

Arcus Data Security Systems, Inc. and Chauffeurs, Teamsters & Helpers, Local 186, International Brotherhood of Teamsters, AFL-CIO, Petitioner. Case 31-RC-7530

September 29, 1997

ORDER DENYING REVIEW

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The National Labor Relations Board has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (relevant parts are attached as an appendix). The request for review is denied as it raises no substantial issues warranting review.¹

¹ The only issue raised in the request for review is whether the Regional Director erred in finding the inside and outside customer service representatives not to be guards under Sec. 9(b)(3) of the Act.

APPENDIX

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

(2) The petitioned-for unit, as amended at the hearing, seeks to include customer service representatives at the Simi Valley facility (the facility).

The lone issue involved herein is whether the customer service representatives are guards within the meaning of Section 9(b)(3) of the Act. The Employer contends that the customer service representatives are guards and, as such, the Petitioner would be ineligible to represent the customer service representatives as the Petitioner admits to membership and represents nonguards. The Petitioner asserts that the customer service representatives are not guards.

Overview of Employer's Operation

The Employer specializes in the storage of electronic media and the provision of related services. Customers store their electronic data—such as computer backup tapes—with the Employer so that, in cases where a customer's on-site data is damaged or lost, they will have their electronic records preserved with the Employer. Customers store their data on to cartridges, magnetic tapes, disks, or other magnetic media and place them into lockable container boxes supplied by the Employer. Customer service representatives then pick up the containers, transport them back to the Employer's facility, and warehouse them in the Employer's vault.

The Employer employs approximately 19 employees at its Simi Valley facility. There is a branch manager, an administrative assistant, an account representative, a sales support representative, a customer service supervisor, and 14 customer service representatives. The customer service representatives are further designated as follows: outside customer service representatives, inside customer service representatives, senior customer service representative, and IO clerk. The parties stipulated that each of these job classifica-

tions, if found not to be guards, would be appropriately included in the unit.

The Guard Status of Customer Service Representatives

Section 9(b)(3) of the Act describes a guard as "an 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."

Starting in the mid-1970s, the Board issued several decisions which, on the whole, expanded the definition of guards. See *Brink's, Inc.*, 272 NLRB 868 (1985), 226 NLRB 1182 (1976), and *Purolator Courier Corp.*, 268 NLRB 452 (1983), 266 NLRB 384 (1983), 265 NLRB 659 (1982), 254 NLRB 599 (1981). More recently, however, the Board has refined and narrowed its definition of guard status in *Purolator Courier Corp.*, 300 NLRB 812 (1990), and *Pony Express Courier Corp.*, 310 NLRB 102 (1993). In these more recent cases, the Board's determination that the courier-guards were not guards was based on various characteristics of employee duties and employer operations. Accordingly, the duties of the customer service representatives and the operations of the Employer involved here will be examined in light of the characteristics relied on by the Board.

Training and Instruction in the Protection of Customer Property. The customer service representatives are trained and instructed that, when confronted with a dangerous situation, they are not to resist in any way. Rather, if physically threatened, the customer service representatives are to surrender the containers holding customer property. After the dangerous incident passes, the customer service representatives are to report the incident to the Employer and the police.

Protection of Employer Property. The customer service representatives do not protect the facility and are not instructed to protect the Employer's facility. If the alarm at the facility is activated, the customer service representatives are instructed to call the Employer's security company. No outside security force is stationed at the Employer's facility.

Training and Instruction in the Use of Weapons and Force. The customer service representatives do not carry or wear weapons. The customer service representatives are not trained in weapons or the use of force, do not wear bullet proof vests, and are not required to be certified as guards. The vehicles driven by the customer service representatives to transport containers to and from customer sites are equipped not with weapons but rather with fire extinguishers and tinted glass on the back windows. The vehicles are not fortified with bullet-proof glass.

Duties. Inside customer service representatives work primarily inside the vault. The employer job description states that their duty is to "Perform routine pulling and filing of media, vehicle loading and unloading of media containers, inventory maintenance and required documentation of customer data stored in the Arcus vault." Outside customer service representatives work largely outside of the employer facility, transporting containers to and from customers. The employer job description states that the role of the outside customer service representative is to "Pick up and deliver customers' archives and vital back-up media." The senior customer service representative's duties are the same as the duties performed by the inside and outside customer service representatives. The employer job description states that the duties of the senior customer service representative includes

training customer service personnel, interfacing with customers, pulling and filing cartridges, staging containers for route delivery, loading and unloading vehicles, and completing documents concerning the receipt and release of customer data. The IO clerk works in the “private suite” adjoining the vault and generates much of the paperwork related to the work of the other customer service representatives.

Level of Access to Customer Premises. Customer service representatives visit customer facilities during work and afterwork hours. At the customers’ facilities, customer service representatives have security clearances, receive identification badges when on premises, and often have access codes or cards to enter secured interior rooms. One customer service representative, however, testified that he has never deactivated an alarm at a customer’s facility. Approximately 80 percent of the deliveries are to customers’ data centers, which are typically restricted areas, requiring a key or access code for entry.

