

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

**INTEGRATED HEALTH SERVICES, INC. D/B/A  
IHS OF GREATER PITTSBURGH**

Employer

and

**DOROTHY J. SHERIDAN, An Individual**

**Case 6-RD-1485**

Petitioner

and

**DISTRICT 1199P, SERVICE EMPLOYEES  
INTERNATIONAL UNION, AFL-CIO, CLC**

Union

**REGIONAL DIRECTOR'S DECISION AND ORDER**

The Employer, Integrated Health Services, Inc. d/b/a IHS of Greater Pittsburgh, is engaged in the operation of a nursing home located in Greensburg, Pennsylvania, which is the sole facility involved in this proceeding. The Petitioner, Dorothy J. Sheridan, an Individual, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to decertify the Union, District 1199P, Service Employees International Union, AFL-CIO, CLC, in a unit of all full-time and regular part-time licensed practical nurses employed by the Employer at its Greensburg, Pennsylvania, facility; excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act. A hearing officer of the Board held a hearing and the parties filed briefs with me.

At the hearing and in their briefs, the parties disagree on whether the tentative agreement signed by the Employer and the Union on December 9, 2002, is a bar to an election.

The Employer asserts that a final contract was not reached on December 9, 2002, and that the tentative agreement reached on that date should not bar an election based on the instant petition. The Union, contrary to the Employer, contends that a contract was reached on December 9, 2002, and that the petition is barred by the contract bar doctrine.

I have considered the evidence and arguments presented by the parties as to the contract bar doctrine. I have concluded, as discussed below, that the agreement signed on December 9, 2002, between the Employer and the Union constitutes a contract which should act as a bar to the petition containing signatures in support of the decertification of the Union filed on December 10, 2002.<sup>1</sup> To provide a context for my discussion of the issues, I will provide a brief overview of the relationship between the Employer and the Union and a discussion of the negotiations for a successor collective-bargaining agreement. I will then present, in detail, the facts and reasoning that support my conclusion on the issues.

## I. OVERVIEW

The Employer, a Pennsylvania corporation, is engaged in the operation of a long term care nursing home and rehabilitation facility located in Greensburg, Pennsylvania. There are approximately six full-time and five part-time licensed practical nurses (LPNs) employed at the facility. The Union has been the certified representative of the unit of LPNs since June 1992. The Union also represents a nonprofessional unit, including employees in such job classifications as certified nursing assistants,<sup>2</sup> housekeeping, dietary aides, laundry aides and

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<sup>1</sup> As noted at the hearing in this matter, on December 10, 2002, a letter from the Petitioner was received in the Regional office, attached to which was a petition document containing signatures of employees which, after administrative examination, was determined to constitute a sufficient showing of interest to support the decertification petition in this matter. The formal decertification petition was filed on December 18, 2002. At the hearing and in its brief, the Union argued that the letter submitted by the Petitioner on December 10 does not constitute an unambiguous request for decertification, unlike the request discussed by the Board in Duke Power Company, 191 NLRB 308, fn. 10 (1971), and that the showing of interest with the names of the signers redacted should have been part of the record in this matter. In its brief, the Union requests that the Regional Office conduct a further administrative investigation of the showing of interest. The Union further argues that even if the showing of interest is found to be adequate, the ambiguity of the wording of the Petitioner's letter, the contents of which are set forth infra, requires that the filing date of the petition be found to be the December 18, 2002 filing date of the formal decertification petition.

<sup>2</sup> There are approximately 55 CNAs employed by the Employer, most of whom are full-time.

cooks. Since 1992, the Employer and the Union have negotiated a single contract which has covered in one document both the LPN unit and the nonprofessional unit.<sup>3</sup> The most recent collective-bargaining agreement was effective by its terms from December 10, 1999, to November 30, 2002.

The parties began negotiations for a successor agreement on September 25, 2002. Senior Vice President Labor Relations Michael L. Wilson, Sr. ("Wilson") is responsible for negotiating the Employer's collective-bargaining agreements,<sup>4</sup> and acted as the Employer's chief spokesperson at the negotiations involved herein. The Union's chief spokesperson was Nursing Team Coordinator Kevin Hefty ("Hefty"). Assisting Hefty was a bargaining committee consisting of approximately seven to eight employees.<sup>5</sup> The record indicates that the parties met a total of 8 to 10 times, approximately once per week for two months.

