

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16**

Fort Worth, Texas

DYNEGY MIDSTREAM SERVICES,  
LIMITED PARTNERSHIP<sup>1</sup>

Employer

and

BENNY WALLING, AN INDIVIDUAL

Case No. 16-RD-1445

Petitioner

and

PAPER, ALLIED-INDUSTRIAL, CHEMICAL AND  
ENERGY WORKERS INTERNATIONAL UNION,  
AFL-CIO<sup>2</sup>

Union

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. During the hearing, the Hearing Officer denied both the Union's motion to dismiss the petition and motion to revoke the Employer's subpoenas.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The parties stipulated, and I find, that Dynege Midstream Services, Limited Partnership, Inc., is engaged in natural gas processing with a facility in Chico, Texas. During the past 12 months, a representative period, the Employer in conducting its business, sold and shipped from its Chico, Texas, facility products valued in excess of \$50,000 directly to points outside the State of Texas.
3. The labor organization involved claims to represent certain employees of the Employer. The parties stipulated, and I find, that the Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce does not exist 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. The parties stipulated that the following unit was appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All production and maintenance employees, including instrument and electrical repairmen, chief mechanic, repairman-in-charge, mechanic, repairman, assistant repairman, truck and wench operator fieldman, operator, assistant operator, loader, yardman and facility technicians A, B, and C, at the Employer's Chico, Longview, Leflors, and Seminole, Texas and Ambrose, Oklahoma facilities.

**EXCLUDED:** All other employees, including gas testers, office clerical employees, and guards and supervisors as defined in the Act.

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> The name of the Union appears as amended at the hearing.

The record reflects that in 1996, Trident NGL, Inc. was renamed Warren Petroleum Company, Limited Partnership. In July 1998, Warren Petroleum Company, Limited Partnership was renamed Dynegy Midstream Services, Limited Partnership. The parties stipulated at the hearing that on January 4, 1999 the Oil, Chemical and Atomic Workers International Union and the United Paperworkers Union became Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL-CIO.

The issue underlying this proceeding is whether the instant petition for decertification should be dismissed on the basis that an amendment and extension agreement to the collective bargaining agreement between the Employer and the Union is a contract bar.

It is undisputed by the parties that the Union is the exclusive representative of the unit set forth above. There is also no dispute that a collective bargaining agreement existed between the parties from February 1, 1996 through January 31, 1999. It is further undisputed that in March 1998, the Union requested the Employer to reopen the collective bargaining agreement. The record reflects that on March 2, 1998, the parties agreed to an amendment and extension to the collective bargaining agreement effective from March 2, 1998 through January 31, 2002. Record evidence reveals changes were made to the February 1996 contract which included increases in wages and medical plan contributions, all references to Trident, NGL, Inc. changed to the Warren Petroleum Company, L.P., and dues deduction authorization form changed to reflect Warren Petroleum Company, L.P. The record evidence also reveals changes were made to seniority, leaves of absences, methods of settling grievances, and retiree medical coverage.

The burden of proving that a contract is a bar to an election is on the party asserting the contract bar doctrine. *Roosevelt Memorial Park*, 187 NLRB 517-518 (1970). “The single indispensable thread running through the Board’s decisions on contract bar is that the documents relied on as manifesting the parties’ agreement must clearly set out or refer to the terms of the agreement and must leave no doubt that they amount to an offer and an acceptance of those terms through the parties’ affixing of their signatures.” *Seton Medical Center*, 317 NLRB 87 (1995). For the contract bar doctrine to apply, the contract must be reduced to writing, signed by all the parties before the rival petition is filed, contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship, clearly by its terms encompass the employees involved in the petition, and must cover an appropriate unit. *Appalachian Shale Products Co.*, 121 NLRB 1160, 1161-1164 (1958); *Empire Screen Printing, Inc.*, 249 NLRB 718 (1980).

The record evidence reveals the effective date of the collective bargaining agreement between the Employer and the Union to be March 2, 1998. The record further reveals the March 2, 1998 agreement is a written contract encompassing many of the provisions from the February 6, 1996 contract in addition to other newly-negotiated terms and conditions of employment. The record evidence clearly establishes that this contract embodies substantial terms and conditions sufficient to stabilize a bargaining relationship between the Employer and the Union. Lastly, there is no dispute by the parties regarding the appropriateness of the unit represented by the Union. Accordingly, the contract bar doctrine applies.

The record further reveals the parties executed an amendment and extension to the contract, reaffirming the contract and restating its expiration date, during the first 3 years of the initial long-term contract. As such, the contract was prematurely extended. *Deluxe Metal Furniture*, 121 NLRB 995 (1958); *M.C.P. Food*, 311 NLRB 1159 (1993).

The Employer contends this premature extension should not be allowed as it eliminates the only window an employee has to file a petition. The Employer further argues that contracts longer than three years preclude filing of decertification petitions and cites to *General Cable Corp*, 139 NLRB 1123 (1962), in support of that argument.

The Employer's reliance as it relates to this matter is misplaced. In *General Cable Corp*, the Board extended the two year contract bar rule to three years and determined that contracts having longer fixed terms will be treated for bar purposes as three-year agreements. Therefore, regardless of a contract's length in excess of three years, a petition may be filed during the 90 to 60 day period prior to the third anniversary date of the contract. The Board reasoned "in the totality of the modern-day labor scene, there is ample justification for a three-year rule and that such rule on balance will not seriously impair employee freedom of choice."

With regard to the unfairness of the employees' ability to file a decertification petition, the premature extension rule still allows the petitioner to file during the open period under the original contract. *M.C.P. Foods*, supra. A decertification petition may be filed during the 90 to 60 day period prior to the third-year anniversary date of the original contract. *Dobbs International Services*, 323 NLRB 1159, 1160 (1997). In this case, the 30-day period would have been November 3, 1998 through December 2, 1998,

based on the original contract's expiration date of January 31, 1999. The decertification petition was filed on December 4, 1999.

As such, the decertification petition filed by the Petitioner is untimely. See *H.L. Klion, Inc.*, 148 NLRB 656 (1964). Accordingly, the current collective bargaining agreement between the Employer and the Union serves as a contract bar to an election.

**ORDER**

**IT IS HEREBY ORDERED** that the petition filed herein be, and hereby is, dismissed.

**RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by January 5, 2000.

**DATED** December 22, 1999, at Fort Worth, Texas.

/s/ Claude L. Witherspoon  
Claude L. Witherspoon, Acting Regional Director  
NLRB Region 16

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