

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

UNICCO SERVICE COMPANY

Employer¹

and

UNITED SERVICE AND ALLIED
WORKERS OF R.I.

Petitioner

and

SERVICE EMPLOYEES
INTERNATIONAL 134, AFL-CIO

Intervenor

Cases 1-RC-21649
1-RC-21650

DECISION AND DIRECTION OF ELECTIONS²

¹ The name of the Employer appears as corrected at the hearing.

² Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 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 in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) 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.

The Petitioner, United Service and Allied Workers of R.I., wishes to represent the approximately 76 UNICCO custodial employees working at Providence College and the 24 UNICCO building service employees working at 111 Westminster Street -- the Fleet Bank Building, in two separate units. The Intervenor, Service Employees International Union, Local 134, AFL-CIO, currently represents these two units of employees. There is no issue concerning the appropriate unit at either location.³ The issue in this case is whether, as the Intervenor maintains, the Intervenor and the Employer have contracts in effect at both locations that would bar elections at these two locations. The Petitioner's position is that there are no contracts in effect, and even if there were, elections should be directed because of internal union changes and the lack of due process involved in these changes. The Petitioner's position is that these internal union changes create an exception to the contract bar doctrine, similar to the schism exception. I conclude that the agreements the Intervenor and the Employer reached concerning the Providence College and Fleet Bank locations do not bar elections at these locations, since I find that the agreements were not ratified. Thus, I do not find it necessary to reach the schism argument.

BACKGROUND

1. The parties

UNICCO provides a variety of custodial and maintenance services to various institutions, such as commercial office buildings, government facilities, plants, industrial facilities, and entertainment complexes across the United States and Canada. James Canavan is UNICCO's vice president of labor relations. Canavan deals with the unions

³ The unit descriptions are set out in previous contracts governing these employees, which are in the record (Jt. Exs. 1 & 2).

representing employees at the various UNICCO locations, including at the Providence College and Fleet Bank locations. Karen McAninch is the union representative with whom Canavan has had dealings on behalf of the Intervenor.

2. The ratification process

The key question in this case is whether or not tentative agreements reached between the parties were ratified or not. McAninch, who has worked for the Intervenor for 21 years, testified about the Intervenor's ratification process generally.⁴ The Intervenor's constitution provides that ratification will be done by the members of the bargaining unit who are directly affected. McAninch testified that there are two methods for ratification that she has used. The first and most common one is to invite the membership to a meeting to vote for or against the contract. The second, less common method used, when it is not possible to get everybody together, is to have people sign a petition or a letter saying "yes" or "no."⁵ When ratification takes place at a meeting, McAninch is the individual who organizes the meeting. According to McAninch, contracts are never ratified by informally talking to workers.

3. Providence College

The Intervenor and UNICCO were parties to a collective-bargaining agreement at the Providence College location in effect for the term April 1, 1999 to December 31, 2001 (1999-2001 contract). Both Canavan and McAninch signed the 1999-2001

⁴ McAninch, Antonio Costa, Jimmy Allotey, and Fernanda De Andrade testified at the hearing's resumption, which was directed solely for the purpose of adducing additional evidence on the issue of ratification. All of these witnesses were issued a subpoena to appear at the hearing.

⁵ The only exception to these two methods McAninch could think of was when, on one occasion at Providence College, a mediator held a meeting with employees where they voted on the contract.

contract. When the 1999-2001 contract expired, the contract was not extended and there was no contract in effect. During the period of time after the contract expired, the parties engaged in negotiations for a new contract.

During this time, from December 31, 2001 until August 23, 2002, the Employer suspended dues check-off and informed the Intervenor that it (the Employer) was under no obligation to arbitrate grievances. The Union engaged in a one-day work stoppage during this interim period, as well. With the help of a federal mediator, the parties signed a tentative agreement dated August 23, 2002.

