Wolverine Dispatch, Inc. *and* International Union, United Plant Guard Workers of America (UPGWA), Petitioner. Case 7–RC–20312

July 17, 1996

DECISION AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

The National Labor Relations Board, by a three-member panel, has considered objections and determinative challenges regarding an election held May 26, 1994, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows that, of the approximately 34 eligible voters, 30 cast ballots, of which 15 were for and 11 were against the Petitioner, and 4 were challenged, a sufficient number to affect the outcome.

The Board has reviewed the record in light of the exceptions and briefs and, for the reasons set forth below, has decided to adopt the hearing officer's findings and recommendations only to the extent consistent with this decision, and finds that the election must be set aside and a new election held.

The Employer excepts, inter alia, to the hearing officer's recommendations to overrule Objection 4 and to sustain the challenges to the ballots of Wadsworth and Skiffington. Contrary to the hearing officer, we find that Objection 4 should be sustained, but we agree with the hearing officer's finding that Wadsworth and Skiffington are not guards. Thus, we find that Wadsworth and Skiffington are not eligible to vote in a rerun election in this guard unit.[1]

1. The Employer operates armored car and related services and has a facility containing a lobby, various offices, a lunchroom, a central control room, and a secured vault. Polling was scheduled to take place in the lunchroom from 6:30 to 9:30 a.m. and 3 to 4 p.m. Objection 4 concerns the 3 to 4 p.m. session and alleges that the ''[b]oard [sic] agent unlawfully closed the polls during a time period when the polls were scheduled to be open.'' The Employer argues that the number of employees possibly excluded from voting because of the unscheduled closing of the polls was sufficient to affect the election results.

The Union's observer, Nelson, failed to return to the polling area by the time the afternoon session was scheduled to begin. The Board agent nevertheless opened the polls at 3 p.m., as scheduled. Soon thereafter, however, the Board agent became concerned that some individuals were voting who he believed the union observer would have challenged. At about 3:15 p.m., the Board agent decided to telephone the Regional Office. He took the ballot box and, at his instruction, Wadsworth, the Employer's observer, took the eligible voter list, to Wadsworth's office, which had the nearest telephone. According to Wadsworth, from the polling area to her office is ''quite a distance . . . . Our lunchroom is almost on one corner of our building, and we had to walk down the hallway and down the next hallway to my office.'' Wadsworth further testified that the doorway to the lunchroom cannot be seen from the doorway of her office.

At Wadsworth's office, the Board agent called the Regional Office. Nelson then appeared at Wadsworth's office. The Board agent asked Nelson why he was late. Nelson stated that he was not late, as the polling session was scheduled to start at 3:30 p.m. The Board agent told Nelson that he was scheduled to have returned at 2:45 p.m.

Wadsworth, Nelson, and the Board agent then returned to the lunchroom and set up the ballot box again at about 3:20 p.m. Only one person, Streeter, voted thereafter. The Board agent closed the polls at 4 p.m., as scheduled.

In recommending overruling Objection 4, the hearing officer noted that the Board agent and Wadsworth left the polling area for only a few minutes and that only one person voted after voting resumed. Finding that the evidence failed to show that a single voter was disenfranchised by the Board agent's actions, the hearing officer concluded that the Board agent's actions did not warrant setting aside the election.

Contrary to the hearing officer, we find that the unscheduled mid-session closing of the polls warrants setting aside the election. The Board has held that it will set an election aside when the number of employees possibly disenfranchised due to polls being closed when scheduled to be open is sufficient to affect the election outcome.[2]

Here, the approximate number of eligible voters exceeded the number of ballots cast by four. Thus, apparently four eligible voters did not vote. During the unscheduled closing of the polls in the middle of the 3 to 4 p.m. polling session, the Board agent and the Employer's observer were out of view of the polling area. Although the polls were closed for only a few minutes,

[1] The bargaining unit agreed to by the parties is as follows:

All full-time and regular part-time employees performing guard duties as defined in Section 9(b)(3) of the Act employed by the Employer at and out of its facility located at 871 West River Center Drive, N.E., Comstock Park, Michigan; BUT EXCLUDING all couriers, office clerical employees, professional employees and supervisors as defined in the Act.

