

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

(Various locations in California)

SECURITY CONSULTANTS GROUP,
INC.

Employer

and

CALIFORNIA SECURITY OFFICERS
UNION

Case 32-RC-5537

Petitioner

and

UNITED GOVERNMENT SECURITY
OFFICERS OF AMERICA

Intervenor

DECISION AND ORDER

The Employer provides security guard services to the United States government at federal facilities located in various counties in Central and Northern California. On November 1, 2007, the Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act, which it amended at hearing, seeking to represent approximately 36 security guards employed by the Employer in the California counties of Fresno, Inyo, Kern, Kings, Madera, Merced, Mono, San Benito, and Tulare, and the cities of Gilroy and Salinas, California.¹ The Intervenor has been the certified collective-bargaining representative of these employees since September 5, 2006.² On July 24, 2007, the Employer and the Intervenor executed a collective-bargaining agreement covering the employees employed in the unit sought by the Petitioner, as well as other employees employed by the Employer at other locations whom the Petitioner does not seek to represent. A hearing officer

¹ Gilroy is located in Santa Clara County; Salinas is located in Monterey County.

² The unit employees were then employed by the Employer's predecessor, NCLN 20.

of the Board held a hearing on January 28 and 29, 2008,³ and the Employer and the Petitioner have filed post-hearing briefs.⁴ The sole issue before me is whether the Employer's collective-bargaining agreement with the Intervenor precludes the processing of the Petitioner's representation petition. The Petitioner disputes the applicability of the Board's contract bar rules as urged by the Employer and the Intervenor. Having considered the record evidence and the parties' arguments, I find that the collective-bargaining agreement between the Employer and the Intervenor was executed prior to the filing of the petition on November 1, 2007, and it therefore operates as a bar, and I shall dismiss the petition.

BACKGROUND FACTS

The Employer provides security and guard services to the United States government at federal facilities in Northern and Central California pursuant to a contract with the Department of Homeland Security (DHS). The Employer commenced providing guard services when its contract with DHS became effective on July 1, 2007. The guard services for some of the counties covered by the Employer's contract with DHS had previously been provided by another employer, NCLN 20, whose employees were represented by the Intervenor. On September 5, 2006, in Case 32-RC-5445, the Intervenor was certified as the exclusive bargaining representative of the NCLN 20 security guards employed in the counties of Fresno, Kern, Kings, Inyo, Madera, Mariposa, Merced, Mono, Monterey, San Benito, Santa Clara, Tulare, and

³ The Petitioner did not send a representative to attend the second and final day of hearing. The Petitioner's president left a message on the hearing officer's voicemail on the morning of January 29, 2008, stating that he would be unable to attend the hearing. Upon receipt of the message, the hearing officer attempted, but was unable, to contact the Petitioner's president to confirm whether and when he would be able to proceed. The hearing officer proceeded with the scheduled hearing, as the other parties were present with their witnesses, the Petitioner had previously been notified the hearing would be held on January 28, 2008, and on consecutive days thereafter, and the Petitioner chose not to send an alternative representative.

⁴ In its post-hearing brief, the Petitioner submitted letters written by the Petitioner's president to the Region, which were not introduced into evidence at hearing. I have not relied upon these letters because they are not part of the formal record. However, to the extent that these letters identify evidence that the Petitioner claims it would have introduced had the hearing been continued or that the Region should have subpoenaed from the Employer or the Intervenor, I note that none of these matters raised by the Petitioner are material to the decision herein.

Tuolumne, pursuant to NCLN 20's contract with DHS. However, DHS altered the geographic boundaries when soliciting bids for the 2007 Northern and Central California guard contracts. As a result, the territory covered in the Employer's and NCLN 20's respective contracts with DHS is not coextensive.⁵ The Employer's contract with DHS added three counties: San Francisco, San Mateo, and Santa Cruz, and omitted Tuolumne county.