The tentative agreement dated August 23, 2002, which is signed by both Canavan and McAninch, by its terms runs for three-years, from January 1, 2002 through December 31, 2004, with wage increases retroactive to January 1, 2002.⁶ The preamble of the tentative agreement states that it is a tentative agreement subject to ratification by the union membership. Canavan understood that before the contract could be implemented, it should be ratified.

Canavan testified that he believed the contract was ratified shortly after the tentative agreement was reached.⁷ The basis for Canavan's belief that the union membership had ratified the contract was a few different conversations he had with three people. First, about one week after the tentative agreement was reached, Canavan spoke to McAninch and asked her if it had been ratified and she informed him that it had been. Second, supervisor Walter Silva, the UNICCO site manager at Providence College, told

⁶ The parties noted in the tentative agreement that the document reflects changes to the previous agreement. The specific articles identified and changed in this agreement, include; duration, wages, pension, personal days, vacation, and prescription allowance.

⁷ Canavan testified twice, once in the Intervenor's direct case and once on rebuttal.

Canavan that the workers had ratified the agreement – he had been told this and he was aware that they had a vote. Finally, supervisor Mark Gentes, the UNICCO operations manager at Providence College, also informed Canavan that it was his understanding that the tentative agreement had been ratified.

After Canavan learned that the union membership had ratified the tentative agreement, he prepared a draft of the entire agreement, signed it, and forwarded it to McAninch. UNICCO then, at Canavan's direction, implemented the terms of the agreement. McAninch has never returned a signed copy of the agreement prepared by Canavan. Canavan testified that, at some point in time, he asked McAninch why she had not yet returned the signed agreement to him, but other than saying she would look into it, she never got back to him about that. According to Canavan, McAninch has a history of not getting things back to him in a timely manner.

According to Canavan, McAninch has never voiced any objection to the contract's implementation and, after the tentative agreement was reached, she inquired of Canavan several times as to when the retroactivity would be available for the January 1, 2002 increase. Additionally, the parties have processed grievances and resolved disputes under the contract. During a dispute concerning employees' pay and snow related problems, members of the Intervenor handed out leaflets that included the following statement. "These same employees worked without a contract in 2002 for eight months going on strike for one day on May 6th." The leaflet also references the raises the employees were given in the contract.⁸

⁸ In a chart prepared by McAninch that hangs on the wall at the Intervenor's office, the Providence College contract expiration date is listed as 12/31/2004 and the Fleet contract expiration date is listed as 4/30/2005. These dates match the expiration dates of the tentative agreements.

McAninch testified that the Providence College tentative agreement was not ratified and that she never told Canavan that it had been. McAninch testified that she did not hold a ratification vote because of a disagreement about health insurance provisions of the contract, as to how they needed to be written and implemented.⁹ While McAninch could not recall whether she specifically told the Employer that the Intervenor would not be ratifying the contract as a result of this, she did inform the Employer that she would not be signing the contract because of that. These communications were verbal, as she tried to resolve this matter over the telephone.¹⁰ McAninch testified that she had set up a meeting to discuss these issues with Canavan for December 5, but he cancelled the meeting.¹¹ Similarly, McAninch informed the stewards that the Intervenor was not signing the contract because of these issues, although she is not sure if she notified individual members of that.

Employee Antonio Costa is employed by UNICCO at the Providence College location. Costa was on the Intervenor's negotiating committee leading to the tentative agreement. Costa testified that there was no ratification vote taken on the tentative agreement. Costa agrees that there was a tentative agreement reached on August 23, 2002, but says it was never ratified.

⁹ The health insurance issue involved the Employer's desire to change from one plan to another, which is ultimately what happened. According to McAninch, the new CIGNA plan was significantly worse and created numerous problems, which are still being addressed.

¹⁰ McAninch used a piece of paper to write notes about two issues that needed to be resolved before she would sign the contract. McAninch believes she wrote these notes at some point during the period of time between August 23rd and before December 5th. McAninch used these notes in telephone conversations with Canavan and, perhaps, when she spoke with one of the stewards.