[2] See *Nyack Hospital*, 238 NLRB 257 (1978) (elections in two bargaining units set aside because the number of possibly disenfranchised employees was sufficient to have affected the elections' outcomes); *G.H.R. Foundry Division*, 123 NLRB 1707 (1959) (election set aside because large number of nonvoters could have affected election results).

it is possible that four eligible voters arrived at the polling area to vote during this hiatus, found no one present, and departed unnoticed by the Board agent or the observer. As the tally shows that the election was decided by a margin of four votes with determinative challenges, the number of employees possibly disenfranchised by the unscheduled closing of the polls could be sufficient to affect the election result.

In so finding, we reject the hearing officer's rationale that setting aside the election is not warranted because the evidence does not affirmatively demonstrate that any employees were disenfranchised. As the above-noted cases indicate, when election polls are not open at their scheduled times, the proper standard is whether the number of employees possibly disenfranchised thereby is sufficient to affect the election outcome, not whether that number of voters, or any voters at all, were *actually* disenfranchised.[3] As these cases indicate, this objective standard is necessary to preserve the integrity of the election process.

Moreover, the cases on which the hearing officer relied are distinguishable. In *Kirsch Drapery Hardware*, 299 NLRB 363 (1990), the Board held that the polls' opening 30 minutes late did not warrant setting aside the election, because no voters were disenfranchised by the delay; no party contended that any eligible voter did not vote; and, as only eight votes were cast, the unit was small enough to determine that all eligible employees had voted. The Board similarly held in *Celotex Corp.*, 266 NLRB 802 (1983), that the late opening of the polls did not warrant setting aside the election. There, unlike the objections in the present case, the employer's objections did not allege any possible disenfranchisement of employees and, in fact, the number of employees casting ballots exceeded the number of eligible voters.[4]

In this case, because we find that the number of employees possibly disenfranchised due to the unscheduled closing of the polls during the afternoon voting session was sufficient to affect the election result, we sustain Objection 4 and order that the election be set aside and a new one held.[5]

2. We turn to the hearing officer's finding, in sustaining the outstanding challenges to the ballots of Wadsworth and Skiffington, that they are not guards and thus are not eligible to vote in an election in this guard unit. We agree with the hearing officer.

Wadsworth and Skiffington are both classified as receptionists. Wadsworth's office, which is part of the reception area of the Employer's facility, is adjacent to the main lobby of the Employer's facility. Skiffington, although assigned a desk in another office, spends much of her time in Wadsworth's office. Wadsworth and Skiffington stagger their lunchbreaks so that one of them is always available in the reception area during business hours. Neither wears a uniform or carries weapons. Wadsworth is paid $7 to $8 an hour, while Skiffington is paid $5.50 an hour. Both Wadsworth and Skiffington report to Employer President Chris Armstrong.[6]

Wadsworth and Skiffington receive deliveries, provide applications to job applicants, and announce individuals who seek to meet with representatives of the Employer. Wadsworth also attends weekly management meetings to take notes. Skiffington does clerical computer entry, arranges for employees' uniforms, and handles employee identification cards, and new employee orientation. She also performs background checks of job applicants, including checking references, and reports the results to Regional Manager Dave Armstrong.

The crux of the Employer's argument that these employees are guards is that one of the receptionists' job duties is to admit or deny admission to individuals who wish to enter the locked front door of the Employer's facility. From Wadsworth's office, the receptionists can view the front entrance and lobby areas through thick glass windows. Personnel in the facility's control room can also view the front entrance area on a video monitor but cannot see the lobby area. When the doorbell by the front door is pressed, it signals both the reception area and the control room. During the hours that a receptionist is on duty, a receptionist responds to the signal. According to Chris Armstrong, the receptionist, using an intercom, asks the person seeking entry how she can help him or her. If the person seeking entry is a person whom the Employer does not desire to admit, the receptionist refuses entry. If the person states that he or she has an appointment or other legitimate business with the Employer, the receptionist confirms this and uses a remote control in Wadsworth's office to unlock the front door, which permits the person to enter the secured lobby.

A person who has entered through the front door into the lobby area can proceed no further into the facility unless someone unlocks the lobby door. Persons not employed or well known by the Employer generally are permitted to enter only with an escort, usually Dave or Chris Armstrong. Should a person in the lobby display a weapon, Wadsworth and Skiffington are instructed to set off an alarm in Wadsworth's office that alerts the sheriff's department.

[3] See fn. 2, above.

[4] See also *Jim Kraut Chevrolet*, 240 NLRB 460 (1979), in which the polls' late opening was held not to warrant setting aside the election. There was no evidence that any employee was disenfranchised, as the number of votes cast equaled the approximate number of eligible voters.

