

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

SUNOCO PARTNERS LLC d/b/a  
SUNOCO LOGISTICS<sup>1</sup>

Employer

and

LUCINDA M. GALLAHER, an Individual

**Case** 6-RD-1619

Petitioner

and

ATLANTIC INDEPENDENT UNION

Union

**REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION**

The Employer, Sunoco Partners LLC d/b/a Sunoco Logistics, operates 11 terminals in various locations in Pennsylvania and New York, where it employs approximately 24 bargaining unit employees. The Petitioner, Lucinda M. Gallaher, 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, Atlantic Independent Union, in a unit of all full-time and regular part-time operating and clerical employees employed by the Employer at these terminals. A hearing officer of the Board held a hearing and the Union and the Petitioner filed timely briefs with me.

As evidenced at the hearing and in their briefs, the Union and the Petitioner disagree on whether there is a contract bar.

The Petitioner asserts that the Employer and the Union were in the final year of a 4-year contract, which at most had merely been modified by an addendum which implemented a Board

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<sup>1</sup> The Employer's name appears as amended at the hearing.

decision separating the bargaining unit into two separate units, one consisting of terminal operators and the other consisting of drivers and mechanics, when the petition was filed. The Employer likewise contends that there is no contract bar.<sup>2</sup> The Union asserts, contrary to the Petitioner and the Employer, that the Union and the Employer had concluded a new one year contract covering the unit of terminal operators at issue herein, and that this new contract serves as a bar to the instant petition.<sup>3</sup>

I have considered the evidence and the arguments presented by the parties on the issue of contract bar. As discussed below, I have concluded that the record evidence is insufficient to establish the existence of a contract which would operate as a bar to the instant petition. Accordingly, I have directed an election in a unit that consists of approximately 24 employees.

To provide a context for my discussion of the issues, I will first provide an overview of the parties' bargaining history. Then, I will present in detail the facts and reasoning that supports my conclusions on the issue of contract bar.

### **I. OVERVIEW OF BARGAINING HISTORY**

This case has its origin in the restructuring of the Employer's operations in February 2002.<sup>4</sup> Before then, Sunoco, Inc. (R & M) [herein Sunoco (R & M)], a subsidiary of Sunoco, Inc., manufactured petroleum products and chemicals and distributed these products on both a retail and wholesale basis. Until about February 2002, Sunoco (R & M) operated through various business units, including a Logistics Unit. The Logistics Unit was responsible for operating two

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<sup>2</sup> At the beginning of the hearing, the Employer's representative stated that the Employer took no position on whether there was a contract bar. During the hearing, the Employer's representative presented no witnesses. At the close of the hearing, the Employer's representative read from a letter sent from the Employer to the Region which stated that there was no contract bar.

<sup>3</sup> The Union contends that if there is no contract bar, the bargaining unit must revert to the combined unit of terminal operators, drivers and mechanics.

<sup>4</sup> This description of the restructuring of the operations is adapted from decisions of Region 4 and the Board in Case 4-UC-413.

pipelines which transported petroleum products from Sunoco refineries and terminals at which the products were stored pending delivery. The Logistics Unit also delivered the products by truck to retail and wholesale customers.

The Union had for a number of years represented a bargaining unit consisting of the “operating and clerical employees” employed at several of Sunoco (R & M)’s terminals. The unit was comprised of terminal operators, drivers, and mechanics, all of whom worked in the Sunoco (R & M) Logistics Unit.

In February 2002, Sunoco, Inc. spun off its pipeline and terminal operations into two new companies, Sunoco Partners LLC, the Employer in this case, and Sunoco Logistics Partners LLP (herein called Sunoco Logistics). The pipelines and terminals were transferred to Sunoco Logistics. The Employer is Sunoco Logistics’ general partner and manages its business.

Following Sunoco Logistics’ acquisition of the pipelines and terminals, the terminal operators included in the bargaining unit were transferred to the Employer’s payroll. Sunoco (R & M) retained control over the delivery of product from the terminals, and the unit drivers and mechanics remained on its payroll.

The contract covering the bargaining unit expired in March 2004. Sunoco (R & M) and the Employer unsuccessfully attempted during negotiations for a new agreement to induce the Union to accept separate contracts for the employees employed by the two entities. Instead, the parties settled a 4-year contract covering the combined unit effective by its terms from April 1, 2004 through March 31, 2008.