## **II. DECEMBER 9, 2002**

The parties' final negotiation session took place in Greensburg, Pennsylvania, on December 9, 2002, from about 1:30 p.m. to 10:00 p.m. Prior to this meeting, there were four outstanding issues between the parties. Those issues were: wages, mandatory overtime, longevity bonus/payments and the Employer's right to raise the base wage rate. The meeting concluded when the parties reached a tentative agreement, which both parties believed resolved all outstanding issues. At the conclusion of the meeting, the parties executed the document entitled "Union Proposal,"<sup>6</sup> which provided for a three-year contract, set forth the wages for the life of the contract, resolved the mandatory overtime issue and accorded the

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<sup>3</sup> The Petitioner asserts that the petition in this matter would have been filed earlier if the LPNs had known that the Union was certified to represent them in a bargaining unit separate from the unit of nonprofessional employees. According to the Petitioner, the confusion as to the appropriate bargaining units was caused by the Union.

<sup>4</sup> The Employer has collective-bargaining agreements at various other facilities, including agreements with the Union involved herein.

<sup>5</sup> These employees were elected to serve on the Union's committee. However, other employees who were not members of the bargaining committee also attended negotiations.

<sup>6</sup> The Union had presented this proposal to the Employer at approximately 9:55 p.m.

Employer the right to increase the base wage rate with two weeks' notice to the Union. The document also included provisions that employees with 1 to 4 years of service would receive a "\$100 bonus on ratification date;" "80 percent ER paid health assurance w/\$8.00 RX," "all other TAs" and that the Union would withdraw its strike notice. Wilson signed the tentative agreement on behalf of the Employer and Hefty signed on behalf of the Union.

Both the Union and the Employer agree that the phrase "all other TAs" meant that all tentatively agreed upon articles from earlier negotiation sessions were included in the tentative agreement of December 9. The record indicates that one of the parties' ground rules during negotiations was that when complete agreement was reached on an entire article, the parties would sign off on it as being tentatively agreed upon. The record establishes, however, that as negotiations progressed, the parties "verbalized" their tentative agreement on many articles because the parties were not working off of a hard copy document. Rather, the parties' working document during negotiations was their prior contract, a copy of which was on Wilson's laptop computer. The record reflects that as agreements were reached, Wilson would record the agreed-upon language in bold type or would type a line through deleted language. Because the document was on the computer, the parties verbalized their agreement on each particular article as it was reached. Wilson then typed the letters "TA" and the date next to the article on his computer.

On December 9, 2002, the Union requested that the agreed-upon wage increase be retroactive to December 1, 2002. The Employer was agreeable on the condition that the agreement was ratified by December 11, 2002, the date the payroll for the preceding payroll period was due. Thus, Wilson told Hefty that if the agreement was ratified after December 11, the effective date of the wage increase would be December 12 or later.<sup>7</sup> The Union assured the Employer that the Union would hold a ratification vote on December 11, 2002. The parties also

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<sup>7</sup> In addition, the longevity bonus of \$100 was to be paid to qualifying employees on the date of ratification.

agreed that Wilson would compile and print out all previously tentatively agreed-upon articles, each of which would be reviewed and initialed by both parties on December 10, 2002, at the facility.

On December 10, 2002, Wilson arrived at the facility between 10:00 and 10:30 a.m. Learning that Hefty would be delayed, Wilson proceeded to initial each article and execute the hard copy of the comprehensive tentative agreement.<sup>8</sup> After doing so, Wilson left the facility.

In the early afternoon, Wilson was told that when Hefty arrived to initial the tentatively agreed-upon articles, he deleted certain words in Article 27 dealing with health and welfare. Specifically at issue herein is Hefty's deletion of language setting forth that the Merco Health Prescription Plan has a \$25 annual deductible. Hefty executed the last page of the document with the notation next to his signature "with changes in Article 27."<sup>9</sup> The record indicates that while Hefty was at the facility he provided Administrator Dan Grant with a written withdrawal of the Union's strike notice, as agreed upon by the parties the previous day.

Wilson attempted to contact Hefty by telephone on December 10, 2002, but was unsuccessful. Wilson then e-mailed Hefty to tell him that the language regarding the \$25 deductible was incorrectly removed from Article 27 and that it should be added back as a part of the settlement package which was to be voted upon.

On December 10, 2002, the Petitioner sent a letter to the Regional Office, the body of which states as follows:

You will find enclosed 2 pages of our contract with District 1199P. Contract expiration date November 30, 2002. Also, you will find the petition I took in April, 2002.

The LPNs of Greater Pitt are still interested in leaving this Union or having a separate bargaining unit.

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<sup>8</sup> The comprehensive tentative agreement is dated December 9, 2002.