When the Employer assumed operations on July 1, 2007, it hired a majority of security guards employed by NCLN 20 and recognized the Intervenor as the exclusive bargaining representative of the former NCLN 20 unit. On July 23, 2007, the Petitioner filed a petition in Case 32-RC-5517 seeking to represent all of the Employer's employees employed in the former NCLN 20 unit.⁶ A hearing was held, and on August 16, 2007, I issued a Decision and Order dismissing the petition.⁷ I concluded that the Petitioner's petition was barred by the Certification of Representative that issued on September 5, 2006, certifying the Intervenor as the bargaining representative of the NCLN 20 unit. In doing so, I rejected the Petitioner's argument that the certification year rule should apply only to the predecessor employer, NCLN 20, and not to the Employer, its successor.⁸

After the Employer recognized the Intervenor as the bargaining representative of its employees employed in the former NCLN 20 unit, the parties engaged in bargaining for a collective-bargaining agreement. During a negotiation session on July 24, 2007, the Intervenor advised the Employer of its interest in representing approximately an additional 24 security guards who were not part of the former NCLN 20 unit, but who were employed by the Employer

⁵ NCLN 20 only provided guard services for one city located in Santa Clara County, Gilroy, while guard services for San Jose, the largest city in Santa Clara County were provided by another employer.

⁶ The Petitioner's unit description differed slightly from the description of the certified NCLN 20 unit. The petitioned-for unit identified the city of Gilroy instead of Santa Clara county in accordance with the fact that NCLN 20 did not provide guard services at any other location in Santa Clara county. The Petitioner also deleted reference to Tuolumne county, as the Employer's contract with DHS did not include Tuolumne county and the Employer did not employ any guards in that county.

⁷ I take administrative notice of the record and the Decision and Order in Case 32-RC-5517.

⁸ The parties had stipulated, and I agreed, that the Employer was a "successor" to NCLN 20 as defined in *Burns Security Services*, 406 U.S. 272 (1972).

at locations in Santa Clara County (other than Gilroy) and in Santa Cruz County. The Intervenor offered to provide evidence of its majority support for these employees, although it did not have this evidence in its possession at the bargaining session. Thus, the Employer agreed to recognize the Intervenor as the representative of these additional employees upon a proper showing of majority support. On July 24, 2007, the parties executed a collective-bargaining agreement covering the former NCLN 20 unit employees and the Santa Clara (other than Gilroy) and Santa Cruz employees, effective upon employee ratification of the agreement; however, the parties orally agreed that application of the collective-bargaining agreement to the new Santa Clara and Santa Cruz employees was contingent upon the Intervenor presenting proof of their majority support to the Employer. Absent such proof, the parties understood that these employees would be “dropped” and the agreement would otherwise remain in effect as to the former NCLN 20 employees. On August 8, 2007, Employer voluntarily recognized the Intervenor as the bargaining representative of the Santa Clara and Santa Cruz employees after conducting a card check and determining that a majority desired of the representation by the Intervenor. On August 23, 2007, the Intervenor notified the Employer that the employees had ratified the collective-bargaining agreement. Thus, the collective-bargaining agreement went into effect on August 23, 2007.

Thereafter, on November 16, 2007, the Petitioner filed unfair labor practice charges against the Employer and the Intervenor in Case 32-CA-23642 and Case 32-CB-6361, arising out of the Employer’s recognition of the Intervenor as the bargaining representative of the new Santa Clara and Santa Cruz employees and the parties’ execution of a collective-bargaining agreement including these employees. The Petitioner alleged that the parties’ conduct in this regard was unlawful because the Intervenor lacked majority support. After investigation, I dismissed both charges in their entirety, finding no evidence of impropriety and having determined that the Santa Clara and Santa Cruz employees were properly accreted to the unit.

