

Pony Express Courier Corp. and Joint Council of Teamsters No. 28 on behalf of Teamsters Locals 38, 117 and 378, affiliated with International Brotherhood of Teamsters, AFL-CIO, Petitioner. Case 19-RC-12627

January 13, 1993

ORDER DENYING REVIEW

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (pertinent portions are attached).¹ The request for review is denied as it raises no substantial issues warranting review.²

¹The only issue on which the Employer seeks review is whether the Regional Director erred in finding that the Employer's courier-guards were not guards within the meaning of Sec. 9(b)(3) of the Act.

²In denying review, the Board notes that the Court of Appeals for the Eighth Circuit recently affirmed the Board's finding that this Employer's courier-guards at another location (New Brighton, Minnesota) were not statutory guards under the Act. See *Pony Express Courier Corp. v. NLRB* (No. 92-1292, 8th Cir., Dec. 10, 1992), enfg. 306 NLRB No. 22 (Jan. 21, 1992) (not reported in Board volumes).

APPENDIX

DECISION AND DIRECTION OF ELECTION

³The Employer, a Delaware corporation with branch operations in several States, is engaged in providing "protective" transportation services of time-critical commodities and other items. Petitioner seeks a unit of courier-guards¹ employed out of the Employer's Seattle, Washington branch and its satellite offices in Everett and Olympia, Washington. The Employer contends that a question concerning representation does not exist because its courier-guards are guards within the meaning of Section 9(b)(3) of the Act whom Petitioner may not be certified to represent because it is a labor organization which admits to membership employees other than guards. The Employer agrees that should it be determined that courier-guards are not guards under Section 9(b)(3), then the unit is appropriate.

The Employer characterizes its service as the protective transportation of time-critical and other valuable commodities.² The Employer's Seattle branch area principal customers are the Federal Reserve Bank, commercial banks, savings and loans, and mortgage companies. Seventy to 75 percent of the Employer's business in the Seattle area is the transportation of checks for collection. It also transports a

¹Although Petitioner petitioned to represent "driver/couriers," the job title utilized by the Employer for the individuals sought is courier-guard.

²The Employer explained that it transports commodities not necessarily intrinsically valuable, but of extremely high value to its customers.

wide variety of additional items, including interoffice correspondence, accounting media, pharmaceuticals, blood, medical specimens, X-rays, and similar materials. The Employer does not hold itself out as a transporter of cash or negotiable securities, although a customer may occasionally include such materials without advising the Employer.

In general, the commodities transported require a definite pickup and delivery time because their value to the customer decreases should deadlines not be met. In the Everett and Seattle yellow pages telephone directories, the Employer lists itself under "Delivery Service." The Seattle listing notes the Employer offers overnight service nationwide and same-day service to many Washington cities, but makes no mention of offering guard or protective services.³

Courier-guards are responsible for the pickup, transportation, and delivery of customers' items. They wear distinctive uniforms, with a sleeve patch designating the Employer and the notation "courier guard." Employees also must wear a picture identification badge outside their uniform, with the employee's name, descriptive physical information, and the notation "courier guard."

Daily, courier-guards report to their terminals, where they are issued a route log, any necessary special instructions, keys to those customer facilities requiring key access,⁴ and vehicle keys. If certain stops so require, security access cards and codes also are issued. Prior to departing from the terminal, courier-guards pick up packages for delivery and inspect their vans. On completing their routes, courier-guards return to the terminal to drop off packages, keys, security cards, and paperwork.

The location at a customer's facility where items are delivered or picked up apparently is specified by the customer; courier-guards do not make this decision. During on-the-job route training, courier-guards are informed of all relevant procedures involving the route, including the location for delivery and pickup. Generally, delivery locations appear to be in areas accessible to the general public during ordinary business hours, for instance in a hallway, foyer, or public area, and not in a locked private office or vault. Approximately 10 percent of pickups and deliveries in the area are to lock boxes located outside a customer's premises. The commodities themselves generally are in sealed or locked containers.

According to the Employer, when making afterhour stops, courier-guards may be required to disarm and reactivate a customer's alarm system.⁵ Employee Northrop, the sole employee who testified, estimated that about 95 percent of his time was spent driving, and that he allowed himself about 2 minutes to perform each pickup or delivery.

Newly hired courier-guards undergo a formal training and orientation program. The program includes classroom instruc-

³Executive Vice President Naber testified that in direct solicitation of targeted customers by its sales force, the Employer represents itself as a carrier of valuable commodities offering a protective and time-critical service.

⁴According to Executive Vice President Naber, at least 50 percent of the Employer's customers require employer access to their premises during nonbusiness hours. For any given route, the number of calls a courier-guard must make outside regular business hours varies, and some courier-guards make few or none such calls.

⁵Employee Northrop testified that in 14 years he personally had never had to deactivate an alarm system, but he did not dispute that other courier-guards on different routes may have done so.

tion regarding all aspects of the job, viewing a videotape, and individual training with a dispatcher, supervisor, or operations manager. A portion of this training and orientation program is devoted to security matters and approximately one-half of the orientation video is devoted to this topic. Each new hire receives an employee handbook which devotes approximately 2 pages out of a total of 25 to "Security." In addition, courier-guards receive a doublesided document entitled "Security Instructions for Courier Guards," which must be acknowledged and dated by individual employees. Finally, new hires are provided on-the-job training by another courier-guard familiar with the route. The Employer conducts field audits to ascertain employee compliance with its operating, safety, and security policies. Included in the audit are the following security aspects: whether the courier-guard secures the vehicle at each stop; whether the customer facility keys are kept locked in the vehicle or in the personal custody of the courier-guard; and whether the courier-guard secures the customers' doors when entering and leaving. Employee Northrop testified he had two such audits in 14 years of employment with the Employer and its predecessors.⁶

