

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

WORLD SERVICE WEST/L.A. IN-FLIGHT
SERVICE CO., LLC,

Employer

and

Case No. 31-RC-7905

SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO, CLC, LOCAL 1877

RC Petitioner

WORLD SERVICE WEST/L.A. IN-FLIGHT
SERVICE CO., LLC,

Employer

and

Case No. 31-RD-1430

ABRAHAM GUITTIEREZ, an Individual,

RD Petitioner

and

UNITED SERVICE WORKERS OF AMERICA,
LOCAL 101,

Intervenor.

DECISION AND ORDER

Upon petitions 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.

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.^{1/}

3. The labor organizations involved claim to represent certain employees of the Employer.

4. Based upon the record herein, no question affecting commerce exists concerning the representation of the petitioned-for employees within the meaning of § 9(c)(1) and §§ 2(6) and (7) of the Act for the following reasons:

The sole issue presented at the hearing was whether the RC and RD petitions were barred by an existing collective bargaining agreement between the Employer and United Service Workers of America, Local 101 (herein the Intervenor or Local 101). The Employer and Intervenor claim that they are parties to a valid collective bargaining agreement, executed prior to the filing of the petitions. Both Petitioners claim that the collective bargaining agreement is not valid. The position of Service Employees International Union, AFL--CIO, CLC, Local 1877 (herein the RC Petitioner) is that the collective bargaining agreement does not bar an election because it was never ratified and further that the Intervenor, which is signatory to the collective bargaining agreement, is not a labor organization as defined by the Act. Abraham Guittierez (herein the RD Petitioner) agrees with RC Petitioner that the contract is invalid because it was never approved by the members. I will address these issues after summarizing the factual background.

^{1/} The parties stipulated that the Employer, a limited liability company, is engaged in the provision of airline cleaning and building janitorial services, and that during the past 12 months, a representative period, the Employer purchased goods and supplies valued in excess of \$50,000 from firms located in the State of California, which firms have purchased and received such goods and supplies in California directly from firms located outside the State of California. Accordingly, I find that the Employer satisfies the statutory as well as the Board's discretionary standards for asserting jurisdiction. *Siemons Mailing Service*, 122 NLRB 81 (1959).

The Employer is engaged in the provision of airline cleaning and building janitorial services at Los Angeles International Airport (LAX). Currently, the Employer cleans the facilities in Terminals 1, 5 and 6 and some of the facilities in Terminal 2 and the International Terminal. In March 1999, Local 101 filed an RC Petition in Case 31-RC-7726, to represent a unit of the Employer's Employees and an RD Petition in Case 31-RD-1410, was filed by an individual to decertify the Chauffeurs, Sales Drivers, Warehousemen, & Helpers, Local 572, International Brotherhood of Teamsters, AFL-CIO. After a hearing was conducted, the Acting Regional Director concluded in Case 31-RC-7726 that Local 101 was a labor organization within the meaning of the Act, found that a question concerning representation existed, and directed an election. As a result of the election, Local 101 was certified as the collective-bargaining representative on June 22, 1999 of the following unit:

INCLUDED: Cabin and airline cleaners, dispatchers, custodians, headset workers, chemical room workers, lavatory and water service employees, buffers, warehousemen, auto mechanics, team leaders and senior leads employed by the Employer at Los Angeles International Airport and Burbank Airport.

EXCLUDED: Office and plant clerical employees, technical employees, salesmen, professional employees, all other employees, guards and supervisors as defined in the Act.

Immediately after the election in June 1999, the Employer and the Intervenor began negotiating for a collective bargaining agreement. Over the course of the next 11 months, the parties met approximately seven or eight times to bargain about the initial agreement. These bargaining sessions were attended by representatives of the Employer, Local 101 and interested unit employees (varying from about 5 to 20 employees at the different meetings).

