

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**ANGELICA TEXTILE SERVICES, INC.<sup>1</sup>**

**Employer**

**and**

**EASTER MORRIS, AN INDIVIDUAL**

**Case No. 8-RD-2073**

**Petitioner**

**and**

**UNITE HERE<sup>2</sup>**

**Union**

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in these proceedings to the undersigned.<sup>3</sup>

**INTRODUCTION**

The Employer, a New York corporation operates various commercial laundries serving healthcare institutions through the United States, including a facility located in Lorain, Ohio, the sole facility involved. There are approximately 96 employees in the unit.<sup>4</sup>

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<sup>1</sup> The Employer's name appears as amended at the hearing.

<sup>2</sup> The Union's name appears as amended at the hearing.

<sup>3</sup> The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction. The labor organization involved claims to represent certain employees of the Employer. The Employer and the Union filed post-hearing briefs which have been dully considered. References to exhibits of the Employer and the Union shall be noted as Ex-\_\_\_ and UX-\_\_\_ respectively.

<sup>4</sup> The parties stipulated that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 8(b) of the Act: *All production employees, including custodians, employed by the Employer at its 1820 Iowa Avenue, Lorain, Ohio facility, but excluding all drivers, route sales/service representatives, mechanics, engineers, maintenance employees, office personnel, sales*

The threshold issue for determination is whether the instant decertification petition should be dismissed because of a contract bar.<sup>5</sup>

## **POSITION OF THE PARTIES**

The Union argues that emails between the parties on July 13 and 14, 2006 satisfied the Board's contract bar requirements and that the decertification petition should be dismissed. The Employer argues that the email at issue did not constitute a contract bar because on the date the decertification petition was filed, the parties had not signed the collective bargaining agreement or any other documents tying together their negotiations.<sup>6</sup>

## **DECISION SUMMARY**

I find that the decertification petition is barred by the Board's contract bar rules, and accordingly I shall dismiss the petition.

## **FACTS**

The Employer recognized the Union as the bargaining representative for its employees at the Lorain, Ohio facility in July 2005. Bargaining commenced in late-fall, early winter, 2005. Initially, negotiations were conducted at the local level, with approximately five meetings between December 2005 and late March 2006.<sup>7</sup>

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*representatives, customer representatives, supervisors, guards, managers, and professional employees as defined in the Act.*

<sup>5</sup> At the conclusion of the hearing, counsel for the Union and the Employer summarized their respective arguments relative to a secondary issue, the supervisory status of the Petitioner. At that time, the Union argued that in light of Oakwood HealthCare, Inc., 348 NLRB No. 37 (September 29, 2006) the Petitioner was a supervisor. The Employer argued at the hearing's conclusion and in its brief that the evidence failed to establish that the Petitioner possessed any indicia of supervisory authority including those defined by the Board in Oakwood relative to "assign", "responsibly direct" and "independent judgment". In its brief, the Union argued that the petition was contract barred, rendering a decision on the Petitioner's status unnecessary. In addition, the Union argued that it did not know until the day before the hearing that testimony would be taken on the Petitioner's status. It contends it did not have adequate notice nor an opportunity to present evidence on the issue and that documents were neither subpoenaed nor presented and no other employees testified concerning the Petitioner's status. Finally, the Union argues that the record was not adequate to determine the Petitioner's status. I agree that in light of my decision on the threshold issue, a finding concerning the Petitioner's supervisory status is unnecessary. However, on the basis of my review of the record and the Board's Oakwood and related decisions, I note that there is insufficient evidence on the record to establish that the Petitioner is a supervisor under Section 2(11) of the Act. See also Croft Metals, Inc., 348 NLRB No. 38 (September 29, 2006) and Golden Cress Health Care Center, 348 NLRB No. 39 (September 29, 2006).

<sup>6</sup> The record is replete with details regarding events in March 2007 concerning further communication between the Employer's Assistant General Counsel Carla Laszewski and certain union representatives. I conclude this testimony is immaterial given the finding that a contract bar was established by the July 2006 exchange of emails. In addition, in representation cases the Board limits its inquiry to the four corners of the document or documents alleged to bar an election and excludes consideration of extrinsic evidence. Waste Management of Maryland, 338 NLRB 1002 at 1003 (2003).

<sup>7</sup> At the time, the parties were attempting to negotiate seven initial contracts, including Lorain (the other facilities included: Ballstron Spa, New York; Columbiana, South Carolina; Durham, North Carolina; Holly Hill, Florida; Houston, Texas and Phoenix, Arizona). The record reveals that during local negotiations the Union bargaining

In the spring of 2006, the parties centralized their negotiations and Kurt Edelman Laundry Director for the Union assumed lead responsibility for negotiations involving the seven facilities, including the Lorain facility.<sup>8</sup> After being centralized, negotiations were conducted by telephone, email and sometimes in person. The record reveals a surge of email communications near the end of the negotiations.

An agreement over contract terms at the Lorain facility was reached sometime in May 2006. The terms included both agreements reached at local and centralized negotiations.<sup>9</sup> A ratification vote was held May 26, 2006 and shortly thereafter the parties began the process of drafting a formal contract.

