On December 6, 2021, employee Hector Navarro (the Petitioner) filed a petition seeking a decertification election among a unit of employees employed by Jacmar Food Service Distribution (the Employer) in the City of Industry, California. There are approximately 21 employees in the petitioned-for unit.

On December 27, 2021, a hearing regarding the petition was held before a Hearing Officer of the National Labor Relations Board (the Board). 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; the Section 2(5) labor organization status of the Intervenor (the Union); and the classifications which should be included in any bargaining unit found appropriate (Board Ex. 2).
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 Union which bars the
petition in this matter. I am, accordingly, dismissing the petition.

I. ISSUE AND POSITION OF PARTIES

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

The Union argues that the parties reached a valid collective-bargaining agreement when
the Union accepted the Employer’s “Last, Best, and Final” offer on December 2, 2021, and that
the agreement was effective that day, or, at the latest, when it was ratified on December 4, 2021,
two days before the petition was filed. The Union claims the agreement was effective from
December 4, 2021, through December 3, 2024, and sets forth specific terms and conditions of
employment for unit employees sufficient to stabilize the parties’ bargaining relationship,
including wage increases effective on December 4, 2021. The Union claims that the parties’
agreement is sufficiently formalized to constitute a contract, as it incorporates the parties’ signed
Tentative Agreements on all pending issues. As the instant petition was filed on December 6,
2021, at least two days after this agreement was effective, the Union argues that the petition is
untimely and should be dismissed.

The Employer counters that there is no contract bar because there is no signed,
“completely integrated” agreement between the Union and the Employer. The Employer
contends that the parties reached no meeting of the minds on an agreement, that the parties’
“ground-rules” allowed for further modification of the Employer’s “Final” proposal, and the
agreement was not properly ratified. The Employer also claims the purported agreement is
insufficient for contract-bar purposes because it does not cover substantial terms and conditions
of employment, is unsigned, and lacks a definite effective date, end date, or duration.

II. FACTS

In Case 21-RC-175833, after an election, the Union was certified on September 26, 2016,
as the exclusive collective-bargaining representative of the unit of delivery drivers employed by
the Employer. In May of 2018, the United States Court of Appeals for the District of Columbia
circuit rejected the Employer’s challenge to the Union’s certification and ordered the Employer
to bargain with the Union.

Included: All full-time and regular part-time delivery drivers employed by the Employer at its
facility currently located at 300 Baldwin Park Boulevard, City of Industry, CA 91746;

Excluded: All other employees, warehouse employees, employees employed by an employment
agency, office clerical employees, professional employees, managerial employees,
guards, and supervisors as defined in the Act.
From September 2018 through December 2021, the parties bargained for their initial contract. During that period, they participated in 49 bargaining sessions and exchanged 85 proposals (the Employer made 43 proposals, and the Union made 42 counterproposals).

By December 20, 2018, the parties had reached and signed Tentative Agreements (TAs) on language covering numerous sections of their first contract, including: union recognition, three-year contract duration, discipline and discharge, union access, and grievance and arbitration. By January 2020, the parties reached additional TAs on other subjects, including: hiring, seniority, leave of absence, hours of work, vacations, sick leave, and management rights.

Due to the COVID-19 pandemic, the parties continued their negotiations in 2020-21 by email and through virtual meetings. By the Fall of 2021, the parties began contemplating that their agreement would be effective upon ratification by unit employees.

The parties’ bargaining efforts culminated with the Employer emailing the Union, on Thursday, December 2, 2021, with a written “Last, Best, and Final” contract offer. That offer—which the Union unequivocally accepted by reply email that same day—incorporated the parties’ prior TAs and provided for new wage rates to be effective “upon ratification.” The Employer’s “Final” offer contained no qualification indicating that the Union’s acceptance thereof would not constitute a complete and final agreement. Rather, the language appearing on the offer’s cover page provided that its proposed terms are subject to modification until the parties reach a final agreement “on all Articles and language of a new [CBA].” In its December 2, 2021, email accepting the offer, the Union notified the Employer that it would submit the agreement to the drivers for a ratification vote that weekend. The Employer did not respond at that time to object that there was no final agreement to ratify.

