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

CHOICE AVIATION SERVICES
Employer

and Case 22-RC-356244

AMALGAMATED PRODUCTION AND SERVICE EMPLOYEES UNION, LOCAL 22, ESJB, AFL-CIO
Petitioner

and

SEIU LOCAL 32BJ
Intervenor / Union

REGIONAL DIRECTOR'S DECISION AND ORDER DISMISSING PETITION

On December 6, 2024,[1] Amalgamated Production and Service Employees Union, Local 22, ESJB, AFL-CIO (Petitioner) filed the instant seeking to represent a unit of employees employed by Choice Aviation Services (Employer). The unit is currently represented by SEIU Local 32BJ (Intervenor).

On December 17, pursuant to Section 9(c) of the National Labor Relations Act (Act), a hearing was conducted before a hearing officer of the National Labor Relations Board (the Board) in Newark, NJ.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 22.

Based on the entire record in this proceeding, including the post-hearing briefs filed by the Intervenor and Petitioner, I find that:

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

2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[2]

3. The parties stipulated, and I find, that the Petitioner and the Intervenor are labor organizations within the meaning of Section 2(5) of the Act.

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[1] All dates herein are 2024 unless otherwise specified.

[2] The Employer, Choice Aviation Services, a New York corporation, is engaged in the provision of ground handling of cargo services at facilities throughout the United States, with its primary location at 340-3 Airis Drive, Newark Liberty International Airport, Newark, New Jersey. During the past twelve months, a representative period of time, the Employer purchased and received goods and materials valued in excess of $50,000 directly from points located outside the State of New Jersey.

4. Whether a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act, turns on the Board's contract bar doctrine.

The Petitioner argues that the retroactivity of the Agreement renders the union-security clause unlawful because it denies employees the thirty-day grace period where membership cannot be required as a condition of employment. The Intervenor, to the contrary, argues that the union-security clause safeguards the employees' thirty-day grace period because the language contemplates only application when employment is "covered by" the Agreement, *viz*. the execution date.

I. STATEMENT OF FACTS

The Employer operates an airport cargo and ground handling business at various locations throughout the United States, with a primary location at the Newark International Airport located at 340-3 Airis Drive, Newark, New Jersey. The Intervenor is currently the exclusive collective-bargaining representative for the following unit of employees (Unit):

> All employees employed on the premises of Newark Liberty Airport, or performing airport related services, except for employees represented by another union or working on accounts between the Port Authority of NY-NJ ("PANY") and/or Federal Express and the Employer, excluding security guards, food service employees, engineers, retail employees, supervisors/managers, confidential and office employees as defined by the National Labor Relations Act.

At first, the Intervenor and the Employer signed a collective-bargaining agreement (CBA) that was effective from February 20, 2024, to June 30, 2024. They subsequently incorporated a Memorandum of Agreement (MOA), which was signed on November 13, 2024, and retroactively effective from March 1, 2024, to February 28, 2027.[3]

Ordinarily, a petition filed on December 6, 2024, would be untimely because it was filed outside the "window period" during which timely petitions may be filed.[4]

[3] The CBA and the MOA comprise the "agreement" referenced herein.

[4] For the first three years of a collective-bargaining agreement in industries other than health care, there is a 30-day "window period" during the life of a collective-bargaining agreement, between the 90th and 60th day prior to expiration of the contractual term, during which time a petition may be properly filed. The subsequent 60-day period immediately preceding and including the expiration date of an existing agreement is customarily known as the "insulated period" because, during that time, no timely petition may be filed. See *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1000 (1958). See also *Trinity Lutheran Hospital*, 218 NLRB 199 (1975) (For collective-bargaining agreements to which health care institutions are parties, the insulated period is 90 days; thus, the 30-day window period begins 120 days and ends 90 days prior to contract expiration.)

In relevant part, the Agreement's union security clause reads as follows:

> Article 3: Union Security and Check-Off
>
> 3.1. It shall be a condition of employment that all Employees covered by this Agreement shall become and remain members in the Union on the 31st day following the date this Article applies to their work-site or their employment, whichever is later. The requirement of membership under this section is satisfied by the payment of the financial obligations or the Union's initiation fee and periodic dues uniformly informed.

II. APPLICABLE BOARD LAW AND BURDEN OF PROOF

Pursuant to the Board's long-standing contract bar doctrine, a valid collective-bargaining agreement will act as a bar to a representation petition filed within the first three years of the agreement's term, unless the agreement contains a union security clause that "is clearly unlawful on its face" and save for petitions filed during the specified "window period" (described above in fn 3). *General Cable Corp.*, 139 NLRB 1123, 1125 (1962); *Paragon Products Corp.*, 134 NLRB 662, 666 (1961).