¹¹ McAninch noted in her blotter on the December 5th date "4:30 p.m. Jim Canavan."

Employee Jose Polanco, who has been employed by UNICCO for ten years, was also on the Intervenor's negotiating committee and is the shop steward at the Providence College location. Polanco has been on negotiating committees in the past, as well. Regarding ratification, Polanco testified that, ordinarily, he sets up a meeting with the members and asks them if they are all in agreement and whoever is in agreement raises his or her hand. Polanco testified that he has not done that for the August 23, 2002 tentative agreement because the parties have not reached agreement.

Polanco states that the parties have not reached agreement at all and there are still open issues, such as raises and insurance, though Polanco admits that the parties have not met since August 2002. Polanco testified that he was at the last bargaining session, but he cannot recall what happened. He testified, however, that he has never before seen the August 23, 2002 tentative agreement. When asked if he received a seven- or eight-month retroactivity check, Polanco did admit that he received a check after August 23, 2002, and additional pay increases after that. Polanco testified that he did not know what that was about and, after attempting to reach McAninch on one occasion, he gave up and did not pursue it, even though employees asked him what the extra money was about.

Despite his belief that there is no agreement between the Intervenor and UNICCO, Polanco has signed grievances citing the contract and claiming UNICCO was violating the contract.

4. Fleet Bank location.

UNICCO initially provided building services for Fleet Bank at the Westminster Street location for about 10-15 years, until Fleet contracted out the work to Eastern Building Services for a two-year period. The Intervenor has been the collective-

bargaining representative for the employees at this location during the entire period, under both UNICCO and Eastern. Eastern and the Intervenor entered into a contract on May 5, 2000, to cover the employees when Eastern was the employer.

UNICCO was reawarded the Fleet Bank contract effective June 1, 2002. At that time, UNICCO, in essence, became a successor employer by recognizing the Intervenor as the collective-bargaining representative of its employees at the Fleet Bank location and continuing that relationship. The Eastern contract expired on May 31, 2002, so UNICCO and the Intervenor entered into negotiations for a successor contract, even prior to UNICCO taking over actual operations.

When Canavan and McAninch entered into negotiations, they used the prior Eastern and UNICCO contracts as a basis for starting negotiations. They made the changes they wanted to make to the Eastern agreement and memorialized those changes in a handwritten document drafted by Canavan and signed by Canavan, McAninch, and three employee members of the Intervenor's negotiating committee; Martin Loomis, Fernanda DeAndrade, and Jimmy Allotey. The tentative agreement for the Fleet Bank location states that it is subject to ratification and Canavan understood that ratification was necessary for the agreement to be effective. This tentative agreement is not dated, but Canavan recalls that it was signed prior to the May 31, 2002 expiration of the Eastern contract. The document, by its terms, is a three-year agreement that runs from May 31, 2002, through April 30, 2005.¹²

¹² The subjects covered in the tentative agreement include; duration; yearly wage rates for specific identified job titles; health insurance; life insurance; UNICCO security fund contribution; disability; temporary employee exclusion for certain benefits; parking; successor language; absence language; union recognition changes; and an agreement involving one employee's classification.

After the parties reached a tentative agreement, Canavan did not use the same follow-up procedure that he had used with the Providence College tentative agreement because this one was more complex. Canavan did not sign it. Rather, he drafted a boilerplate agreement that was partially based on the Eastern agreement and the old UNICCO agreement and he then e-mailed it to McAninch in early June 2002. Canavan testified that this contract was more complex because he had to incorporate the items included in the tentative agreement and other agreements the parties had discussed and agreed to, but not included in the tentative agreement. To do this, he went through the Eastern and UNICCO contracts and the tentative agreement and drafted the contract. Based on this, Canavan wanted McAninch to review the contract before he signed and copied it.¹³

