

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

IDEARC MEDIA SALES-EAST CO. d/b/a  
IDEARC MEDIA<sup>1</sup>

Employer

and

MARTIN BRENNAN

Case 4-RD-2151

Petitioner

and

COMMUNICATIONS WORKERS OF  
AMERICA, AFL-CIO<sup>2</sup>

Union Involved

**REGIONAL DIRECTOR'S DECISION AND ORDER**

The Employer, Idearc Media Sales-East, with a facility in Harrisburg, Pennsylvania, sells advertising. Petitioner Martin Brennan filed this petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act. Brennan seeks decertification of the Union Involved, Communications Workers of America, AFL-CIO, as the representative of a unit consisting of the Employer's Graphic Design Artists, Sales Representatives, and Sales Support Representatives.

The Union Involved takes the position that a collective-bargaining agreement executed on February 8, 2009 bars the processing of this petition. The Petitioner asserts that the collective-bargaining agreement does not constitute a bar for the reasons set forth below. The Employer takes no position on the issue.

A Hearing Officer of the Board held a hearing, and the Union Involved and the Employer filed briefs. I have considered the evidence and the arguments presented by the parties, and, as discussed below, I have concluded that there is a contract barring an election. Accordingly, I am dismissing the petition.

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

<sup>2</sup> The name of the Union Involved appears as amended at the hearing.

In this Decision, I will first review the factors that must be evaluated to determine whether the contract bars the processing of the petition. Next, I will present the relevant facts. Finally, I will set forth my legal analysis and conclusions.

## **I. FACTORS RELEVANT TO DETERMINING WHETHER THERE IS A CONTRACT BAR**

The purpose of the Board's contract bar doctrine is 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." *Appalachian Shale Products Co.*, 121 NLRB 1160, 1161 (1958); see also *Deluxe Metal Furniture Co.*, 121 NLRB 995, 997 (1958). Pursuant to this policy, a contract for a reasonable term not in excess of three years will bar the processing of a representation petition for the term of the contract, except that a petition filed during the "window period," more than 60 but less than 90 days before the termination date of the contract, will be processed. *Shen-Valley Meat Packers, Inc.*, 261 NLRB 958, 959-960 (1982); *General Cable Corp.*, 139 NLRB 1123, 1125 (1962).<sup>3</sup>

To constitute a bar, a contract must be in writing, must be signed by all parties prior to the filing of a petition, and must contain substantial terms and conditions of employment to which the parties can look for guidance in resolving day-to-day problems. *Waste Management of Maryland*, 338 NLRB 1002 (2003); *Cooper Tank and Welding Corp.*, 328 NLRB 759 (1999); *Appalachian Shale Products*, above at 1162-1163. The party asserting that a contract operates as a bar bears the burden of proving that it was signed by both parties before a petition was filed. See *Road & Rail Services, Inc.*, 344 NLRB 388, 389 (2005); *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970).

Representation petitions may be timely filed after the expiration of an existing collective-bargaining agreement or during the 30-day window period prior to the 60-day "insulated period" before the contract's expiration. This permits parties to an expiring contract to negotiate a contract safe from the uncertainty of a representation petition. *Crompton Co.*, 260 NLRB 417, 418 (1982).

The Board applies the "Postmark Rule" found at Section 102.111(b) of its the Board's Rules and Regulations to find that a petition is timely filed if it is postmarked within the window period, even if it is not received until the commencement of the insulated period. *Cargill Nutrena, Inc.*, 344 NLRB 1125, 1125 (2005).

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<sup>3</sup> In the health care industry, such petitions must be filed between 90 and 120 days before expiration of the contract. *Trinity Lutheran Hospital*, 218 NLRB 199 (1975).

## **II. FACTS**<sup>4</sup>

Beginning in 2003, the Union Involved was a party to a series of collective-bargaining agreements with the Employer's predecessor, Verizon Information Services. These agreements covered five separate units, including the unit that is the subject of the instant petition. In November 2006, the Employer agreed to be bound by the then-existing collective-bargaining agreement between Verizon Information Services and the Union Involved. The agreement was effective by its terms from February 12, 2006 to 11:59 p.m. on February 7, 2009.<sup>5</sup> The Employer abided by the contract's terms until its expiration, and on January 5, the Employer and the Union Involved began negotiating a successor agreement.

