UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 06

UPMC WASHINGTON

Employer

And

GAVIN MCNALLY, AN INDIVIDUAL

Petitioner

Case 06-RD-374370

And

SEIU HEALTHCARE PENNSYLVANIA

Union

DECISION AND ORDER

On October 1, 2025, Gavin McNally (Petitioner) filed the Petition in this matter under Section 9(c) of the National Labor Relations Act (the Act), seeking an election to decertify SEIU Healthcare Pennsylvania (Union) as the exclusive bargaining representative of the following group of employees (the Unit) currently represented by the Union:

> Included: All full-time and regular part-time services and maintenance employees of The Washington Hospital, including: E.K.G technician, housekeeper, project worker, transport services aide, carpenter, control engineer, electrician, general maintenance worker, HVAC engineer, junior control engineer, plumber (registered master), utility worker- maintenance, wallcover/painter, lead carpenter, lead control engineer, lead electrician, lead HVAC engineer, lead plumber, lead utility worker, storeroom clerk, coder I, coder II, health information technician I, health information technician II, health information technician QA liaison, assistant cook, cashier, cook, dietary aide, dining assistant, meat cutter- inventory control, care partner, certified central services technician, certified surgical technologist, non-certified central services technician, non-certified surgical technologist, unit secretary, rehabilitation attendant I, physical therapy assistant, anesthesia aide, activities technicians -nursing, baker- dietary, behavioral health orderly, central supply nursing assistant, certified nurse aide – transitional care, certified OR tech 10-hour, certified respiratory therapy tech- respiratory care, chef- nutritional services, clerk – admissions, clerk – as detailed, clerk – chart assembly -medical records, clerk – correspondence, clerk – discharges -medical records, clerk -filing, clerk insurance & physician copies – medical records, clerk – medical staff activities – medical records, clerk – outpatient records, clerk – receptionist, coder, coder apprentice, coder – 10 hour, cook – hospitality shop, counter attendant – hospitality shop, curtain room worker – housekeeping, cysto orderly – nursing, delivery clerk – laundry, delivery clerk –

pharmacy, diener – laboratory, diet clerk, discharge/chart assembly clerk, EEG technician -respiratory care/sleep center, EKG technician 10-hour, glassware washer – laboratory, housekeeper/escort- transitional care, house orderly -nursing, HVAC trainee, kitchen aides- hospitality shop, laundry aide, laundry mender, linen room clerk, meet cutter - relief- dietary, medical data analyst – audits – medical records, medical transcriptionist, medical transcriptionist 10-hour, microfilming clerk -medical records, night cook – dietary, non-certified OR Tech 10-hour, non-certified respiratory therapy tech – respiratory care, nursing assistant, nursing assistant – day surgery, occupational therapy aide – occupational therapy, occupational therapy tech – occupational therapy, OR prep aide, OR Prep orderly, painter – maintenance, physical therapy aide – physical therapy, physical therapy assistant 10-Hour, physical therapy escort aide – physical therapy, physical therapy orderly- physical therapy, plumb (journeyman), press operator- laundry, printer- purchasing, records completion clerk, rehabilitation attendant II, respiratory therapy assistant- respiratory care, soiled linen worker- laundry, special item cook – dietary, transcription QA clerk, unit clerk, unit secretary/EKG – day surgery, utility worker – laundry, washroom machine operator – laundry, and X-ray orderly.

Excluded: All other non-professional employees, temporary employees, management level employees, supervisors, first level supervisors, confidential employees and guards.

A hearing officer of the National Labor Relations Board (the Board) conducted a videoconference hearing on December 4, 2025, and March 3, 3026, during which the parties were given the opportunity to present evidence and to state their respective positions on the record. The Union presented witness testimony and documentary evidence. The Union and the Petitioner filed post-hearing briefs.[1] The issue in dispute is whether there is a contract bar precluding the Board from conducting an election. For the reasons set forth below, based on the record and relevant Board law, I find that processing of the decertification petition is precluded by a contract bar.