Canavan testified that at some time during the first week of June, McAninch informed him that the agreement had been approved by her members, with the exception of the health insurance provision, which turned out not to be feasible because of restrictions set by the insurance company, as will be discussed below.¹⁴ More specifically, McAninch told Canavan that it “looks like we have a deal.” While McAninch never spoke the words “the membership ratified the tentative agreement,” Canavan understood that to be the case. Canavan cannot specifically recall whether

¹³ Canavan later testified that this draft was for review. More recently, about three weeks ago, Canavan sent McAninch six copies of a complete contract, signed by him, which memorializes all of the agreed-upon changes.

¹⁴ In her May 22 through June 18, 2002 Business Agent Report, McAninch noted, among other things that “The UNICCO Fleet contract was resolved on schedule, although we did have to leaflet once.”

managers told him that the contract had been ratified. Canavan himself did not personally observe a ratification vote.

After Canavan e-mailed the tentative agreement to McAninch, at his direction UNICCO implemented the terms of the contract at the Fleet Bank location, with the exception of the health insurance benefit, which became complicated and is discussed below. In a memorandum dated June 3, 2002, Canavan directed the vice-president of operations for the Employer's commercial division to implement the contract. He noted in this memorandum that "an agreement has been reached with Local 134 SEIU covering the employees at this location."

According to Canavan, the Intervenor did not object when UNICCO implemented the contract. In fact, when the parties entered into the tentative agreement, McAninch asked whether UNICCO would implement the contract on May 31.

McAninch testified that the tentative agreement was not ratified and that she never told anyone working for the Employer that it had been. As she says was the case with the Providence College tentative agreement, McAninch felt that there were problems with the Fleet Bank tentative agreement that needed to be resolved before she could hold a ratification vote. The first problem was that the agreement the parties reached on health insurance in the tentative agreement turned out not to be possible. The tentative agreement provided that the Employer would pay the cost of COBRA to the Blue Cross/Blue Shield plan carried by Eastern. The parties would then reopen the contract on the issue of health insurance, effective January 1, 2003. McAninch then learned from the insurance company that there was no option to pursue COBRA for these employees through Blue Cross/Blue Shield. Canavan and McAninch had several conversations

about this and, ultimately, the Employer agreed to contract directly with Blue Cross/Blue Shield and provide the employees the same benefits. The parties agreed that this issue would be revisited when the insurance rates went up.¹⁵ In a letter dated June 28, 2002, McAninch confirmed to Canavan her understanding of the parties' agreement concerning health insurance. Although the parties were able to resolve the matter a few weeks later, McAninch knew the language they signed off on in the tentative agreement was no longer relevant and had to be rewritten.

McAninch testified that there were other issues that also needed to be addressed. There was an issue of overtime outstanding¹⁶ and there was an issue about when the reopener would occur. McAninch did not notify Canavan about these issues in writing,

¹⁵ The parties did, in fact, revisit this issue in late May or June 2003. The Employer found out that there was a large increase in insurance rates and wanted to bargain about the benefit. At that time, according to Canavan, McAninch informed him that the employees would be willing to strike over this issue. McAninch denied that she said this. Rather, she testified that it was Canavan who took the position that the Intervenor had a right to strike over this issue. While the tentative agreement has a no-strike clause, Canavan testified that any strike would have been pursuant to the insurance reopener, so it did not indicate to him that there was no agreement. The Intervenor did not end up striking over this issue. Indeed, shortly before the hearing, the parties were able to reach agreement on the insurance reopener, when the Employer agreed to pick up the whole increase.

