SSM Health Saint Louis University Hospital *and* Marissa Martinez and National Nurses Organizing Committee-National Nurses United, AFL-CIO. Case 14–RD–347354

August 4, 2026

DECISION ON REVIEW AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

On August 30, 2024, the Regional Director issued an order dismissing the extant decertification petition under the Board's contract-bar doctrine. In accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review, and the Union filed a timely brief in opposition.

The issue in this contract-bar case is whether the Regional Director erred in dismissing a decertification petition based on a collective-bargaining agreement lacking an effective date capable of being determined from the document's face.

The Employer's request for review is granted as it raises substantial issues warranting review with respect to whether the absence of an effective date on the face of the agreement deprives it of bar quality. Having carefully considered the entire record, including the Employer's request for review and the Union's opposition, we reverse the Regional Director's determination that the collective-bargaining agreement possessed bar quality and remand the case for the purpose of processing the petition.

I. FACTS

The Employer and the Union were parties to a collective-bargaining agreement effective December 13, 2019, through June 15, 2023. In May 2023, they began negotiating a successor agreement. On July 22, 2024,[1] they held their final bargaining session and signed a tentative agreement that day. Article 29 of the tentative agreement—a marked-up copy of the prior contract printed out and initialed by the parties—contains placeholders for the effective date and the expiration date:

> This Agreement shall be effective from [Insert date of ratification] ~~December 13, 2019~~ through [TBD one year after final wage increase] ~~June 15, 2023~~. Either party may serve written notice to the other party of its intent to amend the Agreement at least ninety (90) days prior to [insert expiration date] ~~June 15, 2023~~.

U. Exh. 1(formatting in original).

Relevant to determining the expiration date under that provision, Article 13 (Compensation) similarly provides another placeholder for the date on which the final wage increase will be granted:

> **Third Year Increase (2026)** ~~2021 June 15, 2022~~: Effective [insert first payroll period that begins on or after the second anniversary of ratification].

U. Exh. 1 (formatting in original).

The Union's membership ratified the tentative agreement on July 27, and the Union so informed the Employer that day. On July 31, employee Marissa Martinez filed a decertification petition. There is no evidence that the Union and the Employer conformed their agreement, such as by inserting the missing dates and initialing the insertion, before employee Martinez filed her decertification petition. On August 30, 2024, the Regional Director found that the July 22 version of the agreement barred further processing of the decertification petition and dismissed the petition.

II. ANALYSIS

Under the Board's contract-bar doctrine, a contract of definite duration will bar an election petition filed by any employee or rival union for a term of up to three years, provided that the contract is a written agreement that contains substantial terms and conditions of employment and has been signed by both parties prior to the petition. See *Appalachian Shale Products Co.*, 121 NLRB 1160, 1161-1162 (1958); *General Cable Corp.*, 139 NLRB 1123, 1125 (1962). "Both an effective date and an expiration date are material terms of a contract," and "[u]nless these dates are *apparent from the face of the contract, without resort to parol evidence*, the contract will not serve as a bar." *South Mountain Healthcare & Rehabilitation Center*, 344 NLRB 375, 375 (2005) (emphasis added and citation omitted). "The terms of the agreement *must be clear from its face* so that employees and outside unions *may look to it* to determine the appropriate time to file a representation petition." Id. (emphasis added); see also -*Cooper Tire & Rubber Co.*, 181 NLRB 509 (1970).[2] It is

[1] All dates are in 2024 unless noted otherwise.

[2] During the "contract bar" period, the Board will dismiss all representation petitions unless they are filed during the 30-day period that begins 90 days and ends 60 days before the agreement expires. See *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000, 1001 (1962). In other words, there is a 30-day period—customarily known as the "window period"—during which a petition may be properly filed while the agreement is still in effect. 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,

well settled that the party asserting that a contract is a bar to an election bears the burden of proving the facts establishing the applicability of the contract-bar doctrine. *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970).

Here, the effective date of the collective-bargaining agreement cannot be determined from the face of that document. In Article 29, the agreement includes placeholders for the effective and termination dates, stating "[i]nsert date of ratification" for the effective date and "TBD one year after final wage increase" for the termination date. The date of contract ratification is not stated anywhere in the agreement. To determine that date, an employee or rival union must look outside the four corners of the document to discover the date upon which the Union membership ratified the tentative agreement. Similarly, to determine the expiration date, an employee or rival union would need information not discernible from the agreement to learn the date upon which the Employer's first payroll period starts on or after the ratification's second anniversary (given that the first day of a weekly or biweekly pay period might not coincide with an anniversary date). Because the agreement's effective and termination dates – material terms of the agreement – are "not apparent from the face of the contract, without resort to parol evidence, the contract will not serve as a bar." *South Mountain Healthcare*, above at 375.

