UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SEVEN

VHS SINAI-GRACE HOSPITAL, INC. ¹
Employer

and

CRYSTAL HARPER
Petitioner

and

SEIU HEALTHCARE MICHIGAN
Union

DECISION AND ORDER

The Petitioner filed the original petition in this case on February 8, 2022,² with the National Labor Relations Board ("Board") under Section 9(c) of the National Labor Relations Act ("Act"), seeking to decertify SEIU Healthcare Michigan ("Union") as the exclusive collective-bargaining representative of approximately 320 employees employed by VHS Sinai-Grace Hospital, Inc. ("Employer") at its facility located at 6071 West Outer Drive, Detroit, Michigan. The parties stipulated to the following appropriate unit of current employees ("Unit"):³

Including: All full-time, regular part-time and contingent (per diem) service and maintenance and technical employees employed by the Hospital at its facility located at 6071 West Outer Drive, Detroit, Michigan, including anesthesia technicians, cardiac invasive specialists, cardiac sonographers, care management technicians, CAT scan technologists, cert respiratory therapists, certified O.T. assistants, dialysis equipment technicians, patient transportation dispatchers, ED technicians, endoscopy technicians, hemodialysis technicians, information clerks, interventional radiology technologists, lead care management technicians, lead CAT scan technologists, lead mammography technologists, lead MRI technologists, lead nuclear medical technologists, lead pharmacy technicians, lead polysomnographic technologists, lead radiologic technologists, lead special procedures technicians, lead ultrasound technologists,

¹ The name of the Employer is hereby amended as stipulated in the record.

² All dates 2022 unless otherwise specified.

³ The parties stipulated, and I find, that the stipulated Unit is coextensive with the existing bargaining unit as described in the collective-bargaining agreement between the Employer and Union and the Certification of Representative in Case 07-RC-219245, dated May 18, 2018, despite differences in the language. See Mo’s West, 283 NLRB 130(1987) (citing Campbell Soup Co., 111 NLRB 234 (1955)).
mammography technologists, medical lab technicians, mental health associates, MRI technologists, neurodiagnostics technologists, nuclear medicine technologists, OB associates, orthopedic technicians, patient attendant safety/sitters, patient care associates, pharmacy technicians, polysomnographic technologists, radiologic technologists, radiology associates, radiology patient services representatives, registered respiratory therapists, special procedures technicians, senior pharmacy technicians, senior respiratory therapists, surgical scheduling coordinator, surgical technicians, ultrasound technologists, and vascular ultrasound technicians;

Excluding: Confidential employees, physicians, residents, central business office employees (whether facility based or not) who are solely engaged in qualifying or collection activities or are employed by another Tenet entity, such as Syndicated Office Systems or Patients Financial Services, employees of outside registries, registered nurses, traveling nurses, permanent charge nurses, employees of other agencies supplying labor to the Hospital, already represented employees, managerial employees, skilled maintenance employees, biomedical technicians and guards and supervisors within the meaning of the National Labor Relations Act, and all other employees.

A hearing was held by videoconference on March 7, before a hearing officer of the Board on whether a collective-bargaining agreement exists that would bar the instant petition.\(^4\) All parties participated in the hearing and were provided with an opportunity to call, examine, and cross-examine witnesses, to introduce into the record evidence of the significant facts that support their contentions, and to orally argue their respective positions and submit post-hearing briefs.