¹⁶ Canavan testified about an overtime issue that came up during the recent health insurance reopener negotiations. Canavan testified that a mistake had been made in the draft agreement concerning how overtime was computed during paid leaves. Canavan told McAninch that it was a mistake and that was why he had sent her a draft agreement to review. Canavan told her it was his hope that she would review the agreement and get back to him with those kinds of comments. Loomis testified that he had raised this overtime issue with McAninch in November of 2002 after Veteran's Day, and that McAninch said she had a meeting set up with Canavan for the following week and she would get back to him after that, which she did not do, although the matter was resolved favorably to the employees.

but she did so orally. These were topics she wanted to address at the December 5th meeting, referred to above, but which, as indicated above, never occurred.¹⁷

McAninch testified that although she never held a ratification meeting, where all members were present to vote on the contract, there were membership meetings at which the Fleet Bank tentative agreement was discussed. At the first of these meetings, with the night-shift employees (who apparently make up a majority of the unit), the employees strongly objected to the agreement. The next morning, when McAninch met with the day-shift employees, although they basically were supporting the agreement, because they were overruled by the night-shift employees they decided to work on getting something everybody could live with.

Employee Jimmy Allotey works at the Fleet Bank location. He is one of the members of the Intervenor's negotiating committee who signed the tentative agreement. Allotey says that there was a ratification vote taken on the most recent contract on about May 30th at 9:00 p.m. He testified that, at this meeting, there were only night-shift employees present. He recalled that McAninch was present, together with about 19 employees. At the meeting, there first was some discussion about the agreement and then all of the 19 employees present voted against the agreement. Allotey says that was the end of it and there were no further ratification votes taken on this agreement.

Allotey testified that the main issue the employees were upset about was the health insurance issue. The employees did not want to have the COBRA cover the health

¹⁷ On the same paper mentioned above, where McAninch noted what she wanted to address with Canavan at a December 5 meeting about Providence College, McAninch noted a few issues to be discussed concerning the Fleet Bank location.

insurance. Allotey indicated that if UNICCO would pay for the health insurance, which it ultimately did, these employees might have voted for the contract.

Employee Fernanda De Andrade is employed by UNICCO at the Fleet Bank location. De Andrade was also on the Intervenor's negotiating committee. De Andrade testified that the tentative agreement was never ratified. She works the evening shift and was at the May 30th meeting. She, too, remembers that the members present at the meeting were upset and that they strongly told her no, that they did not want the contract. She does not exactly remember if there was an actual vote.

Employee Martin Loomis is a UNICCO employee working as a boiler operator at the Fleet Bank location. Loomis has worked for UNICCO for eight and a half years. Loomis was a member of the Intervenor's negotiating committee. He, too, testified that although there was a tentative agreement, that agreement was never ratified. Loomis was present for two contract ratification meetings in the past for prior contracts and recalls that the ratification votes would occur at a meeting. Loomis testified that this year there was no such meeting and the contract was not ratified. Loomis also testified that though the contract was not ratified, he and others he spoke to about the tentative agreement knew its terms and were happy with the agreement.

Loomis also testified that he talked with McAninch about whether or not there was a contract in effect at the Fleet Bank location, when they were discussing whether the employees would have the right to strike over health care concerns. Loomis testified that McAninch said that they had the right to strike.

The parties have abided by the terms of the Fleet Bank tentative agreement ever since it was signed.¹⁸ As mentioned above, the Employer immediately implemented the terms of the agreement and has continued to follow its terms. The parties have resolved grievances concerning benefits under the agreement.

ANALYSIS

The applicable law

In Appalachian Shale Products Co.,¹⁹ the Board summarized and articulated the contract bar rules as they had evolved up to that point. In reviewing the rules, the Board noted that it had been “reexamining its contract bar rules with a view toward simplifying and clarifying their application wherever feasible in the interest of more expeditious disposition of representation cases and of achieving 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.” One of the areas the Appalachian Shale Board discussed was ratification. It determined that “Where ratification is a condition precedent to contractual validity by express contractual provision, the contract will be ineffectual as a bar unless it is ratified prior to the filing of a petition, but if the contract itself contains no express provision for prior ratification, prior ratification will not be required as a condition precedent for the contract to constitute a bar.” The Board explained that this distinction was consistent with the Board’s view that every effort should be made to

¹⁸ McAninch testified that there were three open issues after the tentative agreement was signed, but all three appear to have been resolved, even though, according to McAninch, the Intervenor wanted to reopen the insurance issue earlier than the Employer.