On December 4, the Union advised the Employer by email that the agreement had been ratified that day, and noted—consistent with the parties’ TA on duration—“We have a 3-ye[ar] agreement.” As the contract and new wage rates were effective upon ratification, the Union reminded the Employer to ensure that those wage rates were effective that day. Again, the Employer did not object at that time.

On December 6, the Union emailed the Employer a copy of the agreement in Microsoft Word format so that any required edits could be made for the purpose of printing, signing, and distributing the parties’ final agreement. The Employer did not respond on December 6 to question the Union’s characterization of the parties’ formation of a final, ratified, and effective agreement.

Also on December 6, the Petitioner filed the petition in this case. The next day, the Employer emailed the Union, and for the first time questioned whether they had reached a final agreement.

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5 All dates are in 2021 unless otherwise specified.
III. ANALYSIS

A. The Contract-Bar Doctrine

The Board’s contact-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. *Hexton Furniture Co.*, 111 NLRB 342 (1955); *General Cable Corp.*, 139 NLRB 1123 (1962); *Deluxe Metal Furniture Co.*, 121 NLRB 995 (1958); *Appalachian Shale Products Co.*, 121 NLRB 1160, 1163 (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 after the agreement’s effective date. 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, 517-18 (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 at 1163. 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*, 344 NLRB at 375, citing *Cooper Tire & Rubber Co.*, 181 NLRB 509, 509 (1970).

The contract-bar doctrine does not require a single, integrated, and “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, 1002-03 (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. *Id.*

As further discussed below, the Board exercises flexibility regarding the forms of documents that may establish a contract sufficient to establish a bar. For example, in *Georgia Purchasing, Inc.*, 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. 230 NLRB 1174, 1174 (1977). 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 “chart[ed] with adequate precision a continuing contractual relationship between the parties.” *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 “chart[s] with adequate precision the course of the bargaining relationship” before finding the existence of a bar. *Id.*
B. The Union Met Its Burden

Contrary to the Employer’s assertions, I find that the Employer and the Union reached a collective-bargaining agreement that was valid and effective before the filing of the petition on December 6. Accordingly, the petition is untimely and must be dismissed.

First, the Employer and the Union reached an agreement on December 2 that contained substantial terms and conditions of employment sufficient to stabilize their collective-bargaining relationship. That day, the Employer, by email, sent the Union its written “Last, Best, and Final” offer for their initial contract. That same day, the Union, by return email, provided its written and unequivocal acceptance of that offer. Nothing in the Employer’s offer, its communication, or the Union’s acceptance, contained any qualification indicating that the parties’ agreement was less than complete. Rather, the plain meaning of the proposal’s title, “Last, Best, and Final,” signifies that it is one which the Union could accept without further modification.6

Accordingly, a meeting of the minds is not, as the Employer suggests, precluded by boilerplate, appearing on the cover page of the offer, to the effect that the parties may make changes until a final agreement is reached. Because the Employer offered, and the Union accepted (and ratified), the Employer’s “Last, Best, and Final” proposal, the parties intended to have a contract. Consequently, the Employer’s ability to alter its “Final” proposal was extinguished upon the Union’s acceptance.

Nor, contrary to the Employer, is the contract bar precluded because the Union, after the agreement was accepted and ratified, sent the Employer a “draft” agreement for the purpose of making any “necessary” corrections. “Inadvertent errors in a written agreement do[] not reflect a lack of agreement and the need for minor changes or alterations in language does not relieve the parties of the obligation to execute an agreed-on contract.” New Orleans Stevedoring Co., 308 NLRB 1076, 1081 (1992) (citation omitted). Instead, those are routine functions that may be performed after an agreement has been reached. See St. Mary’s Hosp., 317 NLRB 89, 90 (1995) (parties’ assent to tentative agreement sufficient; that they intended to prepare and execute a formal agreement does not establish their intent to condition finality or effectiveness of their agreement on such signing); accord Television Station WVTV, 250 NLRB 198, 199 (1980).