As explained below, based on the record and briefs submitted by the parties, and after carefully considering the arguments and relevant Board law, I find that the petition was not filed in the appropriate window period and as such, 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. FACTS

The Union was certified as the Unit’s exclusive collective bargaining representative on May 18, 2018. The most recent collective-bargaining agreement between the Employer and Union has effective dates of May 9, 2019, until midnight May 8, 2022. There is no record evidence of any other contract in existence during the Employer’s and Union’s collective bargaining relationship. On page 2 of the agreement, above the table of contents, the following language appears:

\(^4\) Evidence was also obtained as to whether, in light of the continuing Covid-19 pandemic, the Region should conduct an election for certain employees employed by the Employer at its facility in Detroit, Michigan, by manual or mail ballot. Because I find the petition was untimely and must be dismissed, I do not make a finding as to the appropriate method of election.
On page 3 of the agreement, the contract reads, in part:

**AGREEMENT**

THIS AGREEMENT, entered into this Ninth (9th) day of May, 2019, by and between the Detroit Medical Center Sinai-Grace Hospital (hereinafter referred to as the “Hospital”, “Facility” or “Employer”), located at 6071 West Outer Drive, Detroit, MI and the Service Employees International Union (SEIU), hereafter referred to as the “Union”).

Article XXVI , Duration of Agreement, reads as follows:

This agreement shall be effective from the date of ratification by the last of the parties to ratify and shall remain in effect until midnight of the Eighth (8th) day of May 2022 (the "expiration date").

A. The Agreement reached between the Facility and the Union is binding on all Employees affected and cannot be changed by any individual.

B. This agreement shall be automatically renewed from year-to-year thereafter, subject to sixty (60) calendar days' notice by any party in writing prior to the expiration date of this Agreement of a desire to amend or modify this Agreement. In the event that such notice is given negotiations shall begin, unless otherwise mutually agreed, not later than fifteen days after such notice is received. During which time the contract shall remain in full force and effect until a new Agreement is reached or until either party serves the other with a ten (10) day notice to terminate.

C. In the event of a failure of the parties to reach an agreement upon such amendments or modifications through any agreement by expiration date, this written agreement shall be terminated as of midnight of the expiration date.\(^5\)

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\(^5\) The Union presented parole evidence on the record regarding the parties’ intent as to the meaning of “midnight” to determine the effective expiration date of the contract. Because I find the contract to be unambiguous, I do not rely on that parole evidence in making my determination. 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, including any terms and conditions incorporated by reference, but parole and extrinsic evidence will not be admitted. *Waste Management of Maryland, Inc.*, 338 NLRB 1002, 1003 (2003) (citing *United Health Care Services*, 326 NLRB 1379 (1998); *Jet-Pak Corp.*, 231 NLRB 552 (1977); *Loree Footwear Corp.*, 197 NLRB 360 (1972) (citing *St. Louis Cordage Mills*, 168 NLRB 981 (1967); *Paragon Products Corp.*, 134 NLRB 662 (1961)) and *Union Fish*, 156 NLRB 187, 191, (1965.) The Board’s rationale for limiting extrinsic or parole evidence is that the terms of the agreement must be clear from its face so employees and outside labor organizations may look to it to determine the
The instant petition was filed on February 8.

II. POSITIONS OF THE 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 contract between the parties was effective until May 8, and that the petition is untimely because it was filed outside the 90 to 120 day “window period” for filing such petitions under the Board’s contract bar doctrine and should be dismissed. *Trinity Lutheran Hospital*, 218 NLRB 199 (1975).

The Petitioner submits that the inclusion of the word “midnight” in the contractual language regarding the expiration date is ambiguous and the contract did not expire at 12:00 a.m. on May 8, but at the very last stroke of the stated day (May 8), which would mean that the contract is effective the entire day of May 8, and the terminal moment of the contract is 12:00 a.m. on May 9, 2022. The Employer also asserts there is no bar and that the contract was filed within the appropriate window period.