I. FACTS

A. Collective Bargaining History

The Union has represented the Unit in successive collective bargaining agreements since about 1973. The most recent agreement before the contract at issue in this proceeding was effective by its terms from February 1, 2022 to January 31, 2025, and was originally entered into by the Union and the former employer of the bargaining unit, "The Washington Hospital." The Washington Hospital became part of the UPMC medical system in 2024.

[1] The Employer did not file a post hearing brief.

B. The February 2025 Tentative Agreement (TA)

The parties engaged in about 15 bargaining sessions between about November 20, 2024, and February 6, 2025, for a successor agreement to the collective-bargaining agreement that was set to expire on January 31, 2025.

On February 6, 2025, the parties entered into a tentative agreement (TA). The tentative agreement consisted of two documents. The documents are initialed on each page by party representatives and signed and dated at the end. The first document is dated February 4, 2025, at the top and signed by the parties on February 6, 2025 (the February 4 document). The second document is dated February 6, 2025, at the top and was signed by the parties on February 6, 2025 (the February 6 document).

The February 4 document specifically makes a ratification vote a condition precedent to the existence of an agreement. It states,

> “UPMC Washington and SEIU Pennsylvania, CTW, CLC tentatively agree to the following matters pending the conclusion of negotiations and ratification of a final collective bargaining agreement.”

Consequently, a ratification vote was conducted on February 10, 2025. The membership voted in favor of ratification and the Union notified the Employer in writing on February 10th that the agreement had been ratified. The Union’s communication to the Employer stated,

> “The workers of Washington Hospital voted to ratify the tentative agreement reached on 2/6/2025. We consider the terms and conditions of the contract implemented.”

On February 10th the Union also notified the Unit, including the Petitioner, by email, that the results of the vote had been in favor of ratification.

As noted above, the February TA is made up of two documents. Together the documents total more than 50 pages and track sections of the 2022-2025 collective-bargaining agreement memorializing agreements to keep, delete, or amend each section. The TA covers a wide swath of detailed agreements on terms and conditions of employment including, among other things, seniority, layoffs, premium pay, hours of work, leaves of absence, paid time off, a grievance procedure, discipline and discharge, safety and health, union security, seniority, wages, retirement benefits, and health insurance.

The TA does not specify the exact effective and expiration dates of the agreement, but in Article 27 it does specifically set the duration of the contract at three years, and, as noted, the February 4 document specifically provides that ratification is a condition precedent to an agreement. The TA also contains agreements that certain items were specifically contingent upon the timing and success of ratification. Those items include a ratification bonus for employees, and a union security clause proposal, that were both specifically contingent upon successful ratification by February 12, 2025. The TA also specifically provides that negotiated wage increases would be

implemented at the beginning of the first pay period after ratification, and that "Effective Upon Ratification" employees would be eligible to enroll in a "UPMC Saving Plan," and would be eligible to enroll in a "UPMC Cash Balance" plan "Effective on the 1st day of the month following ratification…"

The parties have also stipulated that, after the successful ratification vote, the collective bargaining agreement terms were implemented. Witness testimony specifically established that the implementation triggered by ratification included at least wage increases, bonuses, changes in pay and scheduling practices, and the processing of grievances.

C. The Final Contract Document

After the ratification vote and the implementation of the terms and conditions of employment set forth in the TA, the Union and the Employer began the process of compiling the agreements contained in the TA into a final formal contract document. This process began in May 2025 and concluded with the execution of the final document signed by the Union on November 7, 2025, and by the Employer on November 17, 2025. The effective and expiration dates of the contract are listed on the November 2025 contract document as February 1, 2025 to January 31, 2028.