On January 19, 2005, Sunoco (R & M) filed a unit clarification petition in Region 4 in Case 4-UC-413. The petition sought to have the bargaining unit split into two units, one encompassing the terminal operators employed by the Employer and the second covering the drivers and mechanics who remained employed by Sunoco (R & M). On September 7, 2005, the petition was dismissed as untimely, and an appeal subsequently was taken. On June 16, 2006, the Board reversed the dismissal and reinstated the petition. On August 17, 2006, on

remand to Region 4, the unit was clarified as requested. On September 20, 2006, the Board denied the Union's request for review of the decision separating the units.

While the unit clarification petition was initially pending before Region 4, the Union and the two employing entities engaged in negotiations to resolve the issue of separate units. Sunoco (R & M) was represented by its Human Resources representative, Ruth Clauser, and the Employer was represented by one of its managers, David Chalson. By November 2005, while the unit clarification petition was on appeal, these negotiations had almost reached a successful conclusion, but broke off when Sunoco (R & M) wanted the Union to withdraw pending unfair labor practice charges over the subcontracting of jet fuel deliveries.

After the issuance of a Board decision in the jet fuel matter on January 31, 2007, the parties resumed negotiations on the separation of the units. After the exchange of at least 10 drafts over the entire period of these negotiations, they apparently reached an agreement. According to the Union, this agreement was memorialized in a "Proposed Addendum to the Existing Collective Bargaining Agreement on Contract Separation Sunoco, Inc. (R & M) Sunoco Partners LLC" (herein Addendum) which bears the date of February 12, 2007. The Addendum recited that it was prepared by Sunoco, Inc. (R & M) and Sunoco Partners LLC at the Union's request, in response to the Union's proposal. The Addendum recited that the combined response was done solely for the Union's convenience and was subject to the companies' position that Sunoco (R & M) and the Employer were separate entities and each was responding on its own behalf.

The copy of the Addendum introduced into evidence is not signed by either party, although the Union's President John Kerr testified that he was in possession of a copy initialed by himself and Clauser, the Sunoco (R & M) representative. There is no evidence that Chalson or any other representative of the Employer ever signed or initialed the Addendum.

The Addendum stated that the employees will be covered by "separate contracts," which "will have identical terms and conditions to the current contract for the effective period of the

current contract, except for the unit description . . . .” The Addendum also addressed a number of issues that directly resulted from the separation of the units, such as the retention of accrued seniority, the awarding of bid positions to employees in the other unit, the use of unitary seniority for reductions in force, the continued interchange of employees in the separate units, the superseding of the current contract to resolve any conflicts between the Addendum and the current contract, the procedure for separate negotiations, separate recognition clauses, the creation of a lead terminal operator position which apparently complemented the extant lead mechanic position, the continuation of reimbursement for physicals and CDL costs for terminal operators, and the payment of separate incentives. Union President Kerr later stated in a letter to the members that “the Union, by the enclosed proposals, has kept all of your rights intact as if you still had one contract.”

The Addendum did not reference an effective date, but stated that the separate contracts would expire on March 31, 2008. In addition, the Addendum provided that it was subject to ratification by the Union membership. Finally, the Addendum provided for the mutual withdrawal of the unit clarification petition, pending unfair labor practice charges and grievances, as well as the payment of lost overtime.

The Union submitted the Addendum to the bargaining unit for ratification, and by letter dated March 7, 2007, signed by the Union’s President Kerr to Sunoco, Inc. (R & M) representative Clauser, Kerr notified Clauser that the membership had accepted the Addendum. Kerr testified that he believed he also told Employer representative Chalson that the membership had accepted the Addendum.

Thereafter, by letter dated January 22, 2008, signed by the Employer’s Manager of Marketing Terminals, the Employer forwarded Union President Kerr copies of the contract negotiated in 2005, requesting his review and signature.<sup>5</sup> This 2005 draft agreement contained

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<sup>5</sup> Kerr testified that a draft of this agreement had previously been sent to him, but that he had misfiled it.

many of the same concepts on the separation of the units contained in the 2007 Addendum, but apparently in an earlier version. The 2005 draft agreement recited April 1, 2006 as the date of the agreement, and also stated that it was effective upon ratification and expired on March 31, 2008. The 2005 draft also stated, in the upper left-hand corner of each page, the parties names, and under the names: "March 1, 2004 - March 31, 2008."

On February 1, 2008, Kerr responded, noting, in essence, that language from the 2007 Addendum had to be integrated into the 2005 draft contract, and requesting April 1, 2007 as the date of the agreement. Kerr did not comment on the notation March 1, 2004 - March 31, 2008. The Employer did not respond.

On February 27, 2008, the instant decertification petition was filed.

