompton Co., Inc.*, 260 NLRB 417, 418 (1982); *Frye & Smith, Ltd.*, 151 NLRB 49, 50 (1965).

Parties to an agreement that serves as a contract bar cannot eliminate the open period for filing of a petition by entering into a new agreement with a later expiration date prior to the open period, thus “prematurely extending” the agreement. *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1001-1002 (1958). In such circumstances, the parties’ premature extension does not bar the processing of a petition during the open period prior to the expiration of the original agreement. *Id.*
B. Application of Relevant Legal Precedent

It is undisputed that the Employer is the successor of Asset Protection and was obligated to recognize and bargain with the Intervenor as the incumbent union. The dispute lies in the question of whether the collective-bargaining agreement that became effective October 1, 2021 bars the processing of the petition filed on October 26, 2021.

The Petitioner contends that it does not, and the Intervenor contends that it does. In particular, the Petitioner contends that the bridge agreement was a collective-bargaining agreement that barred the processing of a petition filed during its term, except during the open period; the new collective-bargaining agreement was a premature extension of the bridge agreement; and processing of the petition is not barred because the petition was filed during the open period before expiration of the bridge agreement. In contrast, the Intervenor contends that the bridge agreement was a temporary agreement that did not bar the processing of a petition filed during its term; that the new collective-bargaining agreement was not a premature extension; and that processing of the petition is barred during the term of the new collective-bargaining agreement, except during its open period. I find, consistent with the position of the Petitioner, that there is no contract bar.

First, I find that the bridge agreement has all of the characteristics required for a contract to bar processing of a petition under Appalachian Shale: it was reduced to writing; it was signed by all parties prior to filing of the petition; and it contained substantial terms and conditions of employment sufficient to stabilize the bargaining relationship. Regarding the third characteristic, although the Intervenor characterizes the bridge agreement as a temporary measure and something less than a “complete” agreement, the bridge agreement adopted the terms of the predecessor’s agreement, with limited modifications. It therefore governed all terms and conditions of employment set forth in the predecessor’s agreement, as modified. It was not limited to governing only the terms specifically addressed in the agreed-upon modifications. It therefore contained substantial terms and conditions of employment sufficient to stabilize the bargaining relationship.

Second, I find that the 13-month bridge agreement was an agreement of fixed duration and was not a temporary agreement. Although the Intervenor argues that it intended for the agreement to remain in effect only until superseded by a “complete” three-year collective-bargaining agreement, this intent is not reflected in the language of the bridge agreement. The bridge agreement expressly states: “This Bridge Agreement is effective December 1, 2020, and shall remain in effect through December 31, 2021, during which time all provisions of the above referenced Collective Bargaining Agreement between the incumbents, and the Union shall remain in full force and effect, except as provided to the contrary herein.” Although the Intervenor contends that it decided to enter into the bridge agreement in order to defer more complete bargaining until such time as the Employer would have greater flexibility to agree to adjustments under its service contract, the Intervenor’s strategy or intent in agreeing to the bridge agreement does not change the fact that, by its terms, it is a fixed-term collective-bargaining agreement governing substantial terms and conditions of employment.

Third, I find that the new collective-bargaining agreement was a premature extension of the bridge agreement because it was executed and became effective during the open period for
filing of a petition during the term of the bridge agreement and set a later termination date. Therefore, I find that there is no bar to processing of the petition because the petition was filed during the open period for filing of a petition during the term of the bridge agreement.

Finally, I find that, because, following the successorship, the Intervenor and the Employer entered into the bridge agreement, which resulted in a contract bar, no successor bar applies under *UGL-UNICCO Service Co.*

Inasmuch as I have concluded that there is no bar to proceeding to election on the Petitioner’s petition, I shall, in accordance with the stipulation of the parties, order that a mail ballot election be held in the unit described below.

**III. CONCLUSIONS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.³

3. The parties stipulated, and I so find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The parties stipulated, and I so find, that the Intervenor is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

5. 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.

6. The parties stipulated, and I so find the following employees of the Employer constitute a unit (the Unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

   **Included:** All full-time and regular part-time detention officers, armed detention officers, and armed transportation officers performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act,

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³ The parties stipulate, and I so find, that the Employer, Akima Global Services, LLC, an Alaska limited liability company with an office and place of business in Florence, Arizona, provides security services to the United States Immigration and Customs Enforcement (ICE). In conducting its business operations described above, during the past 12-months ending October 26, 2021, the Employer performed services valued in excess of $50,000 directly from points outside the state of Arizona, including services to the United States Government.
employed by the Employer at the ICE Detention Center in Florence, Arizona, under contract to the United States Immigration and Customs Enforcement, Contract # 70CDCR20D0000004.

**Excluded:** All other employees, office clerical employees, professional employees, managers and supervisors as defined in the Act.

Thus, for the reasons detailed above, I will direct a mail-ballot election in the described Unit, which consists of approximately 250 employees.

**IV. 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 United Government Security Officers of America International Union and its Local 838.

**A. Election Details**

The parties stipulated to a mail-ballot election.

The ballots will be mailed by U.S. Mail to eligible voters employed in the appropriate collective-bargaining unit. At **2:00 p.m. on January 19, 2022**, ballots will be mailed to voters by an agent of Region 28 of the National Labor Relations Board. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **January 26, 2022**, should communicate immediately with the National Labor Relations Board by either calling the Region 28 Office at (602) 640-2160 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 28 Office by close of business on **February 2, 2022**. All ballots will be commingled and counted by an agent of Region 28 of the National Labor Relations Board on the earliest practicable date after the return date for mail ballots. In order to be valid and counted, the returned ballots must be received in the Regional Office prior to the counting of the ballots.

**B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending **December 26, 2021**, 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

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4 If, on the date of the count, the Regional Office is closed, or the staff of the Regional Office is working remotely, the count will be done remotely. If the Regional Director determines this is likely, a reasonable period of time before the count, the parties will be provided information on how to participate in the count by videoconference.
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 who are present in the United States may vote.

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 6, 2022. 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.nlrb.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.nlrb.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 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 nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

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

V. 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 10 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.

**Pursuant to Section 102.5 of the Board’s Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency’s website (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden.** A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board’s Rules and Regulations does not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board’s Rules and Regulations and must be accompanied by a certificate of service.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency’s website at www.nlrb.gov. Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency’s website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.
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. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated at Phoenix, Arizona this 4th day of January 2022.

/s/ Cornele A. Overstreet
Cornele A. Overstreet
Regional Director