The Intervenor held a meeting with employees on the 25th or 26th of May at Jesse Owens Park. The meeting lasted all day so that employees on different shifts could attend. Approximately 50 employees attended the meeting throughout the day. There are approximately 414 employees in the bargaining unit. Employees cast votes on ballots by marking ballots that said only "Accept" and "Reject." The employees placed their ballots inside a box and the ballots were counted at the end of the day. The tally was 39 votes of "Accept" and 10 votes of "Reject." There is substantial although not universal testimony to support the following sequence of events.

The business representative for the Intervenor, who was present all day at the meeting, stated that the employees were told that the purpose of the meeting was to vote on whether to accept or reject the collective bargaining agreement between the Employer and the Intervenor. During the day, he said that the Intervenor's representatives had several meetings with groups of employees to advise them that they could vote to accept or reject the contract. He stated that the contract that was ultimately signed by the Intervenor and the Employer was ratified by the employees on or about May 26, 2000. Likewise, the Intervenor's Secretary-Treasurer described the meeting as a ratification vote on the proposed contract. Two employees did not understand the purpose of the meeting to be ratification of the collective bargaining agreement.

On May 30, 2000, the Intervenor and the Employer negotiated about a raise. When the Employer agreed to the raise, the record reflects that the Intervenor's representative asked the employees present what they thought. One employee told him that if the people had agreed to the accept the raise in the voting, then they should go forward. The Intervenor did not hold a subsequent ratification vote after the May 30, 2000 negotiating session.

The Employer and Intervenor ultimately signed a document entitled "Collective Bargaining Agreement Between World Service West L.A. Inflight Service Company, LLC And United Service Workers of America -- Local 101." Intervenor's

business representative, Michael Leon, executed the contract on May 30, 2000 and Charlie Yoon, President of the Employer, executed the contract on June 1, 2000^{2/}. The agreement contains the following language:

The parties intend that the ratification vote will occur on or before Friday, June 2, 2000, and that the Agreement will be signed on or shortly thereafter that date; nevertheless, separate and apart from the ratification date and the execution date, the parties agree that the first payroll period for which this Agreement will be in effect is the June 1 - June 15, 2000 payroll period.

The Intervenor's business representative testified that he understood this language as requiring a ratification of the contract before it became effective. The Employer implemented the contract, effective June 1, 2000 and the petitions herein were filed on July 27, 2000.

Although the parties stipulated that RC Petitioner was a labor organization within the meaning of the Act, the RC Petitioner declined to so stipulate with respect to the Intervenor, Local 101. Section 2(5) of the Act defines a "labor organization" as follows:

The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

^{2/} The recognition and scope clause in the collective bargaining agreement defines the unit as "the World Service hourly employees located at Los Angeles International Airport in the following job categories: cabin and airline cleaners, dispatchers, custodians, headset workers, chemical room workers, lavatory and water service employees, buffers, warehousemen, auto mechanics, team leaders and senior leads." This unit is coextensive with the unit which all parties stipulated was the appropriate unit. The parties did not include the Burbank location as part of the stipulated appropriate unit.

The Board liberally construes the definition of “labor organization.” *St. Anthony’s Hospital*, 292 NLRB 1304, 1305 (1989). In June 1999, the Acting Regional Director applied this liberal construction and found in Case 31-RC-7726 that Local 101 was a labor organization within the meaning of the Act and ordered an election. Local 101 won the election and was subsequently certified as the collective bargaining representative. The Hearing Officer in the present case properly took notice of the record, decision and certification in cases 31-RC-7726 and 31-RD-1410.

Although RC Petitioner contends^{3/} that Local 101 cannot be a labor organization because it did not file required reports under the Labor Management Reporting and Disclosure Act (“LMRDA”) or have elections for officers, it is clear that such evidence is not determinative in analyzing whether an organization is a statutory labor organization. *Armco*, 271 NLRB 350, 350 (1984); *Yale New Haven Hospital*, 309 NLRB 363, 364 (1992). The record reflects that the Employer and Local 101 began bargaining in June 1999 for an initial contract, and continued to meet on a regular basis over the course of the next year. Employees participated by attending these negotiations, with each of the sessions attended by between 5 and 20 unit employees. This active participation indicates that Local 101 is a statutory labor organization. See *Mac Towing*, 262 NLRB 1331, 1332 (1982) (Board found association to be labor organization in the absence of evidence that employees do not participate). Indeed, the negotiations resulted in a signed collective bargaining agreement with express provisions covering wage rates, job classifications, grievances, arbitration, and other terms and conditions of employment, clear indicators of Local 101’s labor organization status. Based on the foregoing, I conclude that there is sufficient evidence to establish

