St. Mary's Hospital and Medical Center *and* Northern California Association of Nurses, U.N.A.C., N.U.H.H.C.E., A.F.S.C.M.E. Case 28–RC–5194 (formerly 20–RC–16982)

April 28, 1995

ORDER DENYING REVIEW

BY MEMBERS STEPHENS, BROWNING, AND TRUESDALE

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Petitioner's request for review of the Acting Regional Director's Decision and Order (pertinent portions of which are attached). The request for review is denied as it raises no substantial issues warranting review.

APPENDIX

The Intervenor contends that there is a contract bar to the instant proceeding and that the petition should, therefore, be dismissed. The Petitioner contends that no signed contract exists, and, under the Board's holding in *Appalachian Shale Products*, 121 NLRB 1160 (1958), and its progeny, no bar exists to the processing of the instant petition. The Employer takes no position with regard to this issue.

The record reflects that the Intervenor has represented the Employer's staff registered nurses (RNs) since 1947. The record contains a recent collective-bargaining agreement effective by its terms from June 1, 1991, through May 31, 1993.[1] Negotiations for a successor agreement commenced in the spring of 1993, with only certain portions of the agreement opened for revision.[2] The issues reopened were: wages, term of agreement, family leave, no discrimination, educational programs, staffing, layoffs, seniority, holidays (Christmas and New Year), per diem scheduling, UCD benefits, a title change (chief nursing executive instead of director of nursing), just cause, and health insurance. During the course of the 1993 negotiations, the parties signed and dated the tentative agreements which were reached on each issue. On June 19, 1993, after a protracted negotiating session that principally dealt with wages, staffing, and health benefits, agreement was finally reached on all issues that had been reopened. The parties signed a tentative agreement which set forth each of the 15 issues that were negotiated and the manner in which they were to be implemented, incorporating by specific reference the signed and dated tentative agreements for the individual issues previously resolved, as well as the wage rates and health care provisions agreed on during that bargaining session.

On or about June 22, 1993, the tentative agreement reached on June 19, 1993, was ratified by the membership of the Intervenor. Thereafter, on July 9 1993, the Employer's director of personnel, Joseph D'Antonio, met with Jan Gersonde, the Intervenor's chief negotiator,[3] to review the contract terms and language so that a formal agreement could be drafted. At that time, D'Antonio and Gersonde reviewed the tentative agreements and other source documents that served as the basis for the new collective-bargaining agreement and agreed that D'Antonio would flesh out the language in a draft he would prepare. At that meeting, there was no disagreement regarding the terms that had been negotiated. No further meetings on the contract terms or language were scheduled. In its brief, the Petitioner summarizes the testimony of D'Antonio and Gersonde, who is now its agent, as follows:

> Once there has been a settlement, a draft of a complete collective bargaining agreement is prepared, the draft is reviewed by the parties to ensure that it accurately reflects the various agreements reached during negotiations, appropriate changes are made, and then it is put into final form for execution.

Indeed, this appears to be an accurate representation of the procedure followed by the parties both during the 1991 and 1993 negotiations.

The instant petition was filed on October 14, 1993.[4] It is uncontroverted that the draft of the agreement was neither prepared nor signed prior to the filing of the petition. The draft did not surface until November 4, 1993, the first day of the hearing in this matter. The Petitioner contends that there are several areas in which the draft language does not reflect the parties' understanding of the terms agreement negotiated. The first provision relates to seniority. According to Gersonde, the draft agreement contains a provision that credits out-of-unit seniority for bidding on unit positions, which is contrary to what was negotiated. However, Allen Fitzpatrick, the Intervenor's chief nurse representative, testified that no agreement was reached on this issue and that the parties had agreed to submit this issue to arbitration if a nonunit employee was awarded a bid position.

The second claimed discrepancy relates to staffing determinations. The draft proposal indicates that a committee will make recommendations on staffing levels to the chief nursing executive. The Petitioner contends that when Gersonde negotiated this matter, there was no language providing that the recommendations would be submitted to the chief nursing executive. The record reflects, however, that the parties contemplated that the committee's recommendations would be presented to the Employer.

The third area relates to the manner in which wages are expressed in the draft agreement. Gersonde states that the Employer requested that an hourly figure be included in the

[1] Art. II of the 1991–1993 agreement defines the unit as follows: ''The Nurses covered by this Agreement are all Registered Staff Nurses performing nursing services. Nurse anesthetists are not included, nor are administrative and executive personnel having authority to hire, discipline, discharge or to determine personnel policies.''

[2] The record does not indicate whether a document exists which was signed by the parties and which specifically stated that, except for those contractual provisions changed by their tentative agreements, the predecessor agreement would remain unchanged and would become the new collective-bargaining agreement.

[3] Gersonde is now an agent of the Petitioner.

[4] It appears from the record that prior to the filing of the petition, the Employer announced to its employees that the Intervenor and Employer had reached agreement for a new contract and the terms of the agreement were implemented in substantial part, if not in their entirety.

collective-bargaining agreement. She agreed but insisted that the monthly figure be used as the principal figure for computing wage increases rather than the hourly amount. The draft has based increases on the hourly amount instead of the monthly figure.

According to the Petitioner, another issue exists concerning language relating to retiree health benefits. The draft language states, ''Premiums may be adjusted *at least* annually.'' (Emphasis added.) Gersonde contends that the parties agreed to an annual adjustment, but not to more frequent adjustments, as this language implies.