[5] Accordingly, Member Cohen finds it unnecessary to rule on Objection 3.

[6] The Employer's guard drivers and coin rollers report to Chris Armstrong through Craig Streeter, Dennis Cooper, and Matt Gregory.

Chris Armstrong testified that on occasion when the control room has been shorthanded, a receptionist has been asked to ''control the access [from the control room] for a short while.'' Control room personnel operate the locks on all the facility's exterior doors and some interior doors, as well as intercoms at each building entrance. They also check video monitors of each entrance and maintain radio contact with guards on their scheduled customer routes.

Section 9(b)(3) of the Act defines a guard as ''any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises.'' Based on the above facts, the hearing officer found, and we agree, that Wadsworth and Skiffington are not guards within the meaning of the Act. The hearing officer noted that while Wadsworth and Skiffington perform receptionist and clerical duties, including receiving deliveries, permitting access to the Employer's lobby area, and monitoring the front entry and lobby area, they do not perform significant guard duties or functions, nor do they wear uniforms, carry weapons, receive guard training, or enforce security rules against employees.[7] Neither do they make rounds or present themselves as guards. Moreover, as described above, they perform a number of other clerical functions, such as taking notes at meetings, doing clerical computer entry, and arranging for employees' uniforms. We therefore agree with the hearing officer that any ''guard-like'' duties Wadsworth and Skiffington perform are incidental to their basic clerical functions.

Our finding that receptionists Wadsworth and Skiffington are not guards is wholly consistent with Board precedent under which employees who perform some ''guard-like'' duties that are incidental to receptionist or clerical duties are not found to be guards under the Act. In *55 Liberty Owners Corp.*, 318 NLRB 308 (1995), the Board held that doorpersons and elevator operators in condominium buildings performing some similar functions to the receptionists here were not guards within the meaning of Section 9(b)(3). The employees monitored and regulated access into the building, denied entry to unauthorized persons, received deliveries, and observed and reported irregularities. Like the receptionists here, the doorpersons and elevator operators did not carry weapons, wear uniforms or badges, make rounds of the building, or have security training. The Board found that any guard-like job duties were incidental to the doorpersons' and elevator operators' primary function of providing courtesy oriented and receptionist-type services to building tenants.

It is significant that, in reaching this conclusion, the Board relied on a case[8] determining that a receptionist was not a guard, even though some of her functions were closer to traditional and well-settled guard duties than those of the doorpersons and elevator operators in *Liberty*. In *Ford*, the receptionist, who was stationed near the main entrance of the administration building at a manufacturing facility, communicated with all persons seeking admission, did not permit unauthorized employees to pass through the building lobby, checked in and issued passes to all vendors and visitors, required clearance passes for all incoming and outgoing packages, and reported violations of company security rules. The receptionist was an employee of the security department and under the same supervision as the plant guards, and a plant guard performed the receptionist's duties on shifts during which she was not present. The Board found these facts insufficient to establish that the receptionist was a guard.[9] Thus, our finding that the receptionists in the present case are not guards is squarely within Board precedent.

Contrary to the Employer, the Board's decision in *Republic Aviation Corp.*, 106 NLRB 91 (1953), fails to support its contention that the receptionists here are guards. The eight receptionists found to be guards in *Republic Aviation* served in the employer's police department, wore uniforms, and were supervised by a police lieutenant. The receptionists screened visitors at plant gates and entrances and checked deliveries at plant entrances. The receptionists cleared visitors by checking with the employer's police headquarters and prepared and issued passes to authorized visitors. The receptionists also checked employees taking sick leave or other leave. Additionally, the receptionists reported violations of rules and regulations for the protection of personnel and property.

While the receptionists found to be guards in *Republic Aviation* performed some functions similar to those performed by the receptionists in the present case, such

[7] Arguing that there is no evidence that its guard employees receive training, the Employer has excepted to the hearing officer's finding that the receptionists do not receive specialized training with the Employer's guard employees. We find it unnecessary to rely on the hearing officer's finding to the extent that it implies that the Employer's guard employees receive training.

[8] *Ford Motor Co.*, 116 NLRB 1995 (1956).

