

NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Northwest Protective Service, Inc. and International Union, Security, Police and Fire Professionals of America and Service Employees International Union, Local 24/7 International Union of Security Officers, Party in Interest

Service Employees International Union, Local 24/7 International Union of Security Officers and International Union, Security, Police and Fire Professionals of America. Cases 19–CA–28124, 19–CP–526, and 19–CB–8856

September 23, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND MEISBURG

On June 10, 2003, Administrative Law Judge Jay R. Pollack issued the attached decision. The Respondent Employer and the Respondent Union each filed exceptions and a supporting brief. The Respondent Employer and the General Counsel each filed an answering brief to the Respondent Union’s exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge’s rulings, findings,¹ and conclusions only to the extent consistent with this Decision and Order.

A. Background

This case arose out of a competition between the Respondent Union (Local 24/7), a “mixed-guard” union, and the Charging Party Union (SPFP), a “pure-guard” union, to represent the same unit of guards employed by the Respondent Employer (Northwest).²

Northwest provides security services to clients in Seattle and Tacoma, Washington. For approximately 30

years, Northwest’s guard employees had been represented for purposes of collective bargaining by the International Union of Security Officers (IUSO), a pure-guard union. Northwest and IUSO were parties to a series of collective-bargaining agreements, including one effective August 1, 2000, through June 30, 2002 (the 2000 Agreement).

On March 5, 2002,³ IUSO merged with Respondent Local 24/7, a union affiliated with the Service Employees International Union (SEIU). SEIU represents employees other than guards, thereby making Local 24/7 a mixed-guard union.

On May 20, Respondent Local 24/7 notified Northwest of the merger and affiliation, requested recognition, and requested a meeting to discuss these matters. Northwest agreed to meet, but reserved the right not to recognize any union other than IUSO and, further, reserved the right under Section 9(b)(3) of the Act to recognize only a pure-guard union.⁴

The parties met on May 31. Northwest expressed concern that Local 24/7’s affiliation with SEIU created a conflict of interest because Northwest’s clients employed workers who also were represented by SEIU. Local 24/7 demanded that Northwest recognize it and sign an extension of the 2000 Agreement. Northwest refused, reasserting its right not to recognize Local 24/7.

Meanwhile, SPFP had begun recruiting the unit employees. On June 25, 5 days before the 2000 Agreement expired, SPFP advised Northwest that it had sufficient support among the employees to become their representative, and requested voluntary recognition. Northwest refused. But, in a letter dated June 27, Northwest advised, “If SPFP is interested in voluntary recognition, NW Protective Service would only do so after a card check establishing that SPFP indeed currently represents a majority of its unionized workforce.” Northwest, however, also advised SPFP of the 2000 Agreement, explaining, “NW Protective would not consider any relationship until 12:01 a.m. on July 1, 2002.” SPFP agreed to a card check.

The card check was conducted on June 27 and showed that a majority of employees supported SPFP.⁵ Based on

¹ The Respondent Union has effectively excepted to some of the judge’s credibility findings. The Board’s established policy is not to overrule an administrative law judge’s credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² A mixed-guard union is one which represents guards but which also admits nonguards to membership, or is affiliated with a union that admits nonguards to membership. A pure-guard union, in contrast, admits only guards and is not affiliated with any union that admits nonguards. See Sec. 9(b)(3) of the Act.

³ All dates are 2002, unless stated otherwise.

⁴ Sec. 9(b)(3) provides, in pertinent part:

the Board shall not . . . decide that any unit is appropriate . . . if it includes, together with other employees, any individual employed as a guard . . . ; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

⁵ A local clergyman conducted the card check that showed 207 out of 410 employees supported SPFP.

the card check, Northwest and SPFP executed a recognition agreement. The agreement provided, in part: “Effective 12:01 a.m., on July 1, 2002, Northwest Protective Service, Inc. recognizes the [SPFP] as the exclusive representative of its security officers.”⁶

Local 24/7 was not given prior notice of the card check, but on June 28, Northwest notified Local 24/7 and SEIU of its results and that Northwest had agreed to recognize SPFP effective July 1. The next day, Northwest’s attorney, James Shore, spoke with SEIU representative Baratz. Upon being informed of the recognition agreement, Baratz warned, “this isn’t over. We’re going to do whatever we have to do.” Shore asked if Baratz meant picketing; Baratz answered, “That and more. We are going to contact customers, we’re going to contact politicians, and we’re going to march down the streets.” Shore tried to convince Baratz not to picket, but Baratz made clear the only way Northwest could avoid picketing was to recognize Local 24/7 and extend the 2000 Agreement.