The process of preparing the final document did include certain changes being made during the drafting process to correct errors, clarify the agreements in the TA, and to make certain changes to the details of some agreements contained in the TA. Some of the changes amounted to nothing more than updating or correcting terminology, such as changing references to "vacation" to PTO" or changing references to "forty hour employee" and "sixteen hour employee" to full time and part time employees. There were a few arguably substantive changes made to Article 5 involving seniority as it relates to job bidding and layoffs. One example is below:

Section 5.6 (a) TA page 11	Section 5.6 Final CBA Page 21
(a) Employees with the least classification seniority ranking in that job classification in the department involved shall be the first laid off, unless a more senior employee in the classification volunteers to accept the layoff, provided the senior ranking employees retained can do the available work.	Per Diem or Casual Employees in that job classification in the department involved shall be the first laid off, unless a bargaining unit member in that job classification volunteers, provided the remaining employees can do the available work. If there are still required layoffs, Regular part time employees with the least bargaining unit seniority ranking in that job classification in the department involved shall be the first laid off, unless a more senior employee in the classification volunteers to accept the layoff, provided the senior ranking employees retained can do the available work.

	If there are still required layoffs, Full time employees with the least classification seniority in that job classification in the department involved shall be the first to be laid off, unless a more senior employee in the classification volunteers to accept the layoff, provided the senior employees retained can do the available work.

Changes of a similar scale were also made in the opening paragraphs of Section 5.5, as well as in Sections 5.5(d), 5.5(e), 5.5(f), and 5.6(g). All other articles of the November 2025 final contract document substantively match the agreements reflected in the February 2025 TA.

II. POSITIONS OF THE PARTIES

The Union asserts that the petition should be dismissed because the Union and the Employer had entered into a current and valid collective bargaining agreement prior to the filing of the Petition. The Union contends that the parties had entered into an agreement sufficient as a contract bar as of the February 10, 2025, ratification (with effective dates of February 1, 2025 – January 31, 2028).

The Petitioner argues that the petition is timely and no contract bar exists because the long form of the contract was not fully executed by both parties until November 17, 2025, after the October 1, 2025, filing of the petition. The Petitioner argues that the TA does not constitute a formal agreement because the parties continued to adjust the language before the long form agreement was signed, and because the Union and the Employer deviated from their bargaining history where they have historically signed a long form contract after ratification. The Petitioner also argues that the ratification of the TA by the bargaining unit holds no weight on the status of the contract. Lastly, the Petitioner argues that the contract bar doctrine is not codified into statute and is born out of deference to agency decision-making that is no longer merited under *Loper Bright Enterprises v. Raimondo,* 603 U.S. 369 (2024).[2]

The Employer did not take a position on whether a contact bar exists but stipulated that there is a current contract effective from February 1, 2025 – January 31, 2028.

[2] In its brief the Petitioner also addressed a request made by the Union in its Statement of Position that the petition be dismissed because of certain errors on the face of the petition, namely the failure of the Petitioner to insert a number in Field #6, which requests the number of employees in the involved unit, and an incorrect/incomplete unit description in Field #5. The Board has a statutory obligation to resolve questions concerning representation and the Board has found that parties should not be permitted to "seize upon technical defects in pleadings to gain substantive victories." *Advance Pattern*, 80 NLRB at 35 (1948). Accordingly, the Union's request that the petition be dismissed because of alleged technical defects on the petition form is denied.

III. APPLICABLE LEGAL AUTHORITY

Under the Board's contract bar doctrine, a collective bargaining agreement may prevent the Board from processing a petition seeking to replace or remove a bargaining representative if the agreement conforms to certain requirements. *Hexton Furniture Company*, 111 NLRB 342, 344 (1955). The purpose of the contract bar doctrine is to provide stability in bargaining relationships by balancing the need to avoid excessive interruptions in a bargaining relationship with the right of employees, at reasonable times, to change or remove a bargaining representative. *Seton Medical Center*, 371 NLRB 87 (1995). The burden of proving that a contract bar exists is on the party asserting the doctrine. *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970).