^{3/} At the close of the hearing, RC Petitioner through its counsel waived its right to file a brief and proceeded to make a closing statement. Because not all parties chose to waive briefs, the Hearing Officer stated that the briefs were due on August 10, 2000. Counsel for RC Petitioner submitted a two-page letter on August 4, 2000 supplementing counsel’s closing statement. Counsel for Intervenor, Local 101, argued that this letter constituted a brief which must be disregarded. Because the Hearing Officer told all of the parties that briefs were due on August 10, I will consider the August 4 letter as part of the record.

that employees participate in Local 101 and that it is a labor organization within the meaning of the Act.

The parties concur that negotiations for a collective bargaining agreement began in June 1999 and that a document entitled "Collective Bargaining Agreement Between World Service West L.A. Inflight Service Company, LLC And United Service Workers of America -- Local 101" was signed by Local 101 and the Employer on May 30 and June 1, 2000, respectively. RC and RD Petitioner claim that the agreement does not bar the election, however, because it was not ratified prior to its execution. Local 101 and the Employer, the parties to the agreement, assert that they reached a final collective bargaining agreement that is sufficient to bar processing of the RC and RD petitions. Precedent dictates that the party asserting contract bar bears the burden of proof. *Lane Construction Corp.*, 222 NLRB 1224 (1976); *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970).

For a contract to operate as a bar to a petition it must: be in writing; signed by the parties prior to the filing of the petition; contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship; encompass the employees sought in the petition; and must cover an appropriate unit. *Seton Medical Ctr.*, 317 NLRB 87 (1995); *Appalachian Shale Prods. Co., Inc.*, 121 NLRB 1160 (1958). There is no contention that the agreement signed by the Employer and Local 101 does not meet the conditions set forth above. Rather, RC and RD Petitioners claim that the agreement is not valid because it required ratification as a condition precedent. Where ratification is an express condition precedent in a contract, the contract will be "ineffectual as a bar unless it is ratified prior to the filing of the petition." *Appalachian Shale*, at 1163. To determine whether ratification is an express condition precedent, the Board examines only the written instrument and will not look to parole or other extrinsic evidence. *Merico, Inc.*, 207 NLRB 101, 101 n.2 (1973).

In the instant case, the record reflects that the contractual provision referring to ratification is contained in Article XIX of the agreement. That article states in

part that the parties “*intend* that the ratification vote will occur on or before Friday, June 2, 2000” (emphasis added). This language falls short of establishing that ratification is a condition precedent to the contract’s validity. Rather, it expresses the parties’ intent to submit the contract to a ratification *vote*. This provision is clearly distinguishable from the contract clauses in those cases where the Board has found ratification to be an express condition precedent. In *Merico, Inc., supra*, the agreement signed by the parties stated that the “Union Committee is Unanimous for acceptance and each member is hereby pledged to recommend this agreement for ratification by the membership at Fort Payne, Alabama, Merico Plant.” The Board held that the use of the phrase “for acceptance” indicated that the agreement was tentative until ratified by the membership. 207 NLRB at 101. See also *United Health Care Services, Inc.*, 326 NLRB 1379, 1379-80 (1998) (ratification a condition precedent where union committee would “recommend [] ratification” of “Tentative Memorandum Agreement”); *Childers Products Co.*, 276 NLRB 709, 711 (1985) (ratification a condition precedent where contract stated “THIS AGREEMENT SUBJECT TO RATIFICATION”).

