

**Corrections Corporation of America and United Government Security Officers of America for and on Behalf of Local #301, Petitioner.** Case 5-RC-14767

February 10, 1999

ORDER DENYING REVIEW

BY MEMBERS LIEBMAN, HURTGEN, AND  
BRAME

The Board has delegated its authority in this proceeding to a three-member panel, which has carefully considered the Intervenor National Professional Corrections Employees Union, Local 1's and the Employer's requests for review of the Regional Director's Decision and Direction of Election (relevant portions of which are attached as an appendix), as well as the Petitioner's brief in opposition to the requests for review.<sup>1</sup> The requests for review are denied as they raise no substantial issues warranting review.

In denying review with respect to the Regional Director's finding that there is no contract bar, we agree that *Monsanto Chemical Co.*, 108 NLRB 870 (1954), is controlling. Conversely, *Stay Security*, 311 NLRB 252 (1993), relied on by the Employer, is distinguishable. In *Stay Security*, the Board found that a contract covering a unit of guards between an employer and the union that admitted to membership or was affiliated with an entity that admitted to membership nonguards, would bar a petition during the term of that contract. The Board in *Stay Security* reasoned that while Section 9(b)(3) of the Act prohibited the Board from certifying a mixed guard/nonguard union as the representative of a unit of guards, the Board would leave the parties to their voluntary agreement in the interest of preserving stable bargaining relationships. In the instant case, however, the Petitioner seeks to represent an all-guard unit that the Employer and the Intervenor contend is covered by a contract encompassing a mixed unit of guards and nonguards. As the Board explained in *William. J. Burns International Detective Agency*, 134 NLRB 451 (1961), while guard-only units may be considered appropriate, albeit a guard/nonguard union would not be certifiable, mixed guard/nonguard units are not appropriate for any purpose under Section 9(b)(3) of the Act. Thus, under *Monsanto*, supra, an agreement between an employer and a union representing a mixed guard/nonguard unit will not bar a petition for a guard-only unit. Accordingly, we deny review.

MEMBER LIEBMAN, dissenting.

I would grant the Intervenor's and the Employer's requests for review to reexamine the Board's interpretation of Section 9(b)(3) of the Act and to reconsider *Monsanto Chemical Co.*, 108 NLRB 870 (1954).

<sup>1</sup> Service Employees International Union, AFL-CIO, CLC filed an amicus brief, which we have considered.

APPENDIX

REGIONAL DIRECTOR'S DECISION AND DIRECTION  
OF ELECTION

1/ Corrections Corporation of America (the Employer) is a Tennessee corporation, with a main office in Tennessee, and a work site at the Corrections Treatment Facility in the District of Columbia. The Employer is engaged in the business of managing and operating prisons, jails, and other correctional facilities. During the past 12 months, a representative period, the Employer, in the course and conduct of its business operations, has provided services valued in excess of \$50,000 at points outside the State of Tennessee.

2/ The parties stipulated that the Petitioner, United Government Security Officers of America for and on behalf of Local #301, and the Intervenor, National Professional Corrections Employees Union, Local 1, are labor organizations within the meaning of Section 2(5) of the Act.

3/ The Petitioner filed a petition for the following unit, as amended at the hearing, which it contends includes approximately 241 employees:

All full-time and regular part-time correctional officers assigned to the District of Columbia Jail in [the] District of Columbia, employed by the Employer, excluding all office clerical employees, substitute employees, and all other employees as defined in the Act.

The Intervenor contends that the appropriate unit is as follows, and that there are approximately 380 employees in that unit:

All full-time and regular part-time employees of the Employer employed at the Correctional Treatment Facility, excluding managerial employees, confidential employees, supervisors, temporary employees, physicians, dentists, podiatrists, registered nurses, or any employees engaged in personnel work in other than a purely clerical capacity, and institution residents (inmates) employed by the Employer.

DISPUTED ISSUES

- (1) Whether the correctional officers (CO's) are guards within the meaning of Section 9(b)(3) of the Act.
- (2) Whether the Intervenor and the Employer have entered into a collective-bargaining agreement that bars the processing of the Petition.

