Republic National Distributing Company LLC *and* Steven Washburn and Teamsters Local No. 988. Case 16–RD–327720

August 26, 2026

DECISION ON REVIEW AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

On November 3, 2023, the Regional Director issued an order dismissing the extant decertification petition under the Board's contract-bar doctrine. In accordance with Section 102.71(a) of the National Labor Relations Board's Rules and Regulations, on December 1, 2023, Steven Washburn (the Petitioner) filed a timely request for review,[1] contending that the Regional Director erred in dismissing the petition. Neither the Union nor the Employer filed a brief in opposition.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. The Petitioner's request for review is granted as it raises substantial issues warranting review. Having carefully considered the entire record, including the request for review, we find that the collective-bargaining agreement lacked bar quality at the time the petition was filed because, at that time, the agreement's "Term of Agreement" clause had a blank placeholder for its effective date. Accordingly, we reverse the Regional Director's decision in this case and remand the case for the purpose of processing the petition.

I. FACTS

On October 11, 2022, Teamsters Local Union No. 988 (the Union) was certified as the collective-bargaining representative of a unit of drivers and drivers-helpers employed by Republic National Distributing Company LLC (the Employer). The parties began negotiating a collective-bargaining agreement soon after the Union was certified, and they held their final bargaining session on September 5, 2023.[2] After the final bargaining session, the Employer's counsel, Nicole Buffalano, sent an email thanking everyone for their efforts at the bargaining table. The email included an attachment titled "RNDC Response UNION RESPONSE RNDC ECONOMIC PROPOSAL 9.5.23—Summary 10 pm CT.docx." In brief, this document contained a bargaining proposal submitted by the Union earlier in the evening, with blue track changes indicating how the parties had agreed to resolve each outstanding element of the Union's proposal. For example, the document includes blue text indicating that the parties agreed to set unique wage rates for named unit members who, at the time of negotiation, were receiving a higher wage than the rates negotiated by the parties.[3] The document also stated as follows:

> This Summary, Economic Proposals, and the TA's reached by the Parties are the full and complete agreement between RNDC and Teamsters Local 988. The issues addressed in this Summary, Economic Proposals, and the TAs shall be included in the complete and final collective bargaining agreement between the Parties, subject to ratification by the bargaining unit. This Agreement will remain open until Sunday, September 24 at 5 p.m. CT. If it is not ratified by the bargaining unit membership by that date, without a work stoppage, picketing, handbilling or other concerted activity, any or all provisions will be withdrawn.

The following day, Buffalano emailed the parties to let them know she was working on a full draft of the collective-bargaining agreement. On Monday, September 11, one of the Union Representatives (Ricardo Hidalgo) emailed Buffalano to ask if the Employer had "an ETA for the final version on the tentative agreement," explaining that the Union was attempting to ratify the agreement that Saturday. Later that day, Buffalano sent Hidalgo the provisions of the draft that addressed retirement benefits, although she stated that she was still in the process of reviewing those provisions, and that there might be "small changes" later. Then, on September 13, Buffalano sent a "full draft" of the agreement to Hidalgo, explaining that she "just sent [the draft] to our proofreading department" and that she would "review it once more before the end of the week," but that it "should be good to use for ratification." Both Buffalano's and Hidalgo's emails included signature lines.

The draft agreement sent by Buffalano is titled "Houston Drivers and Helpers CBA (Draft)," and it is dated September 13, 2023. Article 28, Term of Agreement, states that "[t]his agreement was ratified by a vote of the bargaining unit employees on ________. This Agreement shall become effective on __________ and shall remain in effect until August 31, 2028." Below Article 28, the draft states "IN WITNESS THEREOF, the parties have executed this Agreement on this ___ day of ____, 2023." The signature lines are blank.

[1] The Petitioner requested, and was granted, an extension of time in which to file the request for review.

[2] All subsequent dates 2023 unless otherwise indicated.

[3] The unique wage rates were subsequently memorialized in the parties' Memorandum of Understanding mentioned below.

On September 16, a union representative notified Buffalano that the unit had ratified the agreement, and requested a call to discuss the "next steps/transition." Buffalano replied that day, agreeing to call and saying that she would "work on the MOU [setting unique wage rates for certain unit members] today as well." On September 18, one of the Employer's labor relations representatives, Anne Zick, sent an email, entitled "HOUSTON CBA (DRAFT) and List of Drivers and Helpers," to another one of the Employer's employees, presumably for payroll purposes. The email stated "[p]er our conversation, I've attached the draft Houston CBA (this is not the final version, but the wages are final in this version) and a copy of the list of Houston drivers and helpers covered by this CBA." The email explains the payroll changes that will soon go into effect due to the collective-bargaining agreement, including that "effective 9/17/23, the Helpers hourly rate is $18.50 (as denoted in this CBA)."