Second, the agreement contains substantial terms and conditions of employment sufficient to stabilize the bargaining relationship. As noted, such terms may be provided in the

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6 The Employer’s claim that the agreement required ratification by the Unit to be a valid collective-bargaining agreement is not supported by long-standing Board case law nor by the record evidence. “[O]nly where the written contract itself makes ratification a condition precedent to contractual validity shall the contract be no bar until ratified.” Appalachian Shale Products Co., 121 NLRB at 1162. Here, the parties’ written agreement contained no such requirement. Assuming ratification was required, I find that it occurred on December 4, prior to the filing of the petition on December 6. The Union announced to the Employer on December 4 that ratification had occurred, and the record evidence supports that claim. Where ratification is required, a report from the Union that it occurred is normally sufficient. See Swift & Co., 213 NLRB 49, 51 & n.13 (1974) (noting that “it is for the union, not the employer, to construe and apply its internal regulations relating to what . . . amount[s] to ratification.”) (citation omitted). Moreover, even if I were to look beyond the Union’s report, I would find the agreement was ratified pursuant to internal union by-laws because it is undisputed that a majority of unit employees present voted to ratify the agreement.
agreement or in the documents the agreement incorporates by reference. Here, the accepted agreement (the Employer’s “Last, Best, and Final” offer), viewed together with the signed TAs that it explicitly incorporates, set forth the parties’ agreement on: wages, hours of work, discipline and discharge, vacations, grievance and arbitration, contract duration, and other substantial terms and conditions of employment for the unit. Those agreed-upon terms are clearly sufficient to stabilize the parties’ bargaining relationship, and “chart with adequate precision the course of the bargaining relationship.” Appalachian Shale Products Co., 121 NLRB at 1163. Notably, the agreement and the TAs that it incorporates result from over three years of bargaining, which encompassed 85 contract proposals. Yet, the Employer does not specify any substantive term that it claims is missing, much less demonstrate the absence of substantive terms sufficient to stabilize the parties’ bargaining relationship. See St. Mary’s Hosp., 317 NLRB at 90 (agreement need not delineate every single provision in order to qualify as a contract bar) (collecting cases).

I therefore find, based on the foregoing record evidence and Board precedent, that the parties reached agreement on December 2, 2021, encompassing substantial terms sufficient to stabilize their bargaining relationship.

Next, I find that the agreement was sufficiently memorialized. As discussed, the contract bar does not require a single, integrated document bearing the parties’ signature. Rather, the Board exercises flexibility regarding what constitutes sufficient memorialization. Thus, the parties may “signify their agreement by attaching their signatures to a document or documents that tie together their negotiations, by either spelling out the contract’s specific terms or referencing other documents which do so.” Waste Mgmt. of Maryland, Inc., 338 NLRB at 1003. Moreover, something other than a full signature may suffice for contract-bar purposes to establish the parties’ assent to the agreement. See, e.g., St. Mary’s Hosp., 317 NLRB at 90 (signed tentative agreement sufficient to constitute bar); WVTV, 250 NLRB at 199 & n.1 (parties’ initials can constitute sufficient signatures for contract bar); Diversified Servs., Inc., 225 NLRB 1092, 1092 (1976) (employer’s signed cover letter accompanying unsigned proposal, coupled with union’s execution of proposal prior to filing of petition sufficient); Georgia Purchasing, 230 NLRB at 1174-75 (exchange of telegrams between the parties containing wage increases and other terms, when combined with prior agreement incorporated by reference, sufficient). See generally New Orleans Stevedoring Co., 308 NLRB at 1081 (party’s signifying assent to unsigned paper can serve as formation of contract.)

Here, I find, in accordance with the foregoing precedent, that the parties sufficiently memorialized their agreement through their written email exchange (the modern equivalent of the telegram exchange found sufficient in Georgia Purchasing, supra). As shown, that written email exchange included the Union’s unequivocal, written acceptance of the Employer’s “Last, Best and Final” offer, which, in turn, incorporated the parties’ signed, written tentative agreements on wages, hours of work, and numerous other substantive terms. The parties thereby “signif[ied] in writing that they had agreed to the contract provisions contained therein,” which, as shown, “set forth substantial terms sufficient to stabilize the bargaining relationship.” WVTV, 250 NLRB at 199.