<sup>9</sup> Hefty made this notation because he suspected that the inclusion of the language regarding the \$25 deductible was probably not a mere typographical error.

Any information or guidance you can give us, will be greatly appreciated.

As noted above, attached to the letter was a petition document, containing signatures of employees, which has been administratively determined to constitute a sufficient showing of interest to support a decertification petition.<sup>10</sup>

The record indicates that Administrative Organizer Melanie Broome conducted the ratification vote on December 11, 2002. During the meeting with the employees, Broome acknowledged that there was some confusion as to the wording of Article 27.1 with respect to the \$25 annual deductible. Broome told the employees that the provision regarding the \$25 annual deductible was not in the notes of the bargaining committee members, but that in the past such issues were worked out later, if necessary.

It is undisputed that the parties had discussed Article 27 during negotiations and that the \$25 annual deductible was a source of disagreement. The Employer's November 20 contract proposal on health and welfare included a \$20 prescription co-pay with a \$25 annual deductible. At the parties' November 25 negotiation session, the Employer presented a proposal reducing the prescription co-pay to \$8.00 "without language on changing the health insurance."<sup>11</sup> The Union believed that, with this revised language, there was no longer any language regarding the \$25 deductible. The Employer asserts that its November 20 proposal did not refer to the \$25 deductible, and thus the language regarding the deductible remained unchanged by that proposal.

The parties also differ as to the effect of ratification by the Union's membership on the existence of a contract. The Employer's understanding was that the agreement was conditioned upon ratification, and that without ratification, the agreement would not be implemented. The Union asserts, however, that ratification is not a condition precedent to having an agreement. The Union's bylaws provide that members "shall have the right to vote on

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<sup>10</sup> On December 18, 2002, the Petitioner filed the formal decertification petition in this matter which was served on both the Employer and the Union on that date.

<sup>11</sup> In the previous contract, there was no \$25 annual deductible for prescriptions.

strike calls, strike settlements and collective bargaining agreements directly affecting them.” Admittedly, the Union’s general practice is to have its membership ratify all contracts and if an agreement is not ratified, the parties will meet for further negotiations. Here, the contract at issue was ratified by a wide margin on December 11, and the ratification of the agreement was promptly communicated to the Employer. The Employer then immediately implemented the contract, notwithstanding the misunderstanding as to the wording of Article 27.1.

In fact, despite the dispute as to whether the contract should contain language providing for a \$25 annual deductible for the prescription plan, the Employer implemented the \$25 deductible on January 1, 2003. According to the Union, post contract issues such as the disagreement on Article 27.1 often arise and are generally worked out through discussions or, in some cases, by arbitration.

### **III. TIMELINESS OF THE PETITION**

In Appalachian Shale Products Co., 121 NLRB 1160, 1161 (1958), the Board reexamined its contract bar rules in order 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.” Thus, “the doctrine’s dual rationale is to permit the employer, the employees’ chosen collective-bargaining representative, and the employees a reasonable, uninterrupted period of collective-bargaining stability, while also permitting the employees, at reasonable times, to change their bargaining representative, if that is their desire.” Direct Press Modern Litho, Inc., 328 NLRB 860 (1999).

It is well settled that for an agreement to serve as a bar to an election, such agreement must satisfy certain formal and substantive requirements. The agreement must be signed by all parties prior to the filing of the petition that it would bar, and it must contain substantial terms and conditions of employment sufficient to stabilize the parties’ bargaining relationship. An informal document which contains substantial terms and conditions of employment is sufficient if it satisfies the other contract bar requirements. St. Mary’s Hospital, 317 NLRB 89, 90 (1995);

Farrel Rochester Division of USM Corporation, 256 NLRB 996, 999 (1981); Appalachian Shale Products Co., supra.

In Seton Medical Center, 317 NLRB 87 (1995), the Board stated that “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.” This does not mean that contracts must be formal documents or that they cannot consist of an exchange of a written proposal and a written acceptance. Georgia Purchasing, Inc., 230 NLRB 1174 (1977).

In the instant case, it is undisputed that the Employer and the Union executed a tentative agreement on December 9, 2002. That agreement contained substantial terms and conditions of employment, including the term of the contract, wage rates for the life of the contract, a provision as to overtime, an agreement that the Employer could raise the base wage rate with two weeks’ notice and a provision for health care coverage and a prescription plan. The tentative agreement also incorporated all of the parties’ previously agreed-upon tentative agreements on individual articles. On December 10, 2002, the parties initialed and signed off on the comprehensive draft of the agreement which set forth all of the tentatively agreed upon articles. The employees then ratified the agreement and the Employer thereafter implemented the terms of the agreement.