ANALYSIS

Under the Board's longstanding contract-bar rules, the collective-bargaining agreement between the Employer and the Intervenor precludes processing the petition in this case. The Board has developed rules for determining the circumstances under which it will entertain petitions to displace an incumbent bargaining representative during the term of a valid bargaining agreement. Thus, a valid 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, and the Board will not process a representation petition during this period. *Hexton Furniture Co.*, 111 NLRB 342 (1955); *Deluxe Metal Furniture*, 121 NLRB 995 (1958); *General Cable Corp.*, 139 NLRB 1123 (1962). Here, prior to the filing of the petition, the parties' authorized representatives signed an agreement on July 24, 2007; the agreement sets forth substantial terms and conditions of employment; the Employer has applied the terms to the employees encompassed in the petition; and the agreement covers an appropriate unit. Accordingly, the agreement is sufficient to bar the petition filed on November 1, 2007, during the first year of the parties' collective-bargaining agreement. *DePaul Adult Care Communities, Inc.*, 325 NLRB 681 (1998); *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958).

I am not persuaded by the arguments asserted in the Petitioner's post-hearing brief. First, the Petitioner suggests that the Intervenor lost its status as the bargaining representative of the Employer's employees employed in the former NCLN 20 unit on July 24, 2007, by seeking to expand the scope of the unit to include the additional employees in Santa Clara and Santa Cruz counties. The Petitioner's brief does not cite, nor do I find, Board precedent which supports the Petitioner's argument. The Petitioner also argues that the contract bar rules do not apply because the parties' collective-bargaining agreement is not valid. However, the Petitioner does not assert any basis for challenging the validity of the collective-bargaining agreement as to the former NCLN 20 unit—the employees whom it seeks to represent by its petition. Instead, the Petition challenges the Employer's recognition of the Santa Clara and Santa Cruz

employees, whom it does not seek to represent, and their inclusion in the contract. However, the validity of the parties' agreement as to the former NCLN 20 unit is unrelated to the issue of whether the parties appropriately included any additional employees whom the Petitioner does not seek to represent. The evidence establishes that the parties agreed that the collective-bargaining agreement would apply to the former NCLN 20 unit even if the Intervenor failed to provide a showing of support for the additional Santa Clara and Santa Cruz employees. In any event, in accordance with my prior findings in the Petitioner's unfair labor practice charges, I conclude that the record evidence establishes that the additional Santa Clara and Santa Cruz employees are properly accreted to the unit because they share a community of interest with the former NCLN 20 unit and lack a separate identity. See *Firestone Synthetic Fibers Co.*, 171 NLRB 1121 (1968). Among other things, I note the existence of common supervision, geographic proximity, similar skills, training, and interchange.⁹

Finally, I reject the Petitioner's contention the Board's recent decision in *Dana Corp.*, 351 NLRB No. 28 (2007), requires processing its petition because no notice was posted. The Board's decision in *Dana Corp.* modifies the rules regarding recognition bar. This case does not involve a recognition bar. Here, the Employer did not voluntarily recognize the Intervenor as the bargaining representative of the employees whom the Petitioner seeks to represent. To the contrary, the Intervenor was certified as the bargaining representative of the petitioned-for employees on September 5, 2006, after an election where the Petitioner also appeared on the ballot. Moreover, as noted earlier, the Santa Clara and Santa Cruz employees, whom the Petitioner does not seek to represent, were accreted into the previously certified unit, thus, it is

⁹ Conversely, the Employer's employees employed in San Francisco and San Mateo counties, pursuant to the contract with DHS, do not share the same community of interest with the employees employed in Santa Clara and Santa Cruz counties or with the traditional NCLN 20 unit employees because, among other things, they do not share common supervision, wage rates, or interchange.

immaterial whether the Employer voluntarily recognized the Santa Clara county and Santa Cruz county employees.¹⁰

CONCLUSIONS AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I am dismissing the amended petition.

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 case.

3. The Petitioner and the Intervenor are labor organizations within the meaning of the Act.

4. The Petitioner and the Intervenor claim to represent certain employees of the Employer.

5. 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.

ORDER

The petitioner in this matter is dismissed.

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, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **May 14, 2008**. The request

¹⁰ Additionally, I note that the Board explicitly stated that the decision in *Dana Corp.*, which issued on September 28, 2007, would not apply retroactively.

may be filed electronically through the Agency's website, www.nlr.gov¹¹, but may not be filed by facsimile.

Dated: April 30, 2008

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

¹¹ To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web sit, www.nlr.gov.