On July 13, 2006, at 5:53 p.m. Laszewski sent Edelman an email entitled “Final versions of six of the new contract location (sic) CBAs.” (UX-1). In this electronic correspondence, Laszewski explains that the Employer attached “what we believe to be final versions” for the various contracts, including Lorain. Laszewski provided separate word documents representing each contract and advised Edelman that the contracts incorporated most of the changes from Edelman’s emails to her dated July 4 and July 13, 2006.<sup>10</sup> At the end of her July 13, 2006 5:53 p.m. email text, Laszewski typed her first name. The Lorain contract attached to this email was a complete collective bargaining agreement specifying effective dates between May 21, 2006 and February 10, 2009.<sup>11</sup>

On July 14, 2006, at 6:44 p.m., Edelman sent an email to Laszewski indicating that the final set of drafts were accepted.<sup>12</sup> (UX-2). Edelman concluded the email by typing “Thanks! Kurt.”<sup>13</sup>

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committee included Union representatives Dallas Sells (Ohio State Director for Chicago-Midwest Region), John Lacey (Service Representative) and Organizer Robert Roman as well as several employees. The Employer representatives during various local Lorain sessions included Laszewski, Employer’s Counsel, Thomas Bearden, David Domokos, Plant Manager and Richard Robbins, Operations Manager. Laszewski and Domokos attended all local sessions in Lorain.

<sup>8</sup> At the time Edelman took over as the Union’s lead negotiator he held the position Laundry Director for UNITE HERE. At the time of the hearing he held another position, President of Service Workers United, a local union established by UNITE HERE and SEIU for the purposes of organizing.

<sup>9</sup> The Union prepared a typed summary of the Lorain contract terms for use at the ratification vote. (UX-3)

<sup>10</sup> Edelman testified that some corrections still needed to be made to the Holly Hill, Florida contract, not at issue here. The Lorain contract is included as part of UX-1.

<sup>11</sup> During the hearing, Edelman testified that the Lorain agreement attached to Laszewski’s July 13, 2006 5:53 p.m. email accurately reflected the parties’ agreement.

<sup>12</sup> The email acknowledges one change was needed relative to the Holly Hill location which is not at issue. While there was an exchange of clarifying emails (EX-1), no change was made to the Lorain agreement.

<sup>13</sup> The email contains a reference that Edelman would forward the final sets of contracts to various Union representatives. There is testimony that the Lorain contract was forwarded to Dallas Sells to obtain his signature as a formality. Given my conclusion that a contract bar existed as of Edelman’s July 14, 2006 6:44 p.m. email accepting the Lorain contract, any testimony and documents (EX-3 and 4) relating to subsequent communications between Edelman and Service Representative John Lacey, as well as communications between Laszewski and Lacey, Sells and/or any other Union representatives which occurred after the July 14, 2006 6:44 p.m. email are not relevant.

## ANALYSIS

The Board has long held that in order to serve as a bar to an election an agreement must be signed by the parties prior to the filing of the petition and contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship. Appalachian Shale Products, 121 NLRB 1160 (1958). The agreement, however, need not be embodied in a formal document. Informal signed documents, such as a written proposal and acceptance, which nonetheless contain substantial terms and conditions of employment are sufficient. Seton Medical Center, 317 NLRB 87 (1995), Georgia Purchasing, 230 NLRB 1174 (1977), Appalachian Shale, supra at 1162.<sup>14</sup>

The Board does not require the parties to execute the same document in order to constitute a contract bar. Waste Management of Maryland, 338 NLRB 1002 (2003), Holiday Inn of Ft. Pierce, 225 NLRB 1092 (1976). The flexibility that the Board has written into its contract bar rules does not excuse the parties from the fundamental requirement that they signify their agreement by attaching their signatures to a document or documents that tie together their negotiations, by either spelling out the contract's specific terms or referencing other documents that include them. Waste Management, supra at 1003.

The Employer's argument that the typed first names of the respective negotiators, Laszewski and Edelman, on the bottom of the July 13 and 14, 2006 emails did not constitute signatures sufficient to bar the instant petition is misplaced. In Television Station WVTM, 250 NLRB 198 (1980), the Board found that the initialing of a contract was sufficient evidence of a contract bar. In addition the Board has concluded that an exchange of telegrams incorporating by reference the parties prior collective bargaining agreement was sufficient to constitute a bar to a decertification petition. Georgia Purchasing, supra at 1174.

In the instant case, the Employer's July 13, 2006 5:53 p.m. email attaching the final version of the Lorain collective bargaining agreement and the Union's July 14, 2006 6:44 p.m. email evidencing the Union's acceptance represent a complete bargaining agreement to which the parties have signified their agreement.<sup>15</sup>

Accordingly, based on the foregoing and the record as a whole, I find that the Employer and the Union executed a collective bargaining prior to the filing of the instant petition. As a result, the petition is barred by the Board's contract bar rules and I shall dismiss it.

## ORDER

**It is ordered** that the petition in this case be, and hereby is, dismissed.

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<sup>14</sup> The Board has also specified that to bar a petition, a contract must be for a fixed term. Pacific Coast Association of Pulp and Paper Manufacturers, 121 NLRB 990 (1958).

<sup>15</sup> I note that my conclusion with respect to the July 13 and 14, 2006 electronic communications is consistent with emerging practice throughout federal agencies, including the Electronic Signatures in Global and National Commerce Act, as codified in 15 U.S.C. 7001 *et. seq.* and also referred to as the E-Sign Act.

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, N.W., Washington, D.C. 20570-0001. If a party wishes to file a request for review electronically, guidance for E-filing can be found on the National Labor Relations Board web site at [www.nlr.gov](http://www.nlr.gov). On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed. This request must be received by the Board in Washington by May 10, 2007.

Dated at Cleveland, Ohio this 26<sup>th</sup> day of April 2007.

/s/ [Frederick J. Calatrello]

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Frederick J. Calatrello  
Regional Director  
National Labor Relations Board  
Region 8