The cases relied upon by the Regional Director, the Union, and our dissenting colleague to justify their consideration of parol evidence here are distinguishable. In neither *Jackson Terrace* nor *Cooper Tank & Welding* did the Board consider parol evidence to supply an effective date or expiration date that could not be determined from the face of an agreement. *Jackson Terrace Associates*, 346 NLRB 180, 180 (2005) ("The agreement is a 2-page document containing an effective date and a termination date."); *Cooper Tank & Welding Corp.*, 328 NLRB 759, 759 (1999) (noting that it "is undisputed that the collective-bargaining agreement here was signed by all parties and contains an effective date"). Rather, each case involved a complete, signed collective-bargaining agreement with signatures that were undated. In each case, the Board considered extrinsic evidence regarding the date the parties signed the agreement to find that a subsequently filed election petition was untimely under the contract-bar doctrine. Our precedent, however, does not require the dates on which the parties signed an agreement to be apparent from the agreement's face; our precedent does require that the effective date and expiration date are. See *South Mountain Healthcare*, above at 375.

Swift & Co., 213 NLRB 49 (1974), is likewise distinguishable on the ground that the Board there did not permit a party to rely on extrinsic evidence to establish an effective date or expiration date incapable of being determined from the face of an agreement. In that case, the agreement provided that it was to be "effective from September 1, 1973 until September 1, 1976." Id. at 49. The agreement made ratification a condition precedent. After the agreement was signed and ratified, a rival union filed an election petition. The rival union argued that the agreement was not a bar because the ratification process had been improper. In rejecting that argument, the Board found no apparent defect in the ratification process and held that the employer was entitled to rely on the union's statement that ratification had occurred. No such facts are presented here.

Merico, Inc., 207 NLRB 101 (1973), cited by our dissenting colleague, is likewise not on point. In that case, the Board held that a tentative collective-bargaining agreement did not bar a rival union's election petition because the tentative agreement made ratification a condition precedent and it had not been ratified before the rival petition was filed. The tentative agreement there clearly provided that it was to be "retroactive to January 1, 1973." Id. at 101. Nowhere did the Board did suggest that a collective-bargaining agreement can have bar quality even if its effective date is not apparent on the face of the agreement.

In sum, this case is governed by the Board's established rule that, to have bar quality, the effective and expiration dates of an agreement must be clear from the face of the document, without resort to parol evidence, so that employees and rival unions can determine the appropriate time for filing a representation petition. Contrary to the dissent's suggestion, it is not an onerous task for parties to insert the actual effective and expiration dates into their agreement. By contrast, our dissenting colleague's view that the Board should forego that requirement *would* impose an onerous burden on employees. Under his view, disaffected employees seeking to unseat an incumbent union they no longer support would have to go hunting for nonpublic information necessary to calculate the open window for timely filing an election petition.[3] See

no timely petition may be filed. See *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1000 (1958). 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. See *Trinity Lutheran Hospital*, 218 NLRB 199 (1975). If the window period is to serve its intended purpose, employees and rival unions must be able to readily ascertain the date on which the window opens.

[3] This would include individuals hired long after ratification occurred and employees who are not full members of a union, who lack voting rights in a contract-ratification election, and who likely would not be privy to a union's internal ratification date.

Mountaire Farms, Inc., 370 NLRB No. 110, slip op. at 1 (2021) ("If the window period is to serve its intended purpose, employees must be able to *readily ascertain* the date on which the window opens.") (emphasis added). In our view, making it more difficult for employees to exercise their free choice to decide whether or not to be represented —a fundamental right protected by the Act—is more concerning than requiring parties to include the actual effective and expiration dates in their agreements in order for those agreements to serve as contract bars.[4]

In the circumstances of this case, we find that the Union has failed to satisfy its burden of proving that a bar-quality collective-bargaining agreement was in place at the time the decertification petition was filed and, as explained, that the precedent relied on by the Regional Director and the Union in support of the contrary conclusion is distinguishable. We therefore find that the Regional Director erred in dismissing the decertification petition under the contract-bar doctrine.

ORDER

The Regional Director's dismissal of the petition is reversed, and the case is remanded to the Regional Director for further action consistent with this Decision.

Dated, Washington, D.C. August 4, 2026

James R. Murphy, Chairman

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER PROUTY, dissenting.