In contrast, the clause in this agreement indicates that the parties intended the agreement to be valid regardless of ratification: “nevertheless, separate and apart from the ratification date . . . *the parties agree that the first payroll period for which this Agreement will be effective* is the June 1 - June 15, 2000 payroll period, and the first paychecks which will reflect the wage increase are the June 20, 2000 paychecks.” (emphasis added). Thus, the parties specifically contemplated implementing the agreement by the June 20th payroll regardless of ratification. Based on the foregoing, I find that ratification was not a condition precedent to the validity of this agreement.

Even if ratification were a condition precedent to the validity of this agreement, the record establishes that the agreement was ratified. All parties agreed that the Intervenor conducted a vote at a park on May 25 or 26th, 2000. The Intervenor’s business representative, who was at the meeting the entire day, met with several groups of employees to discuss the contract and allowed employees to vote

whether to ratify the contract. The ballots the employees used to vote stated “Accept” or “Reject” on them. At the end of the day, the votes were tallied: 39 “Accept” and 10 “Reject”. The record reflects that two employees who attended the meeting for short periods of time did not believe that they were voting to accept or reject the contract, but instead voting to authorize a strike. A third employee understood the vote as accepting the contract or rejecting the contract and agreeing to strike.

Petitioners argue that this vote was insufficiently clear to constitute contract ratification. It is well settled, however, that the method of contract ratification is a matter within the union’s “exclusive control and domain.” *Childers Products, Co.*, 276 NLRB at 711; *North Coast Counties District Council of Carpenters*, 197 NLRB 905, 906 (1972) (“the method of voting on contract ratification is within the discretion [sic] of a labor organization.”). Because a bargaining agent need not assume the obligation of obtaining ratification, when a union assumes this responsibility, it is up to the union to “construe and apply its internal regulations relating to what would be sufficient to amount to ratification.” *M&M Oldsmobile, Inc.*, 156 NLRB 903, 905 (1966). In the present case, Local 101 called an all-day meeting and discussed the contract with different groups of employees. Employees submitted their votes on ballots in a locked box that was opened at the end of the day. The Intervenor decided that the vote of 39 “accept” and 10 “reject” at the meeting was sufficient to meet its standards for contract ratification. See *Martin J. Barry, Co.* 241 NLRB 1011, 1012 (contract ratified where meeting and vote met union’s standards for ratification despite later complaint by employees and employer that vote was improper); compare *Beatrice/Hunt-Wesson, Inc.*, 302 NLRB 224 (1991) (employer successfully contested union’s ratification by “members” where record established both parties had agreed to ratification by “unit employees”). In the present case, as noted above, the contract is ambiguous on its face as to the ratification procedures and the record reflects no evidence regarding any agreement or bargaining between the parties as to specific procedures for ratification. As such, the ratification must only satisfy the Intervenor’s standards for ratification and

the evidence reflects that the Intervenor 's standards were met. Thus, I find that the agreement was ratified^{4/}.

Accordingly, I find that the collective bargaining agreement between Local 101 and the Employer bars the processing of the instant petitions.

ORDER

IT IS HEREBY ORDERED that the petitions filed herein be, and hereby are, dismissed.

RIGHT TO REQUEST REVIEW

Under the provision of § 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 September 6, 2000.

DATED at Los Angeles, California this 23rd day of August, 2000.

/s/ Tony Bisceglia

Tony Bisceglia, Acting Regional Director
National Labor Relations Board
Region 31
11150 W. Olympic Blvd., Suite 700
Los Angeles, CA 90064

177 3925 2000
347 4020 3350 5000

^{4/} RC Petitioner contends that the contract was not valid because there was no ratification between the end of the last bargaining session on May 30, 2000 and the time the contract was signed by the parties. I reject this argument because there is no evidence that the parties were precluded from making any changes to the agreement post-ratification. Moreover, there is no evidence in the record that any changes negotiated on May 30, 2000 resulted in any terms less favorable to the employees than those presented at the ratification meeting. Finally there is no evidence in the record to establish that a second ratification vote was contemplated by the principals to the contract.