¹⁹ 121 NLRB 1160 (1958).

eliminate the litigation of factual issues such as these in representation cases and to give greater weight to the language of the contract itself.”²⁰

In addition to the need for ratification where it is a condition precedent, to be a bar to an election the agreement must be signed by the parties prior to the filing of the petition that it would bar, and it must contain substantial terms and provisions of employment sufficient to stabilize the parties’ bargaining relationship. Farrel Rochester Division of USM Corp.²¹ The Board does not require that an agreement delineate completely every single one of its provisions in order to qualify as a bar. USM Corp.²² The requirement that a contract be in writing can be satisfied by the signing of informal documents covering substantial terms and conditions of employment, even though it is contemplated that the contract would be formally executed by the parties at a later date. Television Station WVTV.²³ The absence of an execution date in the contract does not remove it as a bar if the date of execution was before the filing of the petition and that date can be established. Cooper Tanks & Welding Corp.²⁴ The burden of proving that a contract is a bar is on the party asserting the doctrine. Roosevelt Memorial Park.²⁵

²⁰ Id. at 1163.

²¹ 256 NLRB 996, 999 (1981), citing Appalachian Shale Products Co., 121 NLRB 1160 (1958).

²² Id. at fn. 18.

²³ 250 NLRB 198, 199 at fn.1 (1980).

²⁴ 328 NLRB 759 (1999).

²⁵ 187 NLRB 517 (1970).

The question of ratification

Here, I find that the Intervenor has not met its burden of establishing that the tentative agreements at the Employer's Providence College and Fleet Bank locations constitute bars to elections at these two locations. In both tentative agreements, the parties made ratification an express condition precedent to the validity of the contract. Thus, the only question to ask for each location is whether the tentative agreement was, indeed, ratified and the answer is clear in each case that it was not.²⁶

I note that all of the direct testimony regarding ratification indicates that the tentative agreements were not ratified. While there was some dispute concerning whether there was a ratification vote on the night-shift at the Fleet Bank location, even assuming a vote had occurred, the vote was that the agreement should not be ratified. Moreover, I do not need to make a credibility resolution between the testimony of Canavan and McAninch to decide whether the tentative agreements were ratified, since even assuming that McAninch told Canavan that the tentative agreements were ratified, that does not prove that they were, in fact, ratified, but only that McAninch said they were. The issue here is whether the agreements were actually ratified and I conclude that it is clear they were not. Accordingly, for contract bar purposes, there were no contracts in place at either the Providence College or Fleet Bank locations and, accordingly there is no bar to an election at either location.

²⁶ I note that the Providence College tentative agreement clearly meets all other requirements to serve as a bar to an election, since the document reflects agreement on substantial terms and conditions of employment and is signed and dated. I also note that the question of whether the Fleet Bank tentative agreement would otherwise bar an election in this case is less clear, since several items were not included in the tentative agreement. In fact, Canavan admitted that numerous items were orally agreed to and the process of incorporating the oral agreements and the Eastern and tentative agreements was complex. Since it is clear that the tentative agreements were not ratified, I do not find it necessary to decide this issue.

The waiver argument

The Intervenor relies on the waiver doctrine to argue that there is a contract bar in these cases, even assuming the tentative agreements were not ratified. The Intervenor contends that because the parties have been acting as if there is a contract in effect at both locations, they cannot at this late date argue that there are none. I do not find the Intervenor's application of the waiver doctrine to the contract bar doctrine persuasive.