The Employer asserts that the December 9, 2002, tentative agreement cannot act as a contract bar for three reasons. First, the Employer argues that the tentative agreement was subject to ratification and ratification did not occur until after the initial petition document was filed in this matter. Second, the Employer asserts that the parties failed to initial each tentative agreement reached during negotiations. Third, the Employer asserts that the Union altered Article 27.1, a substantial term of the agreement, and therefore no overall agreement has been reached.

As noted, the Employer's first contention is that ratification is a condition precedent to the finding of a contract in this case. The Employer asserts that the Union's by-laws and its past practice of having employees ratify agreements establish this condition precedent. The Employer also asserts that the parties expressly agreed that ratification on or before December 11 was required in order for the agreed upon wage increase to be made retroactive to December 1, 2002. In addition, the Employer notes that employees would not receive a longevity bonus until the contract was ratified.

For prior ratification to operate as a condition precedent to contractual validity, it must be expressly required in the contract. Paperworkers Local 5 (International Paper), 294 NLRB 1168, fn. 1 (1989); Appalachian Shale, supra at 1162-1163. In Appalachian Shale, the Board said:

[O]nly where the written contract itself makes ratification a condition precedent to contractual (sic) validity shall the contract be no bar until ratified. \*\*\* Where ratification is a condition precedent to contractual (sic) validity by express contractual (sic) 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.

In this case, neither the summary tentative agreement signed by the parties on December 9 nor the comprehensive tentative agreement initialed and signed by the parties on December 10, 2002, provide for ratification as a condition precedent to contractual validity.<sup>12</sup> The fact that the wage increase would not be effective as of December 1 unless the contract was ratified before the Employer's payroll was submitted establishes only that ratification was

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<sup>12</sup> Likewise, the parties' previous collective-bargaining agreement did not contain language requiring ratification as a condition precedent to the contract. Nor do the Union's bylaws require ratification as a condition precedent to contracts.

Indeed, as the Board stated in Appalachian Shale, supra at 1162-1163, "where the question of prior ratification depends upon an interpretation of a provision for prior ratification in a Union's constitution or bylaws, as distinguished from the incorporation of an express provision in the contract, the contract will constitute a bar."

necessary for the agreement to make the increase retroactive, but does not affect the contract's validity. Likewise, the longevity bonus would become effective upon ratification whether ratification took place on December 11 or later.

The Employer's second contention is that the parties did not sign each tentative agreement as each was reached during negotiations. In this regard, as noted above, the parties agreed during the course of negotiations that the parties' working document would be their prior collective bargaining agreement, a copy of which was in Wilson's laptop computer.<sup>13</sup> In this way the parties were able to utilize available technology. On December 9, the parties incorporated by specific reference all prior tentative agreements, which had been maintained by Wilson on his computer, in a signed and dated agreement. Thus, I find that the document fulfills the requirements set forth in St. Mary's Hospital, supra.

The Employer's third contention is that the Union changed a material term of the agreement by deleting from Article 27.1 the language relating to the \$25 annual deductible. In Appalachian Shale, supra, the Board said that in order to constitute a contract bar, an agreement must contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship. In Farrel Rochester Division of USM Corporation, supra, the Board made it explicit that disputes regarding terms will not void an agreement which otherwise contains substantial terms and conditions of employment. The Board does not require that an agreement delineate every single one of its provisions in order to qualify as a bar. In that case, the Board noted, as is true in the instant matter, that the disputes were resolvable through the contractual grievance procedure or through negotiations.<sup>14</sup>

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<sup>13</sup> The efficacy of this practice is reflected by the fact that when Wilson printed out all previously agreed-upon tentative agreements for initialing on December 10, there was complete agreement on every tentative agreement, except Article 27.1 as described herein.

<sup>14</sup> Moreover, I take administrative notice that in a subsequent proceeding at Case 6-CB-10904 the dispute has been resolved.

In St. Mary's Hospital, supra, the Board denied the petitioner's request for review of the Acting Regional Director's decision to dismiss the petition on the basis that a contract bar existed. In that case the petitioner contended that several discrepancies in the draft agreement established that no final contract existed and thus there could be no contract bar. Despite the petitioner's contentions, the Acting Regional Director found that a contract bar existed because the parties signed a document identifying the terms of a comprehensive collective-bargaining agreement, notwithstanding that the draft of the agreement contained several areas which did not reflect the parties' understanding of the terms negotiated.<sup>15</sup> The Acting Regional Director concluded that the minor deviations between the employer's draft of the agreement and the testimony of the petitioner's witnesses concerning the details of their actual agreement were insufficient to remove the contract as a bar. As noted, the Board denied the petitioner's request for review as it raised no substantial issues warranting review.