The final discrepancy relates to employee health care benefits. Gersonde testified that the parties agreed that 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. Both of these provisions were not contained in the Employer's draft.

After the 1991 negotiations, the same procedure was followed for preparing the draft agreement as was discussed above for the 1993 contract renewal. Gersonde testified that the Employer's first draft contained over 50 changes from what the parties had agreed on during negotiations. These were brought to the attention of the Employer, and the changes were taken out in the second draft. It is undisputed that the Intervenor agreed to allow the Employer to prepare the draft language in both the 1991 and 1993 agreements.

The Petitioner contends that the aforementioned discrepancies for the draft evidence that no final contract exists and, thus, there is no contract bar. The Intervenor maintains that these differences are minor and that substantial terms and conditions of employment have been established which warrant the finding that the parties' agreement is a bar to the processing of the petition. As noted above, the Employer has taken no position on this issue.

The Board stated in *USM Corp*., 256 NLRB 996, 999 (1981):

> In order for an agreement to serve as a bar to an election, the Board's well-established contract-bar rules require that such agreement satisfy certain formal and substantive requirements. The agreement must be signed by the 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. *Appalachian Shale Products Co*., 121 NLRB 1160 (1958). The agreement, however, need not be embodied in a formal document. An informal document which nonetheless contains substantial terms and conditions of employment is sufficient if it satisfies the other contract-bar requirement.[5]

The Board has further held that it is immaterial that a contract does not take the form of a single self-contained document. *Cannon Boiler Works*, 304 NLRB 457 (1991); *Television Station WVTV*, 250 NLRB 198 (1980).

In the instant case, there is no dispute that on June 19, 1993, the Employer and Intervenor reached written tentative agreements that were signed and dated by both parties on all outstanding issues, that the tentative agreement was ratified by the Intervenor's members, and that on July 9, 1993, the Employer's and Intervenor's representatives met to compile the documents that would serve as the basis for the draft agreement. No further meetings were scheduled after July 9, because there were no further issues left to resolve. Prior to the filing of the petition, the terms of the parties' agreement were implemented in substantial part. Thus, the case before me is unlike *Tri-State Transportation Co*., 179 NLRB 310, 311 (1969), where a contract did not bar an election because its terms had not been implemented.

In consideration of the foregoing, I find that the parties' signing of the tentative agreements is sufficient to establish their agreement to these provisions. See *Television Station WVTV*, supra at 199 fn. 1. I also find that the tentative agreement reached on all outstanding issues on June 19, 1993, covered substantial terms and conditions of employment. Additionally, I find that the parties' intent to prepare and execute a formal agreement, which was not accomplished prior to the filing of the petition herein, does not establish that they conditioned the finality or effectiveness of their agreement upon such signing.

In reaching the conclusion that a final agreement was reached, I have carefully considered the Petitioner's arguments regarding the lack of a meeting of the minds on certain issues, such as the manner in which wages were expressed, retiree health benefit adjustments, employee choice of primary physician and the designation of clinic hours.[6] In this regard, the Board found in *USM Corp*., supra,[7] that:

> [T]he Board does not require that an agreement delineate completely every single one of its provisions in order to qualify as a bar. See *Stur-Dee Health Products, Inc. and Biorganic Brands, Inc*., 248 NLRB 1100 (1980); *Levi Straus & Co*., 218 NLRB 625 (1975); and *Spartan Aircraft Company*, 98 NLRB 73 (1952). What is required is that the agreement in question contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship.

I find that the Employer and the Intervenor reached agreement on all outstanding issues on June 19, 1993, and their settlement contains substantial terms and conditions of employment sufficient to stabilize their bargaining relationship. Thus, the minor deviations between the Employer's draft of the agreement and the testimony of Petitioner's witnesses regarding the details to their actual agreement on a few of the issues is not sufficient to remove the contract as a bar. In reaching this conclusion, I have carefully considered *Branch Cheese*, 307 NLRB 239 (1992), relied on by the Petitioner in its brief in support of its argument that there is no contract bar, and I find it to be distinguishable. In *Branch Cheese*, the Board concluded that it was unclear which of two offers by the employer the union's membership had ratified. In the instant case, there is no ambiguity with regard to what the

[5] Citing *Georgia Purchasing, Inc*., 230 NLRB 1174 (1977); *Bendix Corp*., 210 NLRB 1026 (1974); and *Appalachian Shale Products Co*., supra at 1162.

[6] It appears from the testimony that there was never an agreement with regard to the out-of-unit seniority issue. Instead, the parties agreed to submit this issue for arbitration. With reference to the Petitioner's concern with the inclusion of the words ''to the Chief Nursing Executive'' regarding staffing recommendations made by the Fact Finding Panel, I find, in reviewing the language of this provision, that this may very well be a distinction without a difference.

[7] 256 NLRB at 999 fn. 18.

membership ratified, albeit in summary form. Accordingly, I find that a contract bar exists herein, and I shall dismiss the petition on this basis.[8]

[8] The Intervenor requested that the employees in the following positions be added to the existing unit: home health nurses, nurse educators, nurse practitioners, senior nursing systems analyst, case managers, SNF admissions coordinator, and nurse coordinators. The Employer contends that the parties' present bargaining unit is appropriate. In view of my determination that the contract is a bar, I find that it is necessary to address this issue.