III. CONTRACT BAR PRINCIPLES

The Board’s contract-bar doctrine provides that once a collective-bargaining agreement 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 after the three-year limit if the contract’s duration exceeds three years, or during a 30-day period that begins 90 days and ends 60 days before such a contract expires. *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000, 1001 (1962). This 30-day period is commonly known as the “window period” or “open period.” The subsequent 60-day period preceding and including the expiration date is known as the “insulated period,” and no petition can be timely filed during that span. *Id.; Deluxe Metal Furniture Co.*, 121 NLRB 995, 1000 (1958). For collective-bargaining agreements involving healthcare institutions such as this one, the insulated period is 90 days; thus, the window period begins 120 days and ends 90 days prior to contract expiration. *Trinity Lutheran Hospital*, 218 NLRB 199 (1975). 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.” *Direct Press Modern Litho, Inc.*, 328 NLRB 860, 860 (1999) (quoting *Appalachian Shale*, 121 NLRB 1160, 1161 (1958)). See also *Corporacion de Servicios Legales de Puerto Rico*, 289 NLRB 612, 613–614 (1988) (“the contract-bar doctrine is but another instance of the Board’s striking an accommodation among three competing interests: the freedom of an employer and a union to enter into a collective-bargaining relationship, the stability of bargaining relations once established, and employee freedom of choice—all of which underlie the Act’s ultimate goal of fostering industrial peace”).

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There is no dispute by any party that the contract meets the substantive criteria for serving as a bar. It is: (1) reduced to writing; (2) signed by all parties prior to the filing of the petition; (3) contains substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship; (4) clearly encompassing the employees involved in the petition; and (5) covering an appropriate bargaining unit. Appalachian Shale Products Co., supra.

IV. ANALYSIS AND CONCLUSION

At issue in this proceeding is whether the Employer and the Union are parties to a valid collective-bargaining agreement that bars the election petition in this case. Encompassed in this issue is whether the contractual language referencing “midnight” expiration is ambiguous. There is no question that Article XXVI of the contract identifies May 8 as the expiration date of the agreement. As discussed above, the language reads, in part, “This agreement shall be effective from the date of ratification by the last of the parties to ratify and shall remain in effect until midnight of the Eighth (8th) day of May, 2022 (the “expiration date”)” (emphasis added).

The Board has held, in conformity with the general rule of construction, that in the absence of specific expression to the contrary, a contract in effect until a day certain is to be construed as not including the date named after the word “until.” Williams Laundry Company, 97 NLRB 995, 996 fn. 3 (1952). See also, Carter Machine and Tool Co., 133 NLRB 247, 248 fn. 2 (2008), citing Hemisphere Steel Products, Inc., 131 NLRB 56 (1961) (a contract running until a certain date means “exclusive of the day named.”)

The Petitioner argues that the term “midnight” is ambiguous and mandates that the contract remain in effect until 11:59 p.m. on May 8. While acknowledging that the Board has held that a contract running until a certain date means “exclusive of the day named,” as cited in Carter Machine, supra, the Petitioner argues that general rule is only applicable in the “absence of specific expression to the contrary”. Williams Laundry Co., 97 NLRB 995 (1952). Under this argument, the inclusion of the word “midnight” creates ambiguity and a common reading of the language would result in finding that the contract remained in effect throughout May 8 until 11:59 p.m., terminating at 12:00 a.m. on May 9, 2022.

To support its contention, Petitioner cites Brown Co. 178 NLRB 57 (1969), where the contract in question designated that it was “in full force and effect until midnight, July 23, 1969,” and the Board found the contract to be effective until the end of July 23, 1969. However, in that case, the contract further contained language indicating that the contract was “effective to and including the 23rd day of July, 1969.” Here, the contract is equally explicit in that it contains specific and unambiguous language that identifies May 8 as the expiration date. It does not indicate that the contract would remain effective “including” May 8, as was the case in Brown. Finding that the expiration date is May 9 in the instant matter would not only go against the clear language of the contract setting the expiration date of May 8, it would also render the contract as both expired and effective for the duration of May 8.