POSITIONS OF THE PARTIES

THE PETITIONER

The Petitioner contends that the CO's are guards within the meaning of the Act. Furthermore, the Petitioner contends that there was no collective-bargaining agreement in effect between the Intervenor and the Employer when the petition was filed on November 27, 1998. In addition, assuming arguendo that there was a collective-bargaining agreement in effect between the Intervenor and the Employer by that date, the Petitioner asserts that the agreement cannot serve as a bar because it includes a facially invalid union security clause.

THE INTERVENOR

The Intervenor contends that the CO's are not guards within the meaning of the Act. In addition, the Intervenor alleges that it entered into a collective-bargaining agreement with the Em-

ployer on November 12, 1998, prior to the filing of the petition, which serves as a bar to the petition.

#### THE EMPLOYER

The Employer asserts that the CO's are guards within the meaning of the Act, and that the appropriate unit is an all guard unit. The Employer also contends that there is a contract bar to the processing of the petition.

#### I. ARE THE CORRECTIONAL OFFICERS GUARDS WITHIN THE MEANING OF SECTION 9(B)(3) OF THE ACT?

##### FACTS

The Correctional Treatment Facility (CTF) is a facility of the District of Columbia Department of Corrections. The CTF houses inmates convicted of crimes who require drug treatment and mental health services. It also provides housing for women convicted of crimes. Before inmates are sent to the CTF, they are classified as maximum, medium, or minimum security. When they arrive, inmates are placed in certain locations based on their security level designations in order to protect the safety of the other inmates and the staff. Other considerations regarding placement within the CTF are the inmates' gang affiliations and psychiatric conditions.

In or about March 1997, the Department of Corrections contracted with the Employer to manage and operate the CTF. Prior to that time, the employees of the Department of Corrections who worked at the facility were represented for the purposes of collective-bargaining by a different labor organization in a unit that appears to have included CO's and other employees working at various correctional facilities. Shortly after the Employer commenced its operations at the CTF, it recognized the Intervenor as the exclusive collective-bargaining representative of its employees in the unit described above as the Intervenor's proposed unit.

The CO's perform a wide variety of duties depending on the location, or post, to which they are assigned. For example, CO's assigned to the receiving and discharge area are responsible for the intake process with respect to inmates who are transferred to the CTF from other correctional facilities. They review each transferee's file to determine the unit on which he or she will be housed, refer the inmate to the medical department, inventory the inmate's property, and distribute personal hygiene items. Approximately five CO's work at that post, which also is referred to as Intake, Booking, and Property, during the day shift; three CO's work there between 2 p.m. and 10 p.m., and at least two CO's staff the area during the shift that begins at midnight.

Approximately five CO's per shift work in the Visitation post. They pat-search visitors for contraband, ensure that visitors are approved, and direct them to specific visitation areas for meetings with inmates. When the CO's search visitors, they look for drugs, excessive amounts of cigarettes, cigarette lighters, glass items, fingernail files, clippers, guns, and knives, none of which may be brought into the CTF. Visitors pass through the same entrance checkpoint used by employees and all others who enter the facility. When visitors leave the facility, they are checked visually by CO's to ensure that they are not removing the Employer's property. The CO's at that post also are responsible for preventing visitors from leaving the facility with any papers that may have been given to them by inmates. Visitors also must show identification to the CO's

before they leave to ensure that the person exiting the facility is not an inmate. The CO's do not search other employees, however.

CO's assigned to the Medical post coordinate inmates' visits to two local hospitals. They have certifications in respiratory assistance and first aid.

Utility/Escort CO's escort inmates to various locations within the CTF, such as the education or library areas. The inmates are not permitted to move about the facility without an escort.

Less than half of the CO's are certified in the use of firearms. The posts requiring such certification are Perimeter Duty and the CO's who escort inmates to District of Columbia General Hospital. Those CO's carry firearms while working. The CO's assigned to the Perimeter post make rounds outside of the building, but on the grounds of the facility. The primary duty of CO's assigned to each of these posts is to prevent escapes.

The Employer maintains a Special Operations Response Team, often referred to as the SORT team. The SORT team, which consists of approximately ten CO's and seven other employees, responds to disturbances caused by inmates. The CO's on the SORT team have access to weapons, and they receive special training.

CO's assigned to the Control Center post control the facility's alarms located in the walls, fences, and gates. The CO's working there monitor security cameras and alarm systems. In addition, they are the only people in the facility who can operate locks to many internal doors. For example, when a CO or another employee wishes to pass through an internal doorway that is locked, he or she uses a call box at the door to communicate with the CO's in the Control Center. The CO's in the Control Center then view the monitor that is connected to the video cameras at that door to ensure that the person calling is an authorized employee, and they unlock the door by using a switch in the Control Center.