It is true that the Board has found that a **party** to an agreement should not be able to “claim freedom from the contract where its actions demonstrate that it did, in fact, abide by certain terms of the contract, and, further, where it seeks to utilize the provisions of the contract to its own benefit.” Paint Power.²⁷ In Vin James Plastering Company,²⁸ the Board affirmed the administrative law judge's conclusion that the respondent was estopped from raising its failure to sign the collective-bargaining agreement as a defense to unilateral change and other allegations, where its course of conduct manifested an intention to adopt and be bound by the collective-bargaining agreement. This same estoppel logic applies to unions, and is the logic behind a case cited by the Intervenor. As the Board explained in Teamsters Local 251 (McLaughlin & Moran),²⁹ “it would not serve the statutory purpose of encouraging collective bargaining to allow unions to avoid their contracts on the ground that they had failed to follow their own internal procedures.” The policy underlying these cases is that a party to a contract should not

²⁷ 230 NLRB 758 (1977).

²⁸ 226 NLRB 125 (1976).

²⁹ 299 NLRB 30, 32 (1990).

benefit from its own inaction or mistakes where it has enjoyed the benefits of the contract.

The contract bar doctrine, on the other hand, deals with the situation where a third party is seeking to represent an employer's employees. The third party is not a party to the contract being asserted against it as a bar and has not benefited from the contract. Certainly here, where the employees did not have the opportunity to vote on the contract at issue, and may even have voted against the contract, the balance the contract bar doctrine is seeking to achieve tilts in favor of employees having the right to vote.

The fallacy of the argument that the waiver doctrine should be applied in these cases to bind the Petitioner is clear from Appalachian Shale Products Co.³⁰ In this lead contract bar case, the Board stated the rule that, to be a bar, a contract must be signed, even if the parties "consider it properly concluded and put into effect some or all of its provisions." If it is not signed, it cannot serve as a bar to an election. This is so despite those cases which hold that an unsigned contract can still become a binding contract between the parties who live by its terms and that those parties are estopped from asserting there is no contract. This distinction demonstrates the difference between the application of contract bar doctrine and the waiver doctrine and supports the conclusion that waiver doctrine case law is inapplicable in the present contract bar situation.

CONCLUSION

The Providence College and Fleet Bank tentative agreements reached between the Intervenor and UNICCO required ratification as a condition precedent to the formation of contracts that could serve as bars to representation elections. It is clear from the record

³⁰ supra

that neither of these tentative agreements was ratified. Therefore, the tentative agreements cannot serve as bars to elections at these locations.

Accordingly, based upon the foregoing, the stipulations of the parties, and the record as a whole, I find that the following two units of employees of the Employer constitute appropriate units for collective-bargaining within the meaning of Section 9(b) of the Act:

Providence College unit:

All UNICCO custodial employees at Providence College, except all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action.

Fleet Bank unit:

All of the building service employees at the worksite located at 111 Westminster Street, Providence, Rhode Island, except executives and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, provided, however, that the following working foreman shall not be considered a supervisory employee: lead boiler operator.

DIRECTION OF ELECTIONS

Elections by secret ballot shall be conducted by the Regional Director among the employees in the units found appropriate at the times and places set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the units who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or 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 United Service and Allied Workers of Rhode Island or by Service Employees International Union, Local 134, AFL-CIO, or by neither.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the elections should have access to a list of voters and their addresses for each location which may be used to communicate with them. Excelsior Underwear, Inc.,³¹ NLRB v. Wyman-Gordon Co.³² Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of separate election eligibility lists for each location containing the full names and addresses of all the eligible voters at the location, shall be filed by the Employer with the Regional Director, who shall make the lists available to all parties to the elections. North Macon Health Care Facility.³³ In order to be timely filed, such lists must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before August 22, 2003. No extension of time to file these lists may 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 August 29, 2003.

/s/ Rosemary Pye
Rosemary Pye, Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street - Room 601
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 15th day of August, 2003.
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³¹ 156 NLRB 1236 (1966).

³² 394 U.S. 759 (1969).

³³ 315 NLRB 359 (1994).