Next, the Petitioner cites the Board’s decision in Rio Grande Motor Way, Inc., 210 NLRB 73, 74 (1974) as supporting its position that the contract, by its terms, should remain effective through May 8
despite its explicit indication that it expires on that date. However, *Rio Grande* supports the opposite conclusion. In assessing whether a contract with an expiration date of midnight July 1 would *include* July 1, 1973 the Board explicitly found that based on Board precedent and the specific language, the contract would expire on June 30 – the date before the expiration date listed in the contract. Specifically, it noted that “[i]f we accept midnight, July 1, 1973, as the terminal date, then it is clear that the contract would have a duration of 3 years and 1 day.” That is exactly what the Petitioner is seeking to do here.

Finally, the Petitioner argues that the contract bar rules are designed to balance the twin goals of employee freedom of choice and industrial stability. The window period provides employee or union petitioners with the opportunity to file petitions at reasonable, identifiable times to change or eliminate the employees' bargaining representative if they so desire. At the same time, the contract bar affords a reasonable period of stability for the contracting parties and employees. The Petitioner further argues that the interpretation of the language itself and the complexity of the Board’s insulation period rules should not benefit the Union and Employer, but instead necessitate that the petition be processed and an election held. *Bob's Big Boy*, 259 NLRB 153, 153-154 (1981). The Petitioner further argues that the employees’ lack of the requisite expertise to file said petitions, and the burdens of gathering information and the support to file the petitions, suggest the petition be processed to allow employees free choice by voting for or against representation. Finally, it is urged that the Board’s Rules and Regulations, including Section 102.121, indicate that all provisions of Section 102 should be "liberally construed to effectuate the purposes and provisions of the Act" and that such liberal construction be applied by allowing the petition to proceed due to the ambiguities in the contract.

While these principles strike to the core of and resonate the policies and purposes of the Act, their application under the circumstances in this matter is inapposite to long-standing Board precedent. The collective bargaining agreement is not ambiguous and clearly indicates that the contract expires on May 8.

Based upon the clear dictates of the Board enumerated above, there is no dispute that the contract, by its specific terms, indicates that it is effective *until* midnight of the “Eighth (8th) day of May.” It is not ambiguous and the inclusion of the word “midnight” does not make it so. As such, and in accordance with the Board’s holding regarding the 90 to 120 window period for healthcare institutions, the petition would had to have been filed by February 6 to be timely. Here, the undisputed record evidence demonstrates that the petition was filed on February 8, which is inside the insulated period and thus untimely.

V. **ORDER**

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this matter to the undersigned Regional Director. Based on the entire record, I find:

6 The window period for this petition was January 8, 2022, through February 6, 2022.
a. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.
b. The Employer is engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.\(^7\)
c. The Union is a labor organization within the meaning of Section 2(5) of the Act.
d. The labor organization involved claims to represent certain employees of the Employer.
e. There is a valid collective-bargaining agreement covering the employees in the unit the Petitioner seeks to decertify, and the parties dispute the existence of a contract bar to this proceeding.
f. The petition in this case was filed outside the window period and is untimely.
g. The existing contract bars the decertification petition filed by the Petitioner, and no question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of 9(c)(1) and Sections 2(6) and (7) of the Act.

It is hereby ordered that the petition in this matter is 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, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties as well as on the undersigned, in accordance with the requirements of the Board’s Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

**Procedures for Filing Request for Review:** 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 web site \(\text{www.nlrb.gov}\), 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 do 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. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board’s Rules and Regulations.

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\(^7\) The Employer, VHS Sinai-Grace Hospital, Inc., a Delaware Corporation, operates an acute care hospital located at 6071 W. Outer Drive, Detroit, Michigan. During the calendar year ending December 31, 2021, the Employer derived gross revenues in excess of $250,000 and purchased and received at its Detroit, Michigan facility goods in excess of $5,000 directly from points outside the State of Michigan.
Detailed instructions for using the NLRB’s E-Filing system can be found in the E-Filing System User Guide.

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (5 p.m. Eastern Time) on April 12, 2022, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency’s website is accomplished by no later than 11:59 p.m. Eastern Time on April 12, 2022.

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.

Dated: March 29, 2022

Elizabeth Kerwin, Regional Director
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