Laundry officers search all laundry carts for contraband and for inmates that could be hiding in the laundry. CO's assigned to the commissary ensure that all inmates working at the commissary are thoroughly pat-searched for contraband at the end of the work day.

The sally port is the loading dock where deliveries are made. CO's assigned to that post search vehicles that make deliveries.

The CO's wear uniforms, but the uniforms vary from post to post. For example, CO's working at the sally port wear blue jumpsuits. Other CO's wear khaki pants and burgundy shirts, while some CO's wear blue pants with a gray stripe and white shirts. The CO's wear name tags, but employees in other classifications do not. Like other employees, the CO's must pass a police background check before being hired. They are not deputized and, therefore, may not exercise police powers outside of the facility.

CO's do not use force to prevent damage to the Employer's property. For example, if a CO observed an inmate punching a hole in a wall, he or she would write an incident report. If the inmate persisted in damaging the wall, the CO would call a supervisor. CO's also must check a wide variety of the Employer's property at the facility to ensure that objects are not removed or fashioned into weapons. For example, they report missing floor tiles and parts of furniture that could be used as weapons.

CO's are expected to pat-search inmates in a variety of situations, looking for weapons, knives, guns, drugs, or other items

they should not possess. If a weapon is found during such a search, the CO is expected to isolate the area and call a supervisor. If the inmate refuses to turn over the weapon to the CO or the supervisor, the supervisor calls the SORT team. In addition, supervisory CO's may order a CO to physically remove an unruly inmate.

CO's are responsible for knowing the location of all inmates within their areas at all times. They perform "counts" of the inmates, and maintain log books showing when inmates take showers; when they go to the recreation area; when they are visited by physicians or attorneys; and when they are fed. The purposes of these duties are to prevent escapes and to prevent violence between inmates or between inmates and employees. Counts are performed at least three times per day. If a count indicates that an inmate is missing, the CO's notify the police and all other inmates are locked in their rooms pending the resolution of the discrepancy.

In general, CO's are responsible for the supervision and control of inmates, as well as the safety of the inmates and staff. They also are responsible for security, meaning the prevention of escapes and injuries to inmates. The Employer expects the CO's to spend 100 per cent of their time performing security functions. Among other tasks, the CO's enforce rules contained in handbooks issued to inmates, including rules against assaulting staff and fellow inmates. Before commencing work at the facility, each CO typically has one month of correctional training. That level of training is required for the Employer's certification by the American Corrections Association, an industry group. Some CO's receive special training in the use of handcuffs, leg irons, and belly chains, so that they can use those devices to restrain inmates. Others have training regarding pressure point techniques so that they can subdue inmates, for the protection of inmates, employees, and visitors. Many CO's carry radios that are used to communicate with the command center if the CO needs assistance in dealing with a violent disturbance. They also perform "shakedowns" of inmates and inmates' property to prevent the possession of contraband. One of the goals of the CO's is to protect the community that lives near the CTF by ensuring that the inmates remain inside. The Employer's policy with respect to unruly inmates is that the CO's should use the least amount of force necessary. In addition to their other duties, some of the CO's deliver food and books to the inmates' rooms, and they may be called on to provide emergency medical attention. Within the Employer's managerial hierarchy, CO's fall under the chief of security, as well as the unit managers of the posts to which each CO is assigned. The unit managers may or may not be supervisory CO's.

#### CONCLUSION

Section 9(b)(3) of the Act defines guards as employees who "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." The definition of guards is not limited to persons employed to protect property belonging to their own employer or to employees who protect against the conduct of fellow employees. *NLRB v. American District Telegraph Co.*, 205 F.2d 86 (3d Cir. 1953); *American District Telegraph Co.*, 160 NLRB 1130 (1966). Rather, the Board has found that individuals employed for security purposes to protect the safety of persons on the Employer's premises and to keep unauthorized persons off the property are guards within the meaning of

Section 9(b)(3) of the Act. See *A. W. Schlesinger Geriatric Centers*, 267 NLRB 1363 (1983).

