

2. The Employer, a federally chartered credit union with a facility and office located in Oakland, California, is engaged in providing financial services to individuals. During the past twelve months the Employer has received interest payments in excess of \$50,000 directly from financial institutions located outside the State of California. In such circumstances, I find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The record establishes, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

4. The Union contends that there is a contract bar to the instant proceeding and that the petition should, therefore, be dismissed. The Petitioner and Employer contend that no signed contract exists. For the reasons set forth below, I find that a contract bar does not exist.

The Union has represented the unit employees since at least June 1, 1999.³ The Union and Employer were parties to an initial collective bargaining agreement with effective dates of June 1, 1999 through May 31, 2002.⁴ On February 25, Union business representative Terry Keller sent the Employer's chief executive officer, Janine Johnson a letter indicating the Union's desire to reopen the contract. Subsequently, there were three negotiation sessions on May 14, 22 and 29. Keller and Karen Johnson Lewis were present throughout the negotiations on behalf of the Union. Janine Johnson and committee chairman Jim Santana were present for the Employer for all three negotiation

³ The unit includes loan officers, loan clerks, member service representatives, senior member service representatives, operations clerks and collections officers.

⁴ All dates refer to 2002 unless otherwise stated.

sessions and Ralph Edalgo, the Employer's board of director's president attended and was the spokesperson for the Employer during the May 22 and 29 meetings.

On May 14, the Union and the Employer presented written proposals for the portions of the contract they sought to renegotiate. The issues reopened were: recognition and jurisdiction, seniority, probationary period discharge, holidays, vacations, sick leave, bereavement leave, retirement plan, re-classification, wages, health benefits and contract renewal. During the May 14 session, the parties reached a tentative agreement on the probationary period discharge issue and indicated their agreement by affixing their initials beside the letters "TA" written next to the item. During the May 22 session, the parties reached tentative agreement on the seniority and vacation issues, and indicated their agreement by affixing their initials beside the letters "TA" written next to the item.

By the end of their third session on May 29, the parties had reached tentative agreements on all remaining open items and the Union agreed to take the agreements to the members for ratification. The parties noted the tentative agreements on their respective proposals but did not sign or initial the agreements except as noted above. The parties agreed to meet on July 22, directly following the Employer's meeting with its board of directors, to execute the collective bargaining agreement. After the May 29 meeting, Janine Johnson drafted a summary of the status of all the items, i.e. which proposals were agreed on and which proposals were withdrawn. The Employer did not sign or give this summary to the Union.

On June 18, the membership ratified the tentative agreements reached on May 29. On June 24, Keller signed and sent Janine Johnson a letter notifying her that the members

ratified the “Employer’s last proposals from May 29.” On June 26, Johnson signed and sent Keller a letter requesting a copy of the ratified agreement so that the negotiation committee could “review the changes” to prepare for the Employer’s board meeting on July 22. Johnson also wrote “we appreciate your assistance to expedite the contract agreement on July 22.” The instant petition was filed and served on July 2. On July 3, Keller signed and sent Johnson a letter enclosing copies of the agreement for execution. On July 22, the parties signed the agreement.

In order for an agreement to serve as a bar to an election, the Board’s well-established contract bar rules require that such agreement satisfy certain formal and substantive requirements. As set forth in Appalachian Shale Products, 121 NLRB 1160 (1958), the agreement must be signed by the parties prior to the filing of the petition and it must contain substantial terms and conditions of employment sufficient to stabilize the parties’ bargaining relationship. The agreement, however, need not be embodied in a formal document. An informal document or documents, such as a written proposal and a written acceptance, which nonetheless contain substantial terms and conditions of employment, are sufficient if signed. Id.

Although the parties appear to have orally resolved all outstanding contractual issues as of May 29, they did not exchange their final May 29 proposals, and neither party reduced their proposals to a writing that was signed before the instant petition was filed. The Board has made it clear that contracts not signed before the filing of a petition cannot serve as a bar. See, De Paul Adult Care Communities, Inc., 325 NLRB 681 (1998) *citing* Appalachian Shale, *supra*. The Union’s argument that a contract bar exists because the parties initialed 3 of 12 tentative agreements and thereafter exchanged letters

regarding the logistics of executing the parties' oral agreements fails because there exists no signed document that identifies the totality of the parties' agreement. See Seton Medical Center, 317 NLRB 87, 88 (1995). Thus, Keller's June 24 letter and Johnson's June 26 letter in response are both insufficient to establish a contract bar since neither letter set forth the terms of the agreement or attached a writing setting forth the contract terms. See De Paul, *supra*; Seton, *supra*; and, B.C. Acquisitions, Inc., d/b/a Branch Cheese, 307 NLRB 239 (1992).

The critical factor differentiating the instant case from the cases cited by the Union is that here the parties signed no document identifying the terms of a comprehensive collective bargaining agreement. See Seton, *supra* at 88. For example, in Bendix, 210 NLRB 1026 (1974), the parties had signed a letter of agreement setting forth the substantial terms and conditions of employment sufficient in detail to serve as a contract bar. Likewise, in all the other cases cited by the Union, the parties had reduced their tentative agreements to writing and either signed the tentative agreements or attached the tentative agreements to letters signed by representatives of each party. As noted earlier, the parties have merely initialed 3 of 12 tentative agreements and their letters did not set forth or attach *any* of the agreement's terms.

In summary, and based on the foregoing, I find that the instant petition is not barred by any agreement that may have existed between the Union and the Employer at the time it was filed.⁵

⁵ Thus, I find it unnecessary to determine whether the Employer's bargaining representatives had authority to bind the Employer. In any event, the record establishes that the Employer's executive board gave the Employer's bargaining representatives authority to negotiate and reach agreement on behalf of the Employer and the bargaining representatives carried out that authority, reaching an oral agreement of all contract terms based on the guidelines set by the executive board. In these circumstances, the bargaining

5. In light of the above, I find that 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.

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

All full-time and regular part-time employees including loan officers, loan clerks, member service representatives, senior member service representatives, operations clerks and collections officers; excluding all managers, confidential employees, guards and supervisors as defined in the Act.

There are approximately 6 employees in the Unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election⁶ to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or

representatives had authority to bind the Employer. See Diversified Services, Inc. d/b/a Holiday Inn of Ft. Pierce, 225 NLRB 1092 (1976).

⁶ Please read the attached notice requiring that the election notices be posted at least three (3) days prior to the election.

been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 29, AFL-CIO.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359, 361, fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, 1301 Clay Street, Suite 300 N, Oakland, California 94612-5211, on or before October 30, 2002. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions 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 November 6, 2002.

Dated at Oakland, California this 23rd day of October 2002.

Alan B. Reichard, Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Suite 300N
Oakland, CA 94612-5211

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