Further, contrary to the Employer, the agreement’s effective date, end date, and duration are all reasonably discernable from the face of the agreement. As to the effective date, for
example, the agreement explicitly states that certain of its provisions—including those providing for increased wages—will be effective on the “date of ratification,” which, as shown, was December 4. Thus, by its terms, the agreement was effective, at the latest, on December 4—two days before the petition was filed.

I also find that the agreements’ three-year term (duration) is reasonably discernable from its face. See Cooper Tire, 181 NLRB at 509 (deducing agreement’s duration from multiple contract provisions); Youngstown Osteopathic Hosp. Ass’n, 216 NLRB 766, 766 (1975) (looking behind “inartfully drafted” provisions to establish contract duration). Here, on December 20, 2018, the parties reached a written TA that explicitly provided for a three-year term, an agreement they reaffirmed and signed on February 21, 2019, and October 29, 2021. The Employer’s “Final” offer, which the Union accepted on December 2, 2021, expressly incorporated that agreement on duration. As shown, moreover, the agreement became effective upon ratification on December 4. Thus, combining that effective date with the agreed-upon three-year duration, plainly yields a three-year agreement running from December 4, 2021, to December 3, 2024.

Moreover, the agreement’s wage provision further indicates a three-year term, as it provides for three annual wage increases starting from the date of ratification. Cf. Cooper Tire, 181 NLRB at 509 (contract reasonably construed as having three-year term where it provided for a three-year duration—with the day and month omitted—and set forth the effective day, month and year of three annual wage increases). This case is, therefore, unlike Cind-R-Lite, 239 NLRB at 1255-56, where the contract proposal “lack[ed] on its face a definite term of duration,” and the effective dates for three annual wage increases failed to provide a fixed termination date because the last increase could, by its terms, continue indefinitely. Nor is this a case where the agreement presents conflicting effective dates. So. Mountain Rehab. Ctr., 344 NLRB at 375-76 (no contract bar where agreement presented four conflicting effective dates).

In sum, the Union met its burden to demonstrate a contract bar. The record establishes that on December 2, 2021, the Employer and the Union reached 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 December 4, 2021, the date the agreement was ratified. This agreement is effective from December 4, 2021, through December 3, 2024. The instant petition was filed on December 6, 2021. Based on the foregoing and the record as a whole, I find that there was a valid contract between the Employer and the Union at the time the petition was filed.

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7 The Employer, in that Final offer, sought to modify other language in the parties’ TA on duration, specifically, regarding reopening the contract to negotiate over economic provisions including wages, and the Union accepted those modifications. However, those changes do not address, much less alter, the parties’ express agreement to a three-year term, which was incorporated by reference into their final agreement.

8 Consistent with that understanding, the Union’s December 4 email to the Employer, announcing the agreement’s ratification, stated that the parties now “have a 3 yea[rl] contract,” and the Union’s December 6 email stated that the parties’ agreement runs from December 4, 2021 through December 3, 2024—assertions the Employer left unchecked through its silence, at least until December 7, the day after the decertification petition was filed.
C. The Petition Is Untimely

As discussed above, a petition is untimely and will be barred when it is filed after the effective date of a collective-bargaining agreement that meets the requirements for application of the contract bar. Here, the record evidence establishes that the Employer and the Union are parties to a valid collective-bargaining agreement, effective from December 4, 2021, through December 3, 2024. The petition in this case was filed on December 6, 2021, after the agreement’s effective 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 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 of the Board’s Rules and Regulations and must be filed by February 11, 2022.

Pursuant to Section 102.5(c) of the Board’s Rules and Regulations, 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 must be E-Filed through the Agency’s website. A request for review may not be filed by facsimile. To E-File the request for review, go to www.nlrb.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, D.C., 20570-0001, and must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or why filing electronically would impose an undue burden. 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: January 28, 2022

William B. Cowen, Regional Director
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