

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**ASSET PROTECTION & SECURITY SERVICES, LP**

**Employer/Petitioner**

**and**

**Case 28-RM-355622**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 745**

**Union**

**PARAGON PROFESSIONAL SERVICES, LLC**

**Employer/Petitioner**

**and**

**Case 28-RM-355849**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS LOCAL 745**

**Union**

**DECISION AND ORDER**

**I. INTRODUCTION**

On November 18, 2024, International Brotherhood of Teamsters Local 745 (the Union) requested that Paragon Professional Services, LLC (Paragon) and Asset Protection & Security Services, LP (Asset Protection) (collectively, the Employers) recognize it as the exclusive collective-bargaining representative of all full-time and regular part-time detention officers, security control center specialists, property security specialists, and transportation officers (the Unit) employed by the Employers at the United States Immigration and Customs Enforcement (ICE) El Paso Service Processing Center in El Paso, Texas (the ICE facility).

On November 26, 2024, a petition was filed by Asset Protection in Case 28-RM-355622, and on November 27, 2024, a Notice of Representation Hearing issued scheduling a hearing for December 6, 2024, at 10:00 a.m. (local time) via videoconference, and on consecutive days

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thereafter until concluded. On December 2, 2024, a petition was filed by Paragon in Case 28-RM-355849, and, on that same date, a Notice of Representation Hearing issued scheduling a hearing for December 10, 2024, at 10:00 a.m. (local time) via videoconference, and on consecutive days thereafter until concluded (collectively, the instant petitions).

Because the instant petitions involved the same Union and similar facts and issues, on December 5, 2024, the Acting Regional Director issued an Order Rescheduling the Hearing in Case 28-RM-355622 to occur in succession with the hearing in Case 28-RM-355849 on December 10, 2024.

A hearing concerning the instant petitions was held before a hearing officer of the National Labor Relations Board (the Board) on December 10, 2024. The sole issue in dispute was whether there is an election bar precluding the Board from conducting an election. The Employers argue that there is an election bar, and the Union argues that there is not an election bar.

The parties were given the opportunity to present evidence and to state their respective positions on the record at the hearing. Having carefully considered all evidence and arguments presented by the parties, I have concluded, based on the facts and case law as fully discussed below, that the instant petitions should be dismissed pursuant to Section 9(c)(3) of the Act, because the instant petitions were filed in the preceding twelve-month period of a valid election being held with the same unit of employees. Moreover, I conclude that even if I were to order an election for the instant petitions, under Section 9(b)(3) of the Act, the Board would be prohibited from certifying the Union as the exclusive collective-bargaining representative of the Unit if it were to prevail in such an election.

## **II. STATEMENT OF THE FACTS**

### **A. A Valid Election Involving the Unit was Held in the Preceding Twelve-Month Period**

On June 21, 2023, employee Alex Guerrero (Guerrero) filed a decertification petition in Case 28-RD-320410, seeking to decertify International Union, Security, Police and Fire Professionals of American (SPFPA) Local 725 (SPFPA Local 725) as the collective-bargaining representative of the Unit employed by the Employers. On June 29, 2023, Guerrero filed a second decertification petition in Case 28-RD-320960, seeking to decertify SPFPA Local 725 as the collective-bargaining representative of the Unit employed by the Employers, as Joint Employers (collectively, the RD petitions).

On July 21, 2023, a hearing was conducted before a hearing officer of the Board, and on July 23, 2024, I issued a Decision and Direction of Election directing a mail ballot election to be conducted for the RD petitions, with the ballots being mailed to the voters at 2:00 p.m. (Pacific Time Zone) on August 16, 2024, and for voters to return the ballots by mail to the Region 28

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Office by close of business on September 6, 2024. The Tally of Ballots for the RD petitions was conducted on November 12, 2024, wherein a majority of valid votes counted was not cast for SPFPA Local 725 or for the Intervenor, United Federation LEOS-PBA Law Enforcement Officers Security & Police Benevolent Association.

## **B. The Union Represents and Admits to Membership Employees other than Guards**

During the hearing, the parties stipulated that the Union is a labor organization under Section 2(5) of the Act that admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards. The Union representative also admitted at the hearing that the Union represents a unit of non-guard food service employees employed by Paragon at the ICE Facility.