On October 12, the Petitioner filed a petition seeking to decertify the Union. Four days after the petition was filed, on October 16, the parties signed the final version of the collective-bargaining agreement. This final version of the agreement is virtually identical to the September 13 draft version used for ratification, but it revises the blank placeholder in Article 28 to state that the Agreement was ratified by the unit on September 16,[4] 2023, and that the Agreement "shall become effective on September 17, 2023, except as provided otherwise herein, and shall remain in effect until August 31, 2028." The Agreement further states that it was executed on "this 16th day of October, 2023," and the Agreement is signed by the party representatives. A Memorandum of Understanding, setting the wages rates for certain named unit members as agreed to by the parties during the final bargaining session, is appended to the end of the Agreement. On November 3, 2023, the Regional Director found that the agreement effective September 17, 2023, served as a contract bar and dismissed the decertification 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 3 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 f*rom the face of the contract, without resort to parol evidence*, the contract will not serve as a bar." See *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).[5] It is 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).

In dismissing the instant decertification petition, the Regional Director found that the Employer and Union had signed the contract prior to the date the decertification petition was filed by exchanging an offer and acceptance via signed emails on September 13. See *Georgia Purchasing, Inc.*, 230 NLRB 1174, 1174 (1977) (finding a contract bar where the union accepted the contract via a signed telegram). The Regional Director further found that the agreement contained substantial terms and conditions of employment at this time, finding that the parties' Memorandum of Understanding constituted only a "minor deviation" from the preceding drafts and observing that the Employer had already implemented the substantial terms and conditions of the contract on September 17, almost a month before the decertification petition was filed. See *St. Mary's Hospital*, 317 NLRB 89, 90 (1995).

The Regional Director did not, however, address whether the September 13 version of the collective-bargaining agreement—which was the only version of the agreement in existence at the time the petition was filed, and the only version that had been circulated to the unit employees for ratification—contained a clear effective

[4] Although the October 16, 2023 final agreement states that ratification occurred on September 16, the Regional Director found in his dismissal letter that ratification actually occurred on September 15. The Union's tally of ballots of the ratification vote is dated September 15.

[5] 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, 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.

date, which is a separate requirement under the contract-bar doctrine. It is undisputed that the face of the September 13 version of the agreement contained only a blank placeholder for the effective date of the agreement in the "Terms of the Agreement" section. As a result, a material term of the contract could not be determined from the face of the agreement, without resort to parol evidence, and individual employees or interested third parties could not discern the effective date of the agreement for purposes of determining the appropriate timing for filing a petition, such as the decertification petition at issue here. See *South Mountain Healthcare & Rehabilitation Center*, above at 375; see also *Cooper Tire & Rubber Co.*, above at 509 ("[I]n order for a contract to constitute a bar, it must be sufficient on its face, without having to resort to parol evidence and that the term of the agreement, as stated in the agreement, should be such that employees and outside unions may determine the appropriate time for filing representation petitions."). In the circumstances here, the Union bears the burden of proving the applicability of the contract-bar doctrine and, in the absence of a contract with a clear effective date on the face of the agreement, we find that the Union failed to prove that a contract of bar quality was in place at the time the decertification petition was filed on October 12.[6] We therefore find that the Regional Director erred in dismissing the decertification petition under the contract-bar doctrine.[7]

ORDER

The Regional Director's administrative 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 26, 2026

James R. Murphy, Chairman

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER PROUTY, dissenting. My colleagues err in finding no contract bar. By September 13, 2023, the parties had a signed agreement containing all the material and substantial terms and conditions sufficient to establish a contract bar—including a clear effective date—that satisfies *Appalachian Shale Products Co.*, 121 NLRB 1160, 1163–1164 (1958). Because the unit employees ratified this agreement on September 15, well before the petition was filed, it stands as a bar to this election.

