

R.D. # 0007-04
Vauxhall, New Jersey

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

**SOUTH MOUNTAIN HEALTHCARE
AND REHABILITATION CENTER**
Employer

and

CASE 22-RC-12461

**DISTRICT 6, INTERNATIONAL UNION
OF INDUSTRIAL, SERVICE, TRANSPORT,
AND HEALTH EMPLOYEES**
Petitioner

SUPPLEMENTAL DECISION AND ORDER

I. INTRODUCTION

On April 22, 2004, I issued a Decision and Order dismissing the instant petition as being barred pursuant to a contract between the Employer and PACE, Local 1-300, AFL-CIO, CLC (herein the Intervenor). On September 22, 2004, the Board remanded the instant matter to me to “analyze whether the Memorandum of Agreement contains a clear and unambiguous effective date.” Having analyzed the matter further in accord with the Board’s instructions, I have decided again to dismiss the instant petition because I have found that the Memorandum of Agreement contains a clear and unambiguous effective date; as a consequence, a collective bargaining agreement exists between the Employer and the Intervenor which bars the processing of the petition filed herein.

II. ANALYSIS

To serve as a bar to an election, a contract must meet certain basic requirements; these requirements are set out in the Board's decision in *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). In this regard, a contract must be reduced to writing and executed by the parties; it must also be clearly identifiable as a controlling document and contain substantial terms and conditions of employment. The Board in *Appalachian Shale Products Co.*, above, recognized that contracts may on occasion be contained in informal documents and are sometimes arrived at by an exchange of signed documents. See also, *Diversified Services, Inc.*, 225 NLRB 1092 (1976); *United Telephone Co.*, 179 NLRB 732 (1969). Regardless, all parties must sign the contract before the rival petition is filed. *DePaul Adult Care Communities*, 325 NLRB 691 (1998).

In applying its contract-bar rules, the Board is primarily concerned with whether the contract imparts to the relationship a degree of stability which outweighs the right of employees to a redetermination of bargaining representatives at that particular time. *Natona Mills, Inc.*, 112 NLRB 236, 239 (1955) (citing *Nash-Kelvinator Corp., Body Plant #6*, 110 NLRB 447 (1954)).

The Memorandum of Agreement (herein MOA) agreed to by the Employer and the Intervenor, dated March 5, 2004, signed by the Intervenor that day and by the Employer on March 9, 2004, modifies the parties' successor agreement only to the extent contained therein. All other terms of the parties' July 1, 2000 to June 30, 2004 agreement remained the same. Testimony reveals that both the Employer and the Intervenor understood the MOA to be effective March 5, 2004; such is supported by the MOA's language that "*all other terms of the agreement remain[ed] the same . . .*" (emphasis

added). Thus, a majority of Articles in the parties' July 1, 2000 to June 30, 2004 agreement remained the same including, but not limited to, union security, dues checkoff, seniority, discipline and discharge, grievance and arbitration procedures, holidays and job posting.

Petitioner contends that the language is unclear because "all other references as to changes in the preceding agreement are either undated or follow the July 1 and January 1 pattern." More specifically, Petitioner states "the wage increases are scheduled for July 1, 2004 with other increases to follow every six months." As a result, Petitioner asserts that the "*new* collective bargaining agreement . . . begins July 1, 2004" (emphasis in original).

Petitioner's argument is flawed. Petitioner's argument overlooks the fact that, besides wages, under the terms of the MOA, a majority of the Articles in the previous agreement remained the same and in effect at the time the MOA was executed on March 5, 2004. Furthermore, Articles from the previous agreement that were modified, such as medical and prescription coverage, longevity, no fills option and starting rates for C.N.A., dietary and housekeeping, continued to be in effect or, in the case of pension changes and life insurance, were definitively scheduled to go into effect on a specific date (April 1, 2004). The MOA further specified that wage increases would go into effect on a particular date: July 1, 2004.

Accordingly, I find that the MOA, which was reduced to writing and fully executed by the parties, had a clear effective date - March 5, 2004 - and sufficiently specific provisions. Therefore, it is a controlling document that contains substantial terms and conditions of employment. *Appalachian Shale Products Co.*, supra. Thus, the

contract imparts upon the Employer/Intervenor relationship a degree of stability that the Board's contract-bar rules are primarily concerned with. *Natonal Mills, Inc.*, supra.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, DISMISSED.

III. 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 and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, Washington, DC 20570-0001. The Board in Washington must receive this request by November 2, 2004.

Signed at Newark, New Jersey, this 19th day of October, 2004.

/s/ [Gary T. Kendellen]
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