Furthermore, I take administrative notice that the Union is a labor organization under Section 2(5) of the Act that represents non-guard employees. See, *inter alia*, the Certifications of Representation in Cases: 16-RM-347035 (unit including On Premise—Warehouse Associates, Full-time Drivers, Trainers, and Receivers; Retail—Warehouse Class A Drivers, Warehouse Merchandisers, and Warehouse Transfer Drivers; and Wholesale—Warehouse Merchandisers); 16-RC-330812 (unit including all full-time and regular part-time Semi Drivers, Lead Semi Drivers and Route Drivers); and 16-RC-323309 (unit including all full-time and regular part-time Delivery Service Drivers).

## **III. LEGAL STANDARDS**

### **A. The Election Bar**

Section 9(c)(3) of the Act provides, in part, that “No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held.” The election bar applies to representation elections, as well as decertification elections like the instant petitions. *NLRB. v. Mississippi Power Light Co.*, 769 F.2d 276, 278 (5th Cir. 1985). The statutory election bar runs from the date of balloting, not the date of certification of results. *Mallinckrodt Chemical Works*, 84 NLRB 291, 292 (1949). In a mail-ballot election, balloting is completed when the votes are tallied at the ballot count. *Watkins Construction Co. Inc.*, 332 NLRB 828 (2000); *American Driver Service, Inc.*, 300 NLRB 754 (1990); *Kerrville Bus Co., Inc.*, 257 NLRB 176, 177 (1981).

Petitions filed more than 60 days before the end of the 12-month statutory period will be dismissed. *Vickers, Inc.*, 124 NLRB 1051, 1052 (1959). The Act does not permit circumvention of the election bar rule contained in Section 9(c)(3). *E-Center*, 337 NLRB 983 (2002); *Golden Coach*, 266 NLRB 62, 63 (1983); *Casey-Metcalf*, 114 NLRB 1520, 1525 (1956).

**B. The Board is Prohibited from Certifying a Union Representing Non-Guards to Represent Guards**

Furthermore, pursuant to Section 9(b)(3) of the Act, the Board shall not:

decide that any unit is appropriate... if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises [...]

Thus, Section 9(b)(3) of the Act prohibits the Board from certifying a union as the representative of a unit of guards if the union admits non-guards to membership or is affiliated, directly or indirectly, with an organization that admits non-guards to membership. 29 U.S.C. § 159(b)(3); see, e.g., *Brinks, Inc.*, 274 NLRB 970, 970–71 (1985); *Stewart-Warner Corp.*, 273 NLRB 1736, 1737 (1985); *International Harvester Co.*, 145 NLRB 1747, 1749–51 (1964); *Mack Mfg. Corp.*, 107 NLRB 209, 212 (1953).

Congress enacted Section 9(b)(3) of the Act out of a concern about conflicts of interest that might arise if guards were represented by unions that also represented non-guard employees. *Burns Security Services*, 300 NLRB 298, 299 (1990) enf. denied 942 F.2d 519 (8th Cir. 1991). As the Board noted in *The Boeing Company*, Congress was particularly concerned about the role a disputed employee may play during a period of industrial unrest or strike by other employees of the employer. 328 NLRB 128, 130 (1999). Congress sought to prevent conflicts that might arise if, for instance, during a strike by non-guard employees represented by the same union as guards, the guards were required to enforce security rules against their striking co-workers. *Id.*

**C. Application of Legal Standards**

**1. An Election Bar is in Effect for the Instant Petitions**

As stated above, the ballots for the RD petitions were mailed to the voters on August 16, 2024, to be returned by the voters by mail to the Region 28 Office by September 6, 2024. The Tally of Ballots was conducted on November 12, 2024. Accordingly, the 12-month statutory period for the election bar for the Unit began on November 12, 2024, and will end on November 12, 2025.<sup>1</sup> Furthermore, the instant petitions involving the Unit were filed more than 60 days before the end of the 12-month statutory period and therefore must be dismissed. *Vickers, Inc.*, 124 NLRB 1051, 1052 (1959).