The majority brushes this aside simply because, as of the date the petition was filed, the "Term of Agreement" clause in the contract contained a blank space for the effective date. The majority's reasoning misses the forest for the trees. Article 14 (Wages) explicitly ties implementation to the "First Sunday after ratification." It is undisputed that the Union ratified the contract on Friday, September 15. Accordingly, the effective date was—indisputably—no later than Sunday, September 17.[1] This date certain was apparent from the four corners of the agreement, allowing employees to ascertain the effective

[6] Our dissenting colleague would rely upon a wage table in Article 14 (Wages) to find that the effective date is readily apparent on the face of the September 13 instrument. No party made this argument, and for good reason. The wage table merely provides that the first wage increase shall be implemented "First Sunday after ratification." That provision does not speak at all to the non-economic terms, which the parties might have intended to take effect immediately upon ratification but which intent the instrument leaves indeterminable. More importantly, the ratification date does not appear anywhere in the instrument. Hence, a reader would need to look beyond the September 13 document to learn when the Union's membership ratified the agreement before she could ascertain the agreement's effective period and determine when a representation petition could be timely filed. Our precedent makes clear that the effective expiration dates must be clear on the face of the agreement without resort to extrinsic evidence. *SSM Health Saint Louis University Hospital*, 375 NLRB No. 26, slip op. at 1–2 (2026) (finding that agreement lacked bar-quality where it provided that it "shall be effective from [Insert date of ratification]"); see also *South Mountain Healthcare & Rehabilitation Center*, 344 NLRB at 376 fn. 3 ("It is well established that the effective and/or expiration date(s) should be apparent from the face of the contract, without resorting to extrinsic evidence.") (citing *Jet-Pak Corp.*, 231 NLRB 552, 552–553 (1977)). *Cooper Tire & Rubber Co*., 181 NLRB 509 (1970), cited by the dissent, is distinguishable as there, unlike here, the wages section of the agreement provided specific dates on which wage increases would occur and the Board found that a reader could "reasonably construe" the agreement as providing for wage increases on the anniversary of the contract each year. Id. Here, Article 14 of the agreement ("Wages") only states that wage increases would be implemented on the "First Sunday after ratification."

[7] As noted earlier, on October 16, 4 days *after* employee Washburn filed his decertification petition, the Union and Employer replaced "This Agreement shall become effective on __________ and shall remain in effect until August 31, 2028" with "This Agreement shall become effective on September 17, 2023, except as provided otherwise herein, and shall remain in effect until August 31, 2028." On October 16, each party electronically signed the updated agreement. While this updated agreement possessed bar quality, it was not in place when the decertification petition was filed, the point in time when such bar quality agreements must be in place.

[1] I acknowledge that the Board's contract bar rules prohibit the use of parol evidence for substantive contract interpretation; for example, to determine which of several potential effective dates in a contract governs the agreement. See *South Mountain Healthcare & Rehabilitation Center* , 344 NLRB 375, 375 (2005). However, that situation bears no relationship to the current situation as evidence relating to the date the contract actually was ratified is not a matter of contract interpretation, and there-

date "from an examination of the document itself." *Cooper Tire & Rubber Co.*, 181 NLRB 509, 509 (1970) (effective and termination dates could be reasonably construed from the face of the contract where it stated that it "shall become effective ...., 1968 ... until ...., 1971," and provided for wage increases "effective as of September 1, 1968, 1969, and 1970").

My colleagues contend that there was no contract bar for 1 month after this contract was ratified and in effect, until the parties took the ministerial step of going back and filling in the calendar date upon which the contract had become effective 1 month prior. In the real world, parties often reach agreements that are subject to ratification and, as I have argued elsewhere, when they set forth that the agreement will be effective upon ratification, that creates a contract bar upon ratification (assuming all other requirements are met). See *SSM Health Saint Louis University Hospital*, supra, slip op. at 3–4 (Member Prouty, dissenting).[2]

Accordingly, I would deny review of the Regional Director's Order dismissing the petition.

Dated, Washington, D.C. August 26, 2026

David M. Prouty, Member

NATIONAL LABOR RELATIONS BOARD

fore 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). Once the ratification date is determined, then that ratification date also conclusively and unambiguously provides the effective date of the agreement. See *SSM Health Saint Louis University Hospital*, 375 NLRB No. 26, slip op. at 3–4 (2026) (Member Prouty, dissenting).

[2] My colleagues contend that here the contract establishes only that the wage provision is effective upon ratification and does not state that ratification is the effective date for the noneconomic provisions of the agreement. Based on this they speculate that the parties may have intended for the noneconomic provisions to have taken effect earlier (immediately upon ratification as opposed to the Sunday after ratification). My colleagues are straining. See *Cooper Tire & Rubber Co.*, supra (relying on wage provision effective date to find contract bar). My colleagues also chide me for making an argument that "[n]o party made." While this point might have force in some contexts, it has none here where no party filed an opposition to the Petitioner's request for review. I am interpreting the Board's contract bar rules and finding that the Regional Director did not err in dismissing the petition; we are not bound to adopt the Petitioner's arguments simply because there was no opposition filed.