Degree of Accountability to Employer for Property. Customer service representatives are held personally accountable for loss or damage to customers’ containers. During the past 3-1/2 years, there have been two incidents when a customer service representative lost or damaged a customer’s container. For each incident, the customer service representative was disciplined. It also appears that customer service representatives are bonded.

The Manner in Which the Business Holds Itself out to the Public. The Employer does not hold itself out as a security guard service, but rather as a storage center for data and as a recovery service for electronic data in the event of a disaster. The Employer’s advertising package refers to the company as “the world’s most experienced off-site data storage and disaster recovery services corporation.” In its advertising package, the Employer points to staff skills pertaining not to protecting property from theft but rather to providing technical assistance by restoring customers’ electronic data. The advertising package thus describes the Employer’s forte as “speed, accuracy and business savvy in getting our customers back in business fast.” Most of the services provided by the Employer other than data storage are more closely related to technical sales, support, and storage rather than the protection of valuable property. For example, the services highlighted in the advertising package include: a staff with technical expertise in personal computers and network; the sale of data products, such as cartridge holders and racks; the sale of lockable boxes to carry and store electronic data, and data recovery services in case the customer’s on-site data system is damaged. The two services that begin to approach the services typically provided by courier-guards—media library moves and media transportation—focus more on the safe transport of media rather than the protection of customer property.

Value of Customer Property. While undoubtedly important to the customers, the electronic media transported and stored by the Employer does not possess high intrinsic value. The customer property is essentially backup computer tapes. That is, in case of damage to or destruction of the customer’s computer system, there would be a backup set of computer business records stored at the facility.

Upon this examination of the customer service representatives’ duties and the Employer’s operation, I find that the primary function of the customer service representatives is

not, directly and substantially, to protect intrinsically valuable property of the Employer or its customers. Rather, the primary duties of the customer service representatives are to safely transport and store customer property.

In asserting that the outside customer service representatives are guards, the Employer places emphasis on the Board’s decision in *Brinks, Inc.*, 226 NLRB 1182 (1976). There are, however, material differences between the couriers found to be guards in *Brinks* compared to the customer service representatives involved here. First, the couriers in *Brinks* were required to both protect employer property and to resist the theft of customer property. Id. at 1184. In the immediate case, however, the customer service representatives are not required to protect either the Employer’s or the customers’ property. To the contrary, as established above, the customer service representatives are trained and instructed that, when presented with a threatening situation, to not resist and to hand over customer property. Second, the couriers in *Brinks* were equipped to protect: they always wore firearms and sometimes traveled in armored vehicles. Id. at 1183. In this case, however, the customer service representatives do not wear weapons and travel in unarmored vehicles. Third, one duty of the couriers in *Brinks* was to enter banks after hours, make the deliveries or pickups, and then secure the banks upon their exit. Id. at 1183. In the present case, the customer service representatives are not charged with such singular responsibility for the welfare of customer premises. Fourth, the couriers in *Brinks* were used interchangeably in acknowledged and established guard positions. Id. at 1184. In this case, the customer service representatives are never utilized in positions which have been long-established under the Act as guard positions. Due to the material factual differences between the couriers in *Brinks* and the customer service representatives herein, I am unpersuaded by the Employer’s analogy between *Brinks* and the immediate case.

In contending that the inside customer service representatives are guards, the Employer grounds much of its argument on *Brink’s, Inc.*, 272 NLRB 868 (1985). Again, there are key factual differences between the coin room employees found to be guards in that case and the customer service representatives involved herein. First, the coin room employees were empowered to take action to protect the property of the customers and ensure the safety of others on the premises. Id. at 869. In contrast, the inside customer service representatives, if faced with a threatening situation, are instructed not to protect the property of the customers. Nor are the inside customer service representatives instructed to ensure the safety of others at the facility. Second, the coin room employees restricted access to the coin room. Id. at 868–869. The customer service representatives involved in the immediate case, however, are not responsible for deciding who may enter or exit the vault. Other employees are free to enter and exit the vault and customers predecide which of their representatives may enter the vault. Third, the coin room employees protected coins, which are by definition intrinsically valuable. In contrast, the value of the electronic data involved herein is extrinsic not intrinsic: the stored electronic data is valuable only to the customers and select others who can make use of the data; the data standing on its own does not possess significant value. Due to the key differences between the coin room employees in that case and the customer service

representatives here, I am unpersuaded by the Employer's analogy between that case and the immediate case.

Accordingly, I conclude that the customer service representatives are not guards within the meaning of Section 9(b)(3) of the Act and that the Petitioner is eligible to serve

as the representative of the customer service representatives for purposes of collective bargaining if so elected.

There are approximately 14 employees in the unit found appropriate.