

**A. W. Schlesinger Geriatric Center, Inc., Employer-Petitioner and Service Employees International Union Local No. 706, AFL-CIO, CLC. Case 23-UC-119**

30 September 1983

**DECISION ON REVIEW AND ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER**

On 29 March 1983 the Regional Director for Region 23 issued his Decision and Order in the above-entitled proceeding in which he clarified the Union's existing unit of service and maintenance employees at the Employer-Petitioner's facility in Beaumont, Texas, leaving in the unit nine maintenance employees sought to be excluded by the Employer-Petitioner as guards.<sup>1</sup> Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer-Petitioner filed a timely request for review of the Regional Director's decision urging that the Regional Director, in finding that the maintenance employees are not guards, departed from officially reported Board precedent. The Union filed opposition thereto.

On 2 June 1983 the National Labor Relations Board, by telegraphic order, granted the request for review with respect to the status of two of the nine maintenance employees (Harris Fontenot and Russell Perrodin), but denied the request for review in all other respects.<sup>2</sup>

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review and makes the following findings:

The Employer-Petitioner is a Texas nonprofit corporation engaged in the business of providing nursing services for geriatric patients. On 17 December 1982 the Union was certified as the bargaining representative of the Employer-Petitioner's service and maintenance employees.<sup>3</sup>

<sup>1</sup> The Regional Director clarified the unit to exclude the medical records clerks, not in issue herein.

<sup>2</sup> Chairman Dotson would have granted review as to all nine employees.

<sup>3</sup> The unit in which the Petitioner was certified as the collective-bargaining representative in Case 23-RC-4974 is described as follows:

**INCLUDED:** All service and maintenance employees including technical nurses aides, medication aides, X-ray aide, medical records clerks, physical therapists, dietary assistants, cooks, housekeeping, and laundry employees.

**EXCLUDED:** All other employees, technical employees, including occupational technician, occupational therapists, EKG/inhalation/X-ray technician, occupational therapist aide, licensed vocational nurses, guards, watchmen, and supervisors as defined in the Act.

The Regional Director, drawing an analogy to the duties of the nursery attendants in *Lion Country Safari*,<sup>4</sup> found the two maintenance employees in issue not to be guards as their duties "were directed toward preservation of safety during normal operations of the Employer's Geriatric Center."

For the reasons discussed below, we disagree with the Regional Director's conclusion as to these two employees.

Prior to January 1982, an independent company provided the Employer with uniform security guards at its facility. These guards were on duty from 3 p.m. to 7 a.m., 7 days a week, making hourly rounds of the facility and responding to calls from the nurses station. Occasionally, they assisted nurses in lifting very heavy patients.

In late January 1982, the Employer canceled this independent service because of economic considerations. The record reveals that the Employer subsequently hired Russell Perrodin and Roy Barker for evening and weekend duty (Barker was later replaced by Harris Fontenot) with the specific intent of meeting security needs at the facility. The record shows that Perrodin and Fontenot spend between 50 and 70 percent of their time on security functions. During their shifts they lock doors and gates, unlock the doors 15 minutes before the night-shift change, and stand by the doors to observe the shift change. Their responsibilities during the shift change are twofold: First, they are to determine which employees are carrying packages.<sup>5</sup> Secondly, they are responsible for assuring the safety of employees arriving for and leaving from work. The record shows that the women employees were somewhat fearful of making the night-shift change without some security persons present. Like the contract guards, Perrodin and Fontenot make hourly rounds of the Employer's facility, checking lights in the parking lot and other areas. They also continue to perform maintenance duties as required. The Employer has no other security force on the premises.

If Perrodin or Fontenot encounters an employee or other individual creating a disturbance or if there is a trespasser on the property, he has the authority to proceed on his own to ask that the disturbance cease or that the unauthorized person leave. They have, however, been instructed to contact a supervisor or law enforcement authorities first so as to avoid confrontation if possible. Harris Fontenot testified that on one occasion he was

<sup>4</sup> 246 NLRB 156 (1979).

<sup>5</sup> There is testimony in the record that these employees have authority to open packages but that they have not done so until certain legal aspects are checked out with the local police. They do note those employees who are carrying packages in or out of the facility.

called by a nurse when two individuals who were behaving suspiciously refused to leave. He had previously observed the individuals acting suspiciously and, this time, he notified the police who arrived just as he was returning to keep the trespassers under observation.

Based on the record as a whole, although the maintenance employees have no special training as guards and do not wear guard uniforms or carry firearms, we conclude that the two night and weekend maintenance employees are employed for security purposes in addition to their maintenance duties. In performing their security functions they enforce against employees and other persons rules to protect the safety of persons on the Employer's premises, keep unauthorized persons off the property, and protect the premises. The fact that they may report to supervisors, if present, or notify the police does not detract from their guard status. Rather, it is sufficient that they possess and exercise responsibility to observe and report infractions, as this is an essential step in the procedure for enforcement of the Geriatric Center's rules.<sup>6</sup> Like-

<sup>6</sup> *Wright Memorial Hospital*, 255 NLRB 1319 (1980).

wise, it is not determinative that this is not their only function.<sup>7</sup>

The Regional Director's reliance on *Lion Country Safari* is misplaced. There, the employer had other persons employed as rangers who performed guard functions, while the primary responsibility of the nursery attendants there in issue was the care of the animals in the Employer's preserve.<sup>8</sup> The duties of the two employees under consideration in this case clearly encompass the security functions detailed above.

Accordingly, as we find Perrodin and Fontenot are guards within the meaning of Section 9(b)(3) of the Act, we shall clarify the unit to exclude them.

#### ORDER

The unit of service and maintenance employees represented by Service Employees International Union, Local No. 706, AFL-CIO, CLC, at the A. W. Schlesinger Geriatric, Center, Inc., is clarified to exclude the night and weekend shift maintenance employees who perform the security duties described herein.

<sup>7</sup> *Id.*; see also *Watchmanitors, Inc.*, 128 NLRB 903 (1960); *Wackenhut Corp.*, 196 NLRB 278, 279 (1972).

<sup>8</sup> *Lion Country Safari, supra.*