Courier-guards are unarmed and forbidden by the Employer to carry weapons. Courier-guards are informed, and the Employer's written materials specifically state, that their "primary security functions are limited to 'deter, detect, and report,'" and that they are "neither expected nor authorized to use force against suspects except as absolutely necessary for self-defense." They are instructed to safeguard customers' property by such means as maintaining alertness; wearing their uniforms properly; keeping their vans locked when unattended; taking care with customers' keys; and securing customers' facilities: that is, in the case of key access stops, ascertaining that it is appropriate to enter the facility before attempting to do so, securing the facility while inside, refusing to admit others, and leaving the facility locked or otherwise secured as it was found.

If accosted, courier-guards are instructed not to take offensive action, but rather are to take "evasive" action, such as removing themselves and, if possible, the customer's property, from the situation. If threatened with physical harm, they are to surrender the customer's property. They are instructed that they may not permit unauthorized third parties to enter a customer's premises, but their means of discouraging such entry is limited to such defensive action as not unlocking a building door in the presence of suspicious individuals and locking building doors behind them as they enter a facility. If preventive security measures fail to deter theft, vandalism, or other illegal activity, courier-guards' duty is to observe the problem or loss and report it immediately to the police and a supervisor. They are not to apprehend perpetrators. Should courier-guards discover a customer's location to be unlocked, when it should have been locked, they are not to enter, but rather are to contact their supervisor or the police.

⁶Northrop did not specify when these audits occurred; under these circumstances, I believe it appropriate to assume they occurred under the present Employer's operations of the Company. Therefore, these two audits would have occurred within a period of approximately 10 years.

Prior to hiring courier-guard applicants, the Employer does a motor vehicle record check and a prior employer background check. Prior involvement in an incident involving moral turpitude is grounds for refusing to hire an applicant. The Employer does not routinely do a criminal record check of applicants. The interview and screening process takes a couple days and courier-guards may not commence work until this process, including the driving and past employment background checks, is completed. Courier-guards are not fingerprinted for the job. They are not required to obtain individual bonds, but are covered by a group bond carried by the Employer. The only license which courier-guards must hold for the job is a driver's license.

Analysis

In *Purolator Courier Corp.*, 300 NLRB 812 (1990), the Board considered whether unarmed couriers were statutory guards. The Board there stated that the issue was "whether the basic duties of the . . . courier-guards focus on the *protection* of customer property so as to make these employees classifiable as guards under Section 9(b)(3)." If the employees are not engaged "directly and substantially" in the protection of customer property, they are not guards under the Act.

In the instant case, the record establishes that the courier-guards are not engaged directly and substantially in the protection of customer property, but rather function essentially as delivery drivers. Although courier-guards receive some training and instruction regarding the safety of customer property, the protective measures they are directed to use include only such commonsense practices as locking their vans when unattended, turning in customer keys at shift's end, scanning an area for suspicious individuals prior to unlocking a secured area, and locking doors behind them as they enter and leave facilities. Moreover, courier-guards are neither trained nor authorized to use weapons or force. They are unarmed and not expected by the Employer to use any force to secure property in their possession or to protect the customers' premises. In fact, their directions, when faced with a perilous situation, are to "remove" themselves. Should they detect suspicious activity, they are instructed merely to call the police and/or a supervisor. Although afterhours access to customer facilities may require the use of customer keys, the pickup/delivery location typically is located in an area open to the public during normal business hours. While courier-guards wear uniforms and identification badges, this is not dispositive of statutory guard status, as the Board noted in *Purolator*, *supra*. In sum, the record establishes that courier-guards' job duties essentially are comprised of the pickup, transport, and delivery of customer property, ordinarily of no particular intrinsic value to the world at large. In fact, the Employer holds itself out to the public as a delivery service.

Although the facts here are not identical to those in *Purolator*, *supra*, the evidence is strikingly similar. Analyzing these facts in light of the *Purolator* framework, it cannot be concluded that the basic function of courier-guards here involves, directly and substantially, the protection of valuable property of the Employer's customers. At best, the security functions of courier-guards are incidental to the basic function of transporting property. Although some courier-guards may have afterhour access to customer premises, and thus

may be required to use keys for entry or to deactivate and reactivate customer security devices, the Board has made clear that such duties are merely one factor to consider in assessing the entire range of actual employee duties. *Purolator*, supra at 815 fn. 9. In view of the fact that such access to customer premises is not invariably required of courier-guards in the actual performance of their duties and is in any event only incidental to the basic pickup, transportation, and delivery functions of courier-guards, I find these factors insufficient to mandate a conclusion that courier-guards are guards within the meaning of Section 9(b)(3) of the Act.

Therefore, I conclude that courier-guards are not statutory guards. Accordingly, Petitioner is not barred under Section

9(b)(3) of the Act from being certified as the bargaining representative of these employees.

There are approximately 175 employees in the unit.⁷

⁷The supervisory status of the following individuals was stipulated to and is not at issue: District Manager Chris Christen; Branch Manager Rick Owens; Operations Manager Vince Martinez; Supervisors Lamont Rice, Zeb Campbell, and Pat Larkin. The parties further stipulated that lead courier-guards in Everett and Olympia and dispatchers in Seattle were supervisors, and accordingly excluded from the unit. Lead drivers in Seattle, if any, are by agreement of the parties, included in the unit.