[9] Accord: *Hoffman Security*, 302 NLRB 922 (1991) (receptionists found not to be guards even though employed by security contractor that provided both security officers and receptionists to a hospital, where the receptionists, assigned to information desks, greeted visitors, provided information, observed and reported irregularities, at most locations distributed visitor passes or asked visitors to sign in, and at two locations monitored closed circuit televisions. The Board concluded that any guard-like duties of the receptionists were incidental to basic receptionist functions, citing with approval *Ford Motor Co.*, above); *Guards Union Local 79 (ICI Americas)*, 297 NLRB 1021 (1990) (receptionist/switchboard operator who worked in an ammunition plant administration building's lobby and was responsible for admitting visitors and employees was not a guard. Board noted that the receptionist/switchboard operator did not wear a uniform, carry a gun, or receive specialized training).

as regulating access to the employer's facilities and denying entry to unauthorized persons, those tasks were far less central to their chief job duties, which involved significant guard functions that went well beyond the incidental guard-like tasks performed by the receptionists in the present case. In addition, unlike the receptionists in the present case, the receptionists in *Republic Aviation* performed no clerical functions. Accordingly, we find *Republic Aviation* entirely distinguishable from the present case.[10]

We additionally find unpersuasive the Employer's claim that its receptionists are analogous to the coin room employees in *Brink's Inc.*, 272 NLRB 868 (1985). The Employer contends that the coin room employees, found to be guards, did not carry weapons and performed essentially clerical functions. As the coin room employees in that case performed their work in a vault, were responsible for receiving and dispatching valuables (i.e., large quantities of coins), were qualified to fire a pistols, and were authorized to use a pistol kept in the coin room to protect the property and persons, they are entirely distinguishable from the receptionists here. Moreover, in *Brink's* itself, the Board noted that the employer had *nonguard* employees who (like the receptionists here) took measures to restrict access to the employer's premises; despite sharing this common function with nonguard employees, it was the coin room employees' essential guard-type duties that demonstrated they were guards under the Act.[11]

We also find unavailing other factors that the Employer contends show that Wadsworth and Skiffington are guards. Receptionists' staggering their lunch periods to assure that someone is available in reception areas to receive visitors is commonplace in all types of business enterprises; Wadsworth and Skiffington's following of such a practice does not show them to be anything other than receptionists. Additionally, although only Wadsworth and Skiffington can observe persons in the lobby area of the Employer's facility, persons in this area cannot proceed into the interior of the Employer's facility unless they are permitted to pass through the locked lobby door. Moreover, prior to the receptionists' 9 a.m. starting time, control room personnel use remote controls to admit persons to the lobby from the front entrance, even though the receptionists are not present to observe persons who have gained access to the lobby and the control room does not monitor the lobby with video cameras, as it does building entrances. That Wadsworth and Skiffington are the only persons who can view job applicants completing application forms in a room set aside for this purpose by the lobby is similarly inconsequential. Additionally, the fact that Wadsworth and Skiffington are instructed to set off an alarm that alerts the sheriff's department if a person in the lobby displays a weapon does not show them to be guards. Some of the doorpersons found not to be guards in *Liberty*, above, were provided direct telephone lines or walkie-talkies with which to summon the police if an unauthorized person refused to leave or an emergency occurred. Indeed, the fact that Wadsworth and Skiffington are not instructed to take action against a person displaying a weapon, such as ordering the person to drop the weapon, strongly underscores that they are not guards.

Finally, the receptionists' occasional filling in for control room personnel is too sporadic and for too brief a duration to support a finding that the receptionists protect the property of the Employer and others and that their loyalties would be divided during periods of labor unrest, one of Congress' chief reasons for establishing separate guard units. See *Tac/Temps*, 314 NLRB 1142, 1143–1144 (1994). Accordingly, in view of the foregoing, we find that receptionists Wadsworth and Skiffington are not guards under Section 9(b)(3) of the Act and are therefore ineligible to vote in the second election.

[Direction of Second Election omitted from publication.]

[10] The Employer's reliance on *Westinghouse Electric Corp.*, 96 NLRB 1250 (1951), is similarly misplaced. In that case, the employer replaced its receptionist with a uniformed policeman/ receptionist, who had the same authority as the employer's other policemen and whose duties included detaining suspicious persons. That the policeman/receptionist was found to be a guard in that case fails to support the Employer's contention that its receptionists are guards.

[11] The Employer similarly contends that the receptionists are like the Employer's coin rollers, who do not wear uniforms or carry guns and who perform functions the Employer characterizes as clerical. The guard status and job functions of the Employer's coin rollers, however, were not in issue and were not litigated in this case.