## II. LEGAL ANALYSIS

The party asserting that a contract is a bar to an election bears the burden of proving the facts establishing the applicability of the contract bar doctrine. The German School of Washington, D.C., 260 NLRB 1250, 1256 (1982) and cases cited therein. The Board has established a very specific set of requirements for determining whether a contract bar exists. This rule, contained in Appalachian Shale Products Co., 121 NLRB 1160, 1162 (1958), clearly states:

[T]he Board adopts the rule that a contract to constitute a bar must be signed by all the parties before a petition is filed and that unless a contract signed by all the parties precedes a petition, it will not bar a petition even though the parties consider it properly concluded and put into effect some or all of its provisions.

The Board reexamined its contract bar rules in Appalachian Shale Products Co. 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." *Id.* at 1161. 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).

Therefore, 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. These requirements, set forth in Appalachian Shale Products Co., have been applied in numerous Board decisions. See, e.g., Seton Medical Center, 317 NLRB 87 (1995); De Paul Adult Care Communities, 325 NLRB 681 (1998); Waste Management of Maryland, 338 NLRB 1002 (2003).

As noted, in order to operate as a bar, the contract must be signed by all the parties before the petition is filed. 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). It does mean that in such instances the informal document or the documents that are exchanged must be signed by all the parties in order to serve as a bar to an election. Appalachian Shale Products Co., supra; Waste Management of Maryland, supra; DePaul Adult Care Communities, supra; Yellow Cab, Inc., 131 NLRB 239, 240 (1961). The initials of the parties satisfies the signature requirement. Television Station WVTV, 250 NLRB 198, 199 (1980).

The Board has further held that a contract having a fixed term of more than 3 years operates as a bar for as much of its term as does not exceed 3 years. General Cable Corporation, 139 NLRB 1123, 1125 (1962); General Dynamics Corp., 175 NLRB 1035, 1036 (1969). To achieve its contract-bar objectives, the Board looks to the contract’s fixed term or duration, because it is this term on the face of the contract to which employees and outside unions look to determine the appropriate time to file a representation petition. The length of the term of the contract as well as its adequacy must therefore be ascertainable on its face, with no

resort to parol evidence, for it to be a bar. South Mountain Healthcare & Rehabilitation Center, 344 NLRB 375 (2005); Cind-R-Lite Co., 239 NLRB 1255 (1979). The Board will not permit parties to vary the duration dates in an existing agreement or enter into multiple agreements which raise confusion as to the proper filing period. Longview Terrace Co., 208 NLRB 699, 700 (1974).

In the present case, the 2004-2008 contract had a term for 4 years, and only operated as a bar for its first 3 years. Since the instant petition was filed in the fourth year of the 2004-2008 contract, the 2004-2008 contract does not bar the petition.

Further, in the present case, the copy of the Addendum dated February 12, 2007 entered into evidence was not signed by any party. While Kerr testified that he possessed a copy of the Addendum initialed by himself and Clauser, there is no evidence, either documentary or testimonial, which indicates that the Addendum was ever signed by a representative of this Employer. Further, the Addendum makes it clear that it is a response from two separate entities, each responding on its own behalf, but combined only for the convenience of the Union. Thus, Clauser's initials could not satisfy the requirement of the Employer's signature.<sup>6</sup>

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<sup>6</sup> Because there is no evidence that the Employer signed the Addendum, I need not reach the question of whether extrinsic or parol evidence should be considered in determining whether a contract asserted as a bar has been signed. See Jackson Terrace Associates, 346 NLRB 180, 181 (2005), a case in which the Board considered parol evidence where the signatures of all parties were clearly contained on the agreement asserted as a bar, and the sole issue was the date on which the parties' representatives actually signed the agreement. I do note, however, the fact that at least 10 drafts of the Addendum had been prepared, illustrates the need to be able to have some assurance of the precise document to which the parties agreed.

Further, the Addendum on its face appears ambiguous as to whether the Addendum is intended to be an agreement modifying the 2004-2008 contract to implement the Board's decision clarifying the unit by separating the combined bargaining unit into two separate units, or whether the Addendum is intended to be an agreement creating two separate contracts with a one year term. The name of the document reflects this ambiguity: "Proposed Addendum to the Existing Collective Bargaining Agreement on Contract Separation."

The record next reflects the exchange of documents in early 2008. By a signed letter dated January 22, 2008, the Employer forwarded to Union President Kerr a copy of a draft contract from the year 2005. As noted, the parties had almost reached agreement on separating the units by late 2005, but ended negotiations when Sunoco (R & M) wanted the Union to withdraw its pending unfair labor practice charges in the jet fuel case. The 2005 draft contract sent by the Employer to Kerr preceded the Addendum by at least a year and did not include the language set forth in the Addendum, although it included many of the concepts in principle. The cover letter to the 2005 draft contract is the only document in evidence signed by this Employer.

