

UNITED STATES OF AMERICA
Before the
NATIONAL LABOR RELATIONS BOARD
REGION 21

Law Enforcement Officers Security Unions LEOSU-CA, LEOS-PBA
Petitioner

and

Paragon Systems

Employer

Case No. 21-RC-262650

and

International Union, Security, Police &
Fire Professionals of America, (SPFPA) and its Local 3,
Intervenors

PETITIONER’S AMENDED OPPOSITION TO MOTION TO DISMISS

Petitioner Law Enforcement Officers Security Unions LEOSU-CA, LEOS-PBA, by its undersigned counsel, opposes the Intervenors’ Motion to Dismiss and asks the Region to dismiss the Motion. The Intervenors argue that the Petition is barred by a collective bargaining agreement and that the unit sought is inappropriate. The Intervenors are wrong on both issues. Simply stated, the current collective bargaining agreement does not cover the employees sought in the Petotion.

BARGAINING UNIT

The Petition seeks a bargaining unit of “All full time and regular part time, armed security officers employed by the Company, performing guard duties as defined by Section 9(b)(3) of the National Labor Relations Act as noted in 11D.” Section 11D of the Petition refers to the “Air Marine Operations Center (AMOC), Riverside Ca.” The Petition therefore is limited to employees working at AMOC.

The following facts are undisputed:

On November 7, 2014, SPFPA and Paragon executed a collective bargaining agreement to remain in effect between December 1, 2014 and November 30, 2017. That contract defined the bargaining unit as

all security officers employed by the Company in the counties of San Diego, San Bernardino, Riverside and Imperial, California, who are employed pursuant to a contract between the Company and the United States Department of Homeland Security, Federal Protective Services ("DHS/FPS") Contract, or its successor(s), excluding temporary personnel as defined in Section 1.4 of this Agreement, Irregular part-time personnel as defined in Section 1.6 of this Agreement, office clericals, managerial personnel, confidential personnel, supervisors as defined by the National Labor Relations Act, and all other personnel.

[Intervenors' Exhibit B at 3].

On August 27, 2017, as the 2014-2017 contract was about to expire and before the 2017-2021 contract was actually signed, the parties executed a Letter of Agreement which redefined the unit as

all security officers employed by the Company in the counties of San Diego, San Bernardino, Riverside and Imperial, California, who are employed pursuant to a contract between the Company and the United States Department of Homeland Security, or any sub-agency thereunder, including any successor contract covering the same facilities with employees performing the same or substantially similar functions. This shall include, but shall not be limited to, security officers employed by the Company and its successors at the United States Customs and Border Protection Air and Marine Operations Center; at the United States Ports of Entry; and at all other locations currently serviced by the Company under contract with the Department of Homeland Security and its sub-agencies.

[Intervenors' Amended Exhibit A at 36]. This Letter added AMOC employees to the bargaining unit for purposes of the 2014-2017 contract.

On November 14, 2017, SPFPA and Paragon executed the current agreement, to be effective from December 1, 2017 to November 30, 2021. The current collective bargaining agreement defines the bargaining unit as

all security officers employed by the Company in the counties of San Diego, San Bernardino, Riverside and Imperial, California, who are employed pursuant to Contract No. HSHQW9-13-D-00004 between the Company and the United States Department of Homeland Security, Federal Protective Services C1 DHS/FPS") Contract, and its successor(s), excluding temporary personnel as defined in Section 1.4 of this Agreement, Irregular part-time personnel as defined in Section 1.6 of this Agreement, office clericals, managerial personnel, confidential personnel, supervisors as defined by the National Labor Relations Act, and all other personnel.

[Intervenors' Exhibit A at 3]. This is the same bargaining unit described in the 2014-2017 contract, without the AMOC employees. The unit description does not include employees at AMOC.

It is significant that SPFPA Exhibit A does not include the August 2017 Letter of Agreement and the bargaining unit did not include the AMOC employees.

The next day, SPFPA submitted Amended Exhibit A, which shoehorned the August 2017 Letter of Agreement between the contract and a 2019 amendment to the contract. The 2017 Letter is not included in the Table of Contents and is not paginated. [SPFPA Amended Exhibit A at 3, 36].

It is clear that there are at least two versions of the 2017-2021 CBA, one with the August 2017 Letter and one without it. Section 17.1 of the 2017-2021 CBA states as follows:

This Agreement shall be effective as stated in the Preamble of this Agreement and it supersedes any and all prior agreements or understandings of the parties. It is expressly agreed and understood that the wage and fringe benefit rates agreed to herein are the product of concessions and compromises by the parties during the negotiations which resulted in the Agreement; that this Agreement contains and comprises the entire agreement and understanding between the Parties regarding wage and fringe benefits; and that this Agreement displaces any and all prior wage and fringe benefit obligations or requirements of the Company.

[SPFPA Exhibit A at 33; SPFPA Amended Exhibit A at 33]. SPFPA Exhibit A, not SPFPA Amended Exhibit A, is the correct current collective bargaining agreement.

The Petitioner does not dispute that the Letter of Agreement dated August 27, 2017 added "security officers employed by the Company and its successors at the United States Customs and Border Protection Air and Marine Operations Center Air Marine Operations Center (AMOC.)" to

the 2014-2017 bargaining unit. But the parties made and entered into a new collective bargaining agreement on November 15, 2017, which expressly nullified both the December 1, 2014-2017 collective bargaining agreement and the Letter of Agreement dated August 27, 2017 on which the Intervenors base their argument.

By nullifying the August 2017 Letter of Agreement, the parties clearly carved out the “security officers employed by the Company and its successors at the United States Customs and Border Protection Air and Marine Operations Center Air Marine Operations Center (AMOC).”

The Petition therefore seeks an election in an appropriate bargaining unit not covered by any collective bargaining agreement.

Respectfully submitted,

/s/ Jonathan Axelrod

Jonathan G. Axelrod (D C Bar No. 210245)

Beins Axelrod, P.C.

1717 K Street N.W. Suite 1120

Washington, DC 20006

telephone: (202) 328-7222

telecopier: (202) 328-7030

jaxelrod@beinsaxelrod.com

Counsel for the Petitioner

Dated July 14, 2020