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<sup>1</sup> As discussed above, the statutory election bar runs from the date of balloting, not the date of certification of results. *Mallinckrodt Chemical Works*, 84 NLRB 291, 292 (1949) and in a mail-ballot election, as here, balloting is completed when the votes are tallied at the ballot count. *Watkins Construction Co. Inc.*, 332 NLRB 828 (2000); *American Driver Service, Inc.*, 300 NLRB 754 (1990); *Kerrville Bus Co., Inc.*, 257 NLRB 176, 177 (1981).

Although the Employers represented at the hearing that they filed the instant petitions pursuant to the Board's decision in *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 (2023) (*Cemex*),<sup>2</sup> the Act does not permit circumvention of the election bar rule contained in Section 9(c)(3). *E-Center*, 337 NLRB 983 (2002); *Golden Coach*, 266 NLRB 62, 63 (1983); *Casey-Metcalf*, 114 NLRB 1520, 1525 (1956). Accordingly, the Board's *Cemex* decision does not alter the 12-month statutory election bar period under Section 9(c)(3) of the Act.

Based on the foregoing and the record as a whole, I find that an election bar exists for the instant petitions under Section 9(c)(3) of the Act and, I am therefore dismissing the instant petitions.

## **2. The Union Cannot be Certified as the Exclusive Bargaining Representative of the Unit under Section 9(b)(3) of the Act**

Moreover, the Union represents and admits to membership employees other than guards, including non-guard food service employees employed by Paragon at the ICE Facility. Section 9(b)(3) of the Act prohibits the Board from certifying a union as the representative of a unit of guards if the union admits non-guards to membership, as the Union admits here with the instant petitions, or is affiliated, directly or indirectly, with an organization that admits non-guards to membership.

Based on the foregoing and the record as a whole, I find that even if there was no election bar for the instant petitions, the Union cannot be certified by the Board as the exclusive collective-bargaining representative of the Unit under Section 9(b)(3) of the Act.

## **IV. CONCLUSIONS**

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

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find, that Paragon Professional Services, LLC is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

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<sup>2</sup> In *Cemex*, the Board held that an employer violates Section 8(a)(5) and (1) by refusing to recognize, upon request, a union that has been designated as Section 9(a) representative by the majority of employees in an appropriate unit unless the employer promptly files a petition pursuant to Section 9(c)(1)(B) of the Act (an RM petition) to test the union's majority status or the appropriateness of the unit, assuming that the union has not already filed a petition pursuant to Section 9(c)(1)(A) (an RC petition). 372 NLRB No. 130 (2023).

3. The parties stipulated, and I find, that Asset Protection and Security Services, LP is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.
4. The parties stipulated, and I find, that Paragon Professional Services, LLC and its subcontractor Asset Protection and Security Services, LP (collectively, the Employers) are joint employers for the purposes of this proceeding.
5. The parties stipulated, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.
6. The parties stipulated, and I find, that the Union admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.
7. The parties stipulated, and I find, that the Union claims to represent the employees in the following unit:

All full-time and regular part-time detention officers, and full-time transportation officers, performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act, who are employed by the Employers at the United States Immigration and Customs Enforcement (ICE) El Paso Processing Center in El Paso, Texas; excluding all other employees, office clerical employees, professional employees, supervisors, managerial employees, and confidential employees, as defined by the Act.
8. Because the Union is a labor organization that represents non-guard employees, I find that even if there were no election bar to the instant petitions, it would be inappropriate under Section 9(b)(3) of the Act to certify the Union as the exclusive collective-bargaining representative of the Unit if it were to prevail at an election.
9. Based on the evidence presented at the hearing, I find that no question concerning representation can be raised because an election bar under Section 9(c)(3) of the Act was in effect when the instant petitions were filed and remains in effect.

**V. ORDER**

**IT IS HEREBY ORDERED** that the instant petitions are dismissed under Section 9(c)(3) of the Act, as the instant petitions seek an election in the preceding twelve-month period of a valid election held.

## **VI. RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated at Phoenix, Arizona this 17<sup>th</sup> day of July 2025.

/s/ **Cornele A. Overstreet**

Cornele A. Overstreet  
Regional Director