I would deny review, as the Regional Director correctly dismissed the decertification petition based on her finding that it was barred by the collective-bargaining agreement between the Employer and the Union. My colleagues err in instead finding that the agreement is not a bar based on their view that its effective and expiration dates cannot be determined without parol evidence. I disagree. The agreement expressly states that the contract is effective on the date of ratification and continues through the date one year after the final wage increase, which, by the terms of the agreement, is the first payroll period on or after the second anniversary of ratification. Thus, the effective and expiration date can be determined on the face of this agreement: the effective date is the date of ratification and the expiration date is a date deducible from the date of ratification. Moreover, these dates can be determined without resort to parol evidence, i.e., without "evidence of earlier or contemporaneous agreements that might add to, vary, or contradict the writing."[1] Thus, the agreement should serve as a contract bar to the petition filed in this case as the agreement was ratified, signed, and contained all material terms, and the petition was not filed until after the date of ratification, which, by the terms of the agreement, made the contract effective as of that date.

My colleagues misconceive the point of our contract bar rules by contending that the failure of the agreement to divine in advance and state in the agreement the precise date on which ratification would occur means this contract is not of bar quality. In the real world, parties often reach agreements that are subject to ratification and when they do they set forth that the agreement will be effective upon ratification. That is a complete agreement and a contract bar upon ratification. For our contract bar rule to be interpreted more onerously to require that, after the ratification, the parties must return to the agreement and add in the date on which ratification occurred, and that until they do the contract does not serve as a contract bar, is inappropriate. Similarly, my colleagues overstate the burden of determining the ratification date, and thus the effective (and expiration) date of the agreement.

The facts amply demonstrate that the parties' agreement contained the requisite terms and conditions to serve as a bar. An employee or third party union seeking to know when the window is for filing a petition can determine from the face of the contract the information necessary to determine when the contract went into effect and when it is expiring. That this actor would need to consult another source or have other knowledge to determine when the ratification occurred does not infringe on our contract bar rules. I acknowledge that the Board's contract bar rules prohibit the use of parol evidence to determine, for example, which of several potential effective dates in a contract governs the agreement.[2] However, evidence relating

[4] Again, the requirement that the actual effective and expiration dates be included in collective-bargaining agreements does not interfere with parties' ability to reach agreement on employees' terms and conditions of employment. That requirement only affects whether or not that contract can prevent employees—for as long as three years—from exercising their statutory right to choose whether to be represented by a different union or not to be represented at all.

[1] Black's Law Dictionary (12th ed. 2024), Garner, Editor in Chief (parol-evidence rule).

[2] This was the obstacle to a contract bar presented in *South Mountain Healthcare & Rehabilitation Center*, 344 NLRB 375, 375 (2005). There, the contract provided for "at least" four possible effective dates and the conflict among these dates in the contract was the issue that precluded a contract bar. My colleagues quote the case out of context and overread

to the date the contract actually was ratified is *not* a matter of contract interpretation, and therefore does not implicate that prohibition. Indeed, Board precedent does not preclude the application of extrinsic evidence to determine when ratification took place in order to determine whether an agreement was in effect at the time the petition was filed. *Swift & Co.*, 213 NLRB 49, 49 (1974); see also *Jackson Terrace Associates*, 346 NLRB 180, 181 (2005) ("Where . . . the execution date is not clear from the face of the document, the Board may look to evidence outside the document to ascertain the execution date."); *Merico, Inc.*, 207 NLRB 101, 101–102 (1973) (Board found that contract did not act as a bar because ratification was a condition precedent to the agreement and the unit did not, in fact, vote in favor of ratification).

The instant case is not meaningfully different. In this instance, in order to determine if the agreement was in effect when the petition was filed, which is a necessary (if not sufficient) requisite of any contract bar, the ratification date must be determined. Once the date of ratification is determined—and our precedents make clear that it is an appropriate inquiry and consistent with contract bar rules—then that ratification date also conclusively and unambiguously provides the effective date of this agreement and enables ascertainment of the expiration date as well. That's a contract bar quality agreement. I simply do not agree that there is any law or logic to the majority's view that an employee or third party wishing to file a rival petition may be required to consult the ratification date of an existing collective-bargaining agreement to determine whether their petition may be timely, but that asking them to recognize that the agreement's ratification and effective dates are the same is verboten. In finding otherwise, my colleagues both destabilize the bargaining relationship and deny unit employees the full benefit of their choice. Accordingly, I dissent.

Dated, Washington, D.C. August 4, 2026

David M. Prouty, Member

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it to justify their conclusion that a clear statement in a contract that the contract is effective upon ratification is inadequate to create a bar-worthy contract. That was not the issue in *South Mountain Healthcare*.