The basic requirements that a contract must meet to serve as a bar have remained largely unchanged since 1958. The contract must; 1) be in writing, 2) contain the signatures of the parties to the agreement, 3) contain substantial terms and conditions of employment sufficient to stabilize the bargaining relationship, 4) clearly cover the employees involved in the petition; and 4) the bargaining unit must be one that is appropriate under the Act. *Appalachian Shale Products Co.,* 121 NLRB 1160 (1958). These standards are not to be applied in a formulaic manner but are discretionary. The decision maker must weigh the sometimes-conflicting interests of the stability of the collective-bargaining relationship and employee free choice. *Suffolk Banana Co., Inc.*, 328 NLRB No. 157 (1999), citing *Hershey Chocolate Corp.*, 121 NLRB 901, 905 (1958)

With specific regard to the written form of a contract, it is not necessary that the written agreement be in the form of a formal, finalized document. Informal documents may be sufficient so long as they contain substantial terms and conditions of employment and they are signed. *St. Mary's Hospital*, 317 NLRB 89 (1995). Additionally, as found in *St. Mary's*, minor changes to the details of a tentative agreement that are made in the process of the finalization of a formal document, do not necessarily indicate that the parties had not reached a meeting of the minds on substantial terms and conditions. "[T]he Board does not require that an agreement delineate completely every single one of its provisions in order to qualify as a bar." *USM Corp., 256 NLRB 996* (1981).

The contract bar doctrine also provides certain window periods during which rival petitions may be filed, and that are determined by the duration and expiration date of a contract. For this reason, it is important that employees and outside unions be able to review a contract and determine the appropriate window period during which a rival petition may be filed. *South Mountain Healthcare & Rehabilitation Center*, supra at 375 (citing *Cooper Tire & Rubber Co.,* 181 NLRB 509 (1970)). This requires that the duration of the contract and the adequacy of the contract as a bar must be ascertainable from the four corners of the contract itself without the need to resort to considering "parol" evidence regarding the parties' intentions. *Union Fish Co.*, 156 NLRB 187 (1966). See also *South Mountain Healthcare & Rehabilitation Center*, 344 NLRB 375 (2005); *Cind-R-Lite Co.*, 239 NLRB 1255 (1979). *Cooper Tire & Rubber Co.*, 181 NLRB 509 (1970) (deducing term from several provisions in document itself).

There are exceptions, however, to the Board's prohibition on the resort to parol evidence. Those exceptions include, *inter alia*, where the execution date is not clear from the face of the document, *Jackson Terrace Associates*, 346 NLRB 180, 181, fn. 4 (2005) (citing *Road & Rail Services*, 344 NLRB 388 (2005); *Cooper Tank & Welding Corp.,* 328 NLRB 759 (1999)), and where ratification is expressly a condition precedent by the terms of the agreement. With specific regard to ratification, parol evidence may be used to establish that the contract was in fact ratified. *Swift & Co*., 213 NLRB 49 (1974).

When ratification is a condition precedent to contractual validity by express provision in the contract itself, the contract is ineffectual as a bar unless it is ratified prior to the filing of a petition. *Appalachian Shale Products Co*., 121 NLRB 1160, 1162–1163 (1958); *International Paper Co*., 294 NLRB 1168, 1168 fn. 1 (1989); see also *Merico*, *Inc.*, 207 NLRB 101 (1973); *Aramark Sports & Entertainment Services*, 327 NLRB 47 (1998); *United Health Care Services*, 326 NLRB 1379 (1998). When ratification is required, a report to the employer that the contract was ratified is normally sufficient to bar a petition. *Swift & Co*., 213 NLRB 49 (1974).

IV. ANALYSIS

To decide the issues before me I must first analyze whether the TA reached by the parties on February 6, 2025, and ratified on February 10, 2025, was itself adequate to establish a contract bar. Next, I must analyze whether the changes made to the TA before the final, formal contract document was executed, establish that the Union and the Employer had not actually reached a meeting of the minds in February 2025 and, if not, at what point a meeting of the minds was reached.

A. Adequacy of the TA

It is abundantly clear from the record, and the text of the TA itself, that it is in writing; it contains signatures of the parties; it contains substantial terms and conditions of employment sufficient to stabilize the bargaining relationship; it covers the employees involved in the instant petition; and that the bargaining unit involved is not inappropriate under the Act. No party has disputed these facts.