On Thursday, February 5, the Petitioner mailed the decertification petition by United States Postal Service overnight mail to the Regional Office, and it was received on Friday, February 6 during the Regional Office's normal business hours. Upon receiving the petition, Regional Office personnel advised the Petitioner that the petition appeared to be barred by the current collective-bargaining agreement, which was in effect through Saturday, February 7. The Petitioner requested that the Regional Office hold the petition for filing and docketing on Monday, February 9. Neither the Petitioner nor the Regional Office informed the Employer or the Union Involved that the petition had been submitted to the Regional Office.

The Employer and the Union Involved agreed to a successor contract at approximately 11:45 p.m. on Saturday, February 7 and executed it at approximately 2:00 a.m. on Sunday, February 8. The term of the new agreement is from February 8, 2009 through February 11, 2012. On Monday, February 9, the Regional Office docketed the instant petition.

## **III. ANALYSIS**

Because the predecessor collective-bargaining agreement in this matter expired at 11:59 p.m. on February 7, 2009, the 30-day window period for the filing of a timely petition ran from November 10, 2008 through December 9, 2008. The Petitioner, however, did not file a petition during the window period. The insulated period then commenced on December 10, 2008 and ran through the contract's expiration date, February 7.

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<sup>4</sup> The parties stipulated to all of the relevant facts in this matter. The Employer's brief, however, claims that the stipulated facts contain two inaccuracies. Specifically, the Employer asserts that Verizon Information Services changed its name to Idearc Media Sales-East Co. in November 2006, rather than selling its advertising directory service to the Employer. The Employer further claims that it is a Maryland general partnership, rather than a Delaware limited liability company. No party has disputed these claims, and neither purported inaccuracy is germane to the issues herein in this case.

<sup>5</sup> All dates are in 2009 unless otherwise indicated.

The petition was received by the Regional Office on Friday, February 6, during the insulated period.<sup>6</sup> Thus, had the Region docketed the petition on that day, it would have been premature and subject to dismissal. At the Petitioner's request the Region retained the petition for docketing on the next business day, Monday, February 9. During the intervening weekend, the predecessor contract expired, and the Employer and the Union Involved executed a new collective-bargaining agreement.<sup>7</sup>

The Petitioner contends that the Regional Office should have been accepted the petition for filing on the morning of Sunday, February 8, during the two-hour period between the time the predecessor contract expired and the time the Employer and the Union Involved entered into a the successor agreement. However, as the Regional Office was closed during these two hours, the petition could not have been filed during this period.<sup>8</sup>

Had the petition been filed during the two-hour period between expiration of the predecessor contract and execution of the new one, it would not have been timely. In this connection, a successor contract executed the same day a petition is filed will bar an election if the parties to the contract have not been notified of the filing. *Bendix Corp.*, 210 NLRB 1026 fn.1 (1974); *Deluxe Metal Furniture Co.* above at 999. In this case, neither party to the contract had notice of the filing until Monday, February 9. Thus even if the Regional Office had been open between midnight and 2:00 a.m. on Sunday, February 8, a petition docketed at that time would have been barred by the contract executed later that morning.

In short, because the parties executed the successor collective-bargaining agreement on February 8, the contract was effective on that date, and the petition was not docketed until February 9, this agreement constituted a bar to the processing of the petition. *Appalachian Shale Products Co.*, above at 1161 (1958); *Deluxe Metal Furniture Co.*, above at 997. Therefore, the petition is dismissed.

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

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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<sup>6</sup> The "Postmark Rule" is inapposite as the petition was mailed within the insulated period on February 5, 2009.

<sup>7</sup> No party contends that the successor agreement is facially inadequate to serve as a bar to this petition, i.e., that it is unwritten, unsigned or does not contain substantial terms and conditions of employment. *Appalachian Shale*, above, at 1162-1163.

<sup>8</sup> In another context, Section 103.20(b) of the Board's Rules and Regulations defines "working days" as days exclusive of Saturdays, Sundays, and holidays. The Board does not change its due dates as a result of intervening weekend days. See Section 102.111(a) of the Board's Rules and Regulations.

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 Union Involved is a labor organization that claims to represent certain employees of the Employer.

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:

## **V. ORDER**

**IT IS HEREBY ORDERED** that the petition be, and it hereby is, dismissed.

## **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 14th Street, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by e-mail. For details on how to file a request for review by e-mail, see <http://www.nlr.gov/> and click on E-gov. This request for review must be received by the Board in Washington by 5:00 p.m., EDT on **March 24, 2009**.

Signed: March 10, 2009

at Philadelphia, PA

/s/ [Daniel E. Halevy]  
DANIEL E. HALEVY  
Acting Regional Director, Region Four