By signed letter dated February 1, 2008, Kerr proposed inclusion of the language of the Addendum, which this Employer had never signed, into the 2005 draft contract.<sup>7</sup> Kerr also requested that the date of the agreement be changed from the April 1, 2006 date appearing on the draft 2005 contract to April 1, 2007, but Kerr did not comment on the dates March 1, 2004 - March 31, 2008 also appearing on the face of the 2005 draft.

The 2005 draft contract stated that it was effective upon its ratification through March 31, 2008. As of the date of the hearing, there had apparently been two ratification votes in this case: in 2004, when the membership initially approved the 2004-2008 contract and in February or March 2007, when the membership approved the Addendum. Given that the draft 2005 contract also bears the dates March 1, 2004 - March 31, 2008, it is not entirely clear which ratification is contemplated by the document, making its duration difficult to discern from the face of the document.

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<sup>7</sup> Some of the language that Kerr proposed integrating into the draft 2005 contract reflects the ambiguity mentioned above in footnote 6. For example, Kerr proposed adding the following language: " The employees employed by [Sunoco (R & M)] and the employees employed by [the Employer] will be covered by separate contracts. The separate contracts will have identical terms and conditions to the current contract for the effective period of the current contract, except for the unit description. . . . "

It is readily apparent that in this case, the parties' exchange of written documents leaves much doubt as to the terms and duration of the alleged contract. It may be that this Employer had no disagreement with the integration of the Addendum it had never executed into the 2005 draft as Kerr proposed, and it may be that this Employer intended to create a one-year contract as Kerr proposed. However, the fact remains that the Employer never signed the February 12, 2007 Addendum or the 2005 draft as modified by Kerr on February 1, 2008, prior to the filing of the petition on February 27, 2008. As noted above, the Board has made it clear that, in the context of a representation case, contracts not signed before the filing of a petition cannot serve as a bar. De Paul Adult Care Communities, supra; Appalachian Shale Products Co., supra.

In cases where there is ambiguity and confusion as to the terms and duration of the alleged contract, as are present in the instant case, the Board will not find a contract bar. Waste Management of Maryland, supra; Branch Cheese, 307 NLRB 239 (1992); Longview Terrace Co., supra; Road & Rail Services, 344 NLRB 388 (2005). The Union herein did not meet its burden to prove that there was an agreement signed by both parties prior to the filing of the instant petition.

Accordingly, based on the above and the record as a whole, I find that there was no signed contract containing agreed-upon substantial terms and conditions of employment to serve as a contract bar when the decertification petition was filed by the Petitioner.

### **III. FINDINGS AND CONCLUSIONS**

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are 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.

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.

5. 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 nonexempt operating and clerical employees employed by the Employer at its Montello, Fullerton, Kingston, Tamaqua, Northumberland, Mechanicsburg, Altoona, Delmont and Philadelphia, Pennsylvania and Rochester and Tonawanda, New York terminals; excluding all casual employees, secretarial employees, sales employees, professional employees, employees at Employer-operated service stations, guards, watchmen and supervisors as defined in the Act, and employees employed by Sunoco, Inc. (R & M).

#### **IV. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Atlantic Independent Union. The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

##### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before 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 an 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 strike

who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

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 to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Two Chatham Center, Suite 510, 112 Washington Place, Pittsburgh, PA 15219, on or before **April 15, 2008**. No extension of time to file this list will be granted, except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed.

The list may be submitted by facsimile transmission at 412/395-5986. Since the list will be made available to all parties to the election, please furnish a total of **two (2)** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so precludes employers from filing objections based on non-posting of the election notice.

### **V. 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.<sup>8</sup> This request

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<sup>8</sup> A request for review may be filed electronically with the Board in Washington, D.C. The requirements and guidelines concerning such electronic filings may be found in the related attachment supplied with the Regional Office's initial correspondence and at the National Labor Relations Board's website, [www.nlr.gov](http://www.nlr.gov), under "E-Gov." On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-Filing instructions explaining how to file the documents electronically will be displayed.

must be received by the Board in Washington by 5 p.m., EST (EDT), on **April 22, 2008**. The request may **not** be filed by facsimile.

Dated: April 8, 2008

/s/Gerald Kobell

Gerald Kobell, Regional Director

NATIONAL LABOR RELATIONS BOARD  
Region Six  
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