The remaining issue then is the effective and expiration dates of the agreement. The TA does not specifically contain the effective and expiration dates of the agreement. It does, however, specifically set forth that the duration of the agreement will be three years and that ratification is a condition precedent to an agreement:

> "UPMC Washington and SEIU Pennsylvania, CTW, CLC tentatively agree to the following matters pending the conclusion of negotiations and ratification of a final collective bargaining agreement."

As noted earlier, the TA also specifically provides that ratification would be the trigger for implementation of certain agreed-upon terms and conditions of employment.

It is permissible to use multiple provisions of the agreement to deduce the intended effective dates. *Cooper Tire & Rubber Co.*, 181 NLRB 509 (1970). Further, with the duration of the contract being clear within the text of the TA, and ratification clearly a condition precedent to the existence of an agreement, parol evidence concerning the ratification of the agreement may be examined. *Swift & Co*., 213 NLRB 49 (1974). The TA clearly reflects that ratification is a condition precedent and the specific language triggering implementation of certain aspects of the agreement upon ratification establishes, within the four corners of the document itself, that the agreement was to become effective upon ratification. The examination of the parol evidence regarding ratification then establishes that the contract was ratified on February 10, 2025, and on that date the Union sent unequivocal notice of the ratification to the Employer and the Unit. The record thus establishes that the contract became effective by at least February 10, 2025, and was to be effective for a term of three years.

The decertification petition was filed on October 1, 2025, almost eight months after the ratification vote triggered the effectiveness of the contract; therefore, provided the TA indeed represented a meeting of the minds on substantial terms and conditions of employment; the petition is untimely.

B. Final Formal Document

The Petitioner asserts that modifications made to the contract before the formal document was signed in November 2025 indicate that the parties had not actually reached a final agreement in February 2025. The facts show otherwise.

As detailed above, the TA contains agreements on an exhaustive list of terms and conditions of employment including, but not limited to, seniority, layoffs, premium pay, hours of work, leaves of absence, paid time off, a grievance procedure, discipline and discharge, safety and health, union security, seniority, wages, retirement benefits, and health insurance.

A comparison of the TA to the November 2025 final document shows that revisions were made to the details of a few agreements reached in the TA, largely related to Article 5-Seniority. These changes to one article of the contract did not involve the wholesale renegotiation of any terms and conditions and fell far short of changing the fact that the TA, as I found above, clearly represented a comprehensive agreement over substantial terms and conditions of employment. See *St. Mary's Hospital*, 317 NLRB 89 (1995).

As to the effective and expiration dates of the agreement, in light of the terms of the TA indicating that the agreement would be effective upon ratification, the February 1, 2025, effective date listed on the final document does create some ambiguity as to the effective and expiration dates. While the final agreement seemed to settle this matter, it had not yet been signed or published when the instant petition was filed, possibly leaving the Petitioner with some ambiguity as to the actual final effective and expiration dates of the agreement. This ambiguity does not, however, render the contract ineffective as a bar as the ambiguity did not inure to the Petitioner's detriment. The Petition was filed approximately 8 months after either effective date and it would be untimely whether the contract expired three years later on

January 31, 2028, or February 9, 2028. See *Paragon Systems/Patronus Systems*, 371 NLRB No. 152 (2022).

Finally, regarding the Petitioner's reference to *Loper Bright Enterprises v. Raimondo*, *Loper Bright* is inapplicable here because it involves only a standard of review to be applied by the courts. I am bound by existing precedent.

V. CONCLUSIONS

Based on the above, I find that the February 2025 ratified TA covering the recognized bargaining unit bars further processing of the petition.

Accordingly, the petition shall be dismissed.

VI. ORDER

IT IS HEREBY ordered that the petition in this matter 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 April 16, 2026**, 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 April 16, 2026.**

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 off line 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: April 2, 2026

/s/ Tara Yoest

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