The Employer relies on Branch Cheese, 307 NLRB 239 (1992), where the Board reversed a Regional Director's finding that a decertification petition was barred by an existing collective-bargaining agreement because the Board found the evidence insufficient to establish the identity or the terms of the purported agreement. In that case, the employer made a final offer which was rejected by the unit. Negotiations resumed, and two months later the employer sent the union a letter amending the final offer and noting that the management rights clause would be rewritten to reserve the company's right to manage and make economically necessary production decisions. Approximately two weeks later, the union advised the employer that the agreement was ratified. Several months later, before a draft agreement had been prepared, a decertification petition was filed. The Board found that the documents relied upon did not clearly set out the terms of the agreement in that the union's correspondence conveying the

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<sup>15</sup> The disputed language involved provisions on seniority, staffing determinations, wages, retiree health benefits and employee health benefits. The employee health benefits dispute centered around the omission of language that the unit nurses would have the unrestricted right to choose their own primary care physician and that an employee health clinic would be opened at the hospital for specified hours.

members' ratification failed to indicate whether the members ratified the employer's offer of October 12, as originally proposed, or the offer as amended by letter two months later. Nor was it clear whether the union accepted the employer's language concerning the management right's clause, which had not been reduced to writing. Similarly, in Waste Management of Maryland, 338 NLRB No. 155 (April 25, 2003) the Board, relying on Branch Cheese, determined that the parties' exchange of written materials did not constitute a contract bar. In that case the employer sent the union a July 15, 2002 final offer, attached to which was a signed cover letter. After the employees rejected the offer, the union and the employer continued negotiations in August and September, during which the employer orally acquiesced that the term of the proposed contract be extended from four to five years. On September 13, the union and the employer discussed outstanding contract proposals that, according to the union, were characterized by the employer as the "final offer." On September 18 the union faxed an acceptance of the employer's final offer of September 13. Inasmuch as no document other than the union's acceptance embodied or referred to the September 13 "final offer", the exact terms accepted by the union could not be ascertained.

In contrast, in the instant case, it is clear that the members ratified the tentative agreement dated December 9, 2002, which incorporated all of the previously agreed-upon tentative agreements, albeit with a dispute as to one portion of Article 27.1. The agreement was signed by both parties and contains substantial terms<sup>16</sup> and conditions of employment.<sup>17</sup> Thus, I find the Employer's reliance on Branch Cheese to be inapposite.

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<sup>16</sup> The dispute over the single clause in Article 27.1 does not affect my conclusion that the signed agreement involved herein contains substantial terms and conditions of employment. The disagreement over Article 27.1 is not the type of disagreement which would preclude the existence of a contract bar.

<sup>17</sup> Moreover, I note that the agreement at issue herein is a successor collective-bargaining agreement between parties with a decade-long bargaining relationship, whereas the agreement at issue in Branch Cheese was an initial collective-bargaining agreement between parties which were just commencing their bargaining relationship.

Accordingly, based on the above and the record as a whole, I find that the agreement reached on December 9, 2002, should be considered valid to serve as a contract bar.<sup>18</sup>

#### **IV. FINDINGS AND CONCLUSIONS**

Based upon the entire record in this matter and in accordance with the discussion of the issues above, I find and conclude as follows:

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.
3. District 1199P, Service Employees International Union, AFL-CIO, CLC is a labor organization within the meaning of Section 2(5) of the Act.
4. No 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.

In sum, based on the above and the record as a whole, I find that a contract bar exists herein, and the petition is therefore untimely. I shall, therefore, dismiss the Petition in the instant case.

#### **V. ORDER**

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

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<sup>18</sup> In light of my determination that the decertification petition is barred by the parties' contract, I need not address the Union's request that a further administrative investigation of the showing of interest be conducted.

## VI. 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 14<sup>th</sup> Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST (EDT), on June 11, 2003. The request may **not** be filed by facsimile.

Dated: May 28, 2003

/s/ Gerald Kobell

Gerald Kobell, Regional Director

NATIONAL LABOR RELATIONS BOARD  
Region Six  
Room 1501, 1000 Liberty Avenue  
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## CLASSIFICATION INDEX

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