In assessing the legality of union-security provisions in representation proceedings, the Board has clarified that, as a matter of policy, only a union-security clause that explicitly contravenes the proviso in Section 8(a)(3), that employees have at least thirty days from the beginning of such employment or from the effective date of such collective-bargaining agreement, whichever is later, to become members of the Union. *Mountaire Farms*, citing *Paragon Products*, 134 NLRB at 665 ("In addressing the legality of union-security provisions in representation proceedings, in contrast, 'the Board is concerned only that as a matter of policy it should not permit contracts containing union-security clauses explicitly forbidden by statute to govern the time when employees may exercise their freedom of choice in a Board-conducted election'.").[5] The burden of proving "contract bar" is on the party asserting the doctrine. *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970).

An ambiguous union-security clause is <u>not</u> an unlawful union-security clause. Illegality must be clear and unequivocal. *Id.* at 667. The Board has long been clear that if a union-security clause can be legally interpreted, it should be found lawful for the purposes of the contract bar doctrine. *Weyerhaeuser Co.*, 142 NLRB 702, 702–703 (1963) (stating that if a union-security clause "can be legally interpreted," it will bar a petition). In determining whether a union-security clause is clearly unlawful or merely ambiguous, the Board limits its inquiry to the "four corners of the [contract] itself" and will not examine extrinsic evidence. *Jet-Pak Corp.*, 231 NLRB 552, 552–553 (1977). Clearly unlawful union-security clauses include "those which specifically withhold from incumbent

[5] The proper forum for determining whether a particular union-security clause is unlawful is an unfair labor practice proceeding. *Paragon Products*, 134 NLRB at 665.

nonmembers and/or new employees the statutory 30-day grace period" guaranteed by Section 8(a)(3). *Paragon Products,* 134 NLRB at 666.

III. ANALYSIS

Article 3, Section 1 is arguably unlawful with regard to its retroactive application to nonmember incumbent employees. However, the instant clause is neither "incapable of a lawful interpretation" nor "clearly unlawful on its face." See, *Paragon Products*, 134 NLRB at 666–667. As highlighted by the Intervenor, and consistent with *Montaire*, the clause here can be plausibly interpreted to give nonmember incumbent employees thirty-one days from the execution of the MOA, or until "the 31st day following the date this Article applies to their work-site or their employment, whichever is later," to become union members.

The Board's decision in *Montaire* dictates this result. In that case, the Board overturned the Regional Director's decision and found the following union-security clause to be capable of legal interpretation:

> It shall be a condition of employment that all employees of the Employer covered by this Agreement who are members of the Union in good standing on the execution date of this Agreement shall remain members in good standing, and those who are not members on the execution date of this Agreement shall, on or after the thirty-first day following the beginning of such employment, even if those days are not consecutive, shall become and remain members in good standing in the Union.

The Board in *Montaire* reasoned:

> (O)ne plausible interpretation of the clause is that the union-security obligation applies only prospectively to incumbent nonmember employees because the phrase "covered by this Agreement" qualifies the clause requiring membership in good standing "on or after the thirty-first day following the beginning of such employment." That is, "such employment" is employment "covered by this Agreement"; no employment could be "covered by this Agreement" until the Agreement was executed; and incumbent employees have until "the thirty-first day following the beginning of such employment" to become members. We agree with the Union that this is a plausible interpretation of Article 3, Section 1. See *Television & Radio Broadcasting Studio Employees Local 804 (Triangle Publications)*, 135 NLRB 632, 634–635 (1962) (finding valid a union-security clause providing that "all present employees . . . shall become members of the Union and all future employees must become members of the Union within a period of thirty (30) days after employment, and that all employees will continue their membership in the Union during the term of this agreement"), enfd. 315 F.2d 398 (3d Cir. 1963).

Like the valid union-security clause in *Montaire*, the clause here states that employees "shall become and remain members in the Union on the 31st day following the date this Article applies to their work-site or their employment, whichever is later." Because no employment could have been covered by this Agreement until the Agreement was actually executed, the Article was not operative until such execution. Thus, the union-security clause at issue here is, at most, ambiguous with regard to its retroactive application to incumbent nonmember employees. As such, it is neither "incapable of a lawful interpretation" nor "clearly unlawful on its face." See, *Paragon Products*, 134 NLRB at 666–667.

CONCLUSION

For the reasons set forth in detail above, I find the union security clause in the Agreement is lawful. Accordingly, the current Agreement bars further processing of the instant petition.

ORDER

IT IS HEREBY ORDERED that the petition is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

***Procedures for Filing Request for Review*: Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden.** A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the E-Filing System User Guide.

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business **(5 p.m. Eastern Time) on February 14, 2025**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on February 14, 2025.**

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was offline or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Direction and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Dated: January 31, 2025

Suzanne Sullivan, Regional Director
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AFFIDAVIT OF SERVICE OF Regional Director's Decision and Order Dismissing Petition

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **January 31, 2025,** I served the above-entitled document(s) by **electronic mail** upon the following persons, addressed to them at the following addresses:

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January 31, 2025	Raquel Wilkinson, Designated Agent of NLRB
Date	Name
	/s/ Raquel Wilkinson
	Signature