The Board considered facts similar to those of the instant case in *Crossroads Community Correctional Center*, 308 NLRB 558 (1992). In that case, employees found to be guards (called Correctional Residence Counselor I (CRC I)), also worked for a company that had obtained a contract to operate a program of a state department of corrections. Like the CO's in the instant case, the CRC I employees in *Crossroads* ensured that no unauthorized visitors entered the facility; searched all visitors and inmates entering the facility for contraband; searched packages entering the facility; monitored surveillance cameras; counted inmates; reported damage to the facility or to the employer's property; and were instructed to notify their supervisors in the event of a disturbance caused by the inmates. The Board there denied the petitioner's request for review of the regional director's decision and order dismissing the petition on the grounds that the CRC I employees were guards, since the petitioning union admitted employees other than guards to membership.

The indicia of guard status in the instant proceeding are stronger than those in *Crossroads*. Thus, unlike the CRC I employees in that case, a significant number of the CO's here carry firearms and are certified in the use of firearms. In addition, several CO's are trained in the use of restraints such as handcuffs, leg irons, and belly chains, and others are trained in the use of pressure point techniques to subdue inmates. Furthermore, when instructed to do so by a supervisor, CO's physically remove unruly inmates.

Accordingly, I conclude that the CO's are guards within the meaning of Section 9(b)(3) of the Act. All of the CO's spend all, or almost all, of their working time performing security functions. The facts of this case are distinguishable from those of *George Junior Republic*, 224 NLRB 1581, 1583 (1976), cited by the Intervenor, where the Board found that nightmen and custodial care employees at a juvenile detention and education facility were not guards. Although those employees were required to prevent the entry of unauthorized visitors and the departure of the juvenile detainees at night, they did not use weapons or search visitors or inmates. Moreover, the CO's in the instant case prevent escapes and unruly behavior of adult convicts, some of whom are classified as maximum security inmates, rather than the juvenile delinquents involved in the cited case.

#### II. IS THERE A COLLECTIVE-BARGAINING AGREEMENT BETWEEN THE INTERVENOR AND THE EMPLOYER THAT CONSTITUTES A BAR TO THE PROCESSING OF THE PETITION?

##### FACTS

As noted above, the Intervenor and the Employer contend that they entered into a collective-bargaining agreement on November 12, 1998, prior to the filing of the petition. That alleged collective-bargaining agreement includes a recognition clause, paraphrased above as the Intervenor's proposed appropriate unit, pursuant to which the Employer recognizes the Intervenor as the exclusive collective-bargaining representative of all of the Employer's employees at the CTF, including CO's and employees no party contends are guards within the meaning of the Act.

## CONCLUSION

Based on my finding that the CO's are guards within the meaning of Section 9(b)(3) of the Act, I conclude that the collective-bargaining agreement which the Intervenor and the Employer assert was created prior to the filing of the petition cannot serve as a bar to the instant proceeding. This case is virtually indistinguishable from *Monsanto Chemical Co.*, 108 NLRB 870 (1954); in which the Board established its policy of processing petitions for elections in units limited to guards even if the guards are included in mixed units of guards and nonguard employees covered by contracts that have not expired. In that case, the Board explained that "finding the contract no bar here gives recognition to the basic intent of Congress in enacting [Section 9(b)(3)], that is, that guards should not be included in the same unit with other employees." *Id.* at 971. The Board has followed this reasoning by directing a decertification election in a guard unit even though the unit was not coextensive with the contractual mixed unit, *Fisher-New Center Co.*, 170 NLRB 909 (1968), and by finding that a suc-

cessor employer has no obligation to bargain with a union that represents guards and nonguards in the same unit, *Field Bridge Associates*, 306 NLRB 322 fn. 3 (1992), *enfd.* 982 F.2d 845 (2d Cir. 1993), *cert. denied* 509 U.S. 904 (1993). In the latter case, the Board clearly stated, "Such units are not appropriate under the Act." 306 NLRB at 322 fn. 3.

Because the asserted contractual unit prevents that contract from constituting a bar to the processing of the petition, I find it unnecessary to rule on the other arguments raised by the parties concerning the contract bar issue.

I find that there is no bar to the conduct of an election pursuant to the Petitioner's petition, and I am directing an election in the unit found appropriate herein. The record is clear that the Intervenor admits to membership employees other than guards. Therefore, the Board could not certify the Intervenor as the exclusive collective-bargaining representative of the appropriate guard unit. Accordingly, the Intervenor will not appear on the ballot at the election.