Attorney Shore then discussed the situation with Northwest’s CEO, who instructed Shore to do whatever was necessary to prevent disruptions to Northwest’s customers. As a result, on June 30 Northwest recognized Local 24/7 and signed an extension of the 2000 Agreement.

B. The Judge’s Decision

The judge found that Northwest lawfully withdrew recognition from Local 24/7 on June 27, relying on *Wells Fargo Armored Service Corp.*, 270 NLRB 787 (1984), *enfd. sub nom. Teamsters Local 807 v. NLRB*, 755 F.2d 5 (2d Cir.), *cert. denied* 474 U.S. 901 (1985). He then found that Northwest lawfully recognized SPFP and entered into the recognition agreement. As a result, the judge found that Northwest violated Section 8(a)(1), (2), (3), and (5) of the Act by withdrawing recognition from SPFP; recognizing Local 24/7 on June 30; and by signing the June 30 contract extension, which contained a union-security clause.⁷ The judge further found that Local 24/7 violated Section 8(b)(7)(A) and (C) by threatening Northwest with picketing, and violated Section 8(b)(1)(A) and (2) by accepting recognition from Northwest and entering into the June 30 contract extension. Last, in remedying the Respondents’ violations, the judge imposed joint-and-several liability on Northwest and Local 24/7 for reimbursement of all dues collected pursuant to the unlawful June 30 contract extension.

⁶ The parties stipulated that the SPFP maintained its card majority through July 1.

⁷ In the absence of exceptions, we adopt the judge’s findings that Northwest engaged in this unlawful conduct.

For the reasons set forth below, we affirm the judge’s findings regarding Respondent Local 24/7, except for his finding that Local 24/7 violated Section 8(b)(7)(A). We also find that certain modifications to the judge’s remedy are appropriate, as explained below.

C. Discussion

1. Northwest lawfully withdrew recognition from Local 24/7

Initially, we agree with the judge that Northwest lawfully withdrew recognition from Local 24/7, but we clarify his analysis.⁸ As described, the judge found that Northwest withdrew recognition from Local 24/7 on June 27. It is true that Northwest signed off on the recognition agreement with SPFP on June 27; however, by its terms that agreement was not effective until July 1. Indeed, Northwest’s initial response to SPFP’s request for voluntary recognition made clear that Northwest intended to maintain the status quo until the actual expiration of the 2000 agreement: “NW Protective would not consider any relationship until 12:01 a.m. on July 1, 2002.” And, in fact, it did adhere to the 2000 Agreement until its expiration on July 1, notwithstanding that it never officially recognized Local 24/7 as the unit employees’ bargaining representative after IUSO’s merger with Local 24/7 in March.⁹

The July 1 effective date is further supported by Northwest’s conduct. On June 28, an SPFP representative requested a list of unit employees, but Northwest refused, explaining that it would have to wait until July 1. Moreover, Northwest did not notify the unit employees of the results of the card check until July 1.

For these reasons, we agree with the General Counsel and Northwest that Northwest withdraw recognition from Local 24/7 on July 1, and not on June 27 as found by the judge.

We further find, contrary to Local 24/7’s argument, that Northwest’s July 1 withdrawal of recognition was lawful.¹⁰ In *Wells Fargo Armored Serv. Corp.*, 270 NLRB 787 (1984), *enfd. sub nom. Teamsters Local 807 v. NLRB*, 755 F.2d 5 (2d Cir.), *cert. denied* 474 U.S. 901

⁸ The complaint does not allege that the withdrawal of recognition of Local 24/7 was unlawful, but Local 24/7 makes that argument in asserting that it was the unit employees’ lawful representative all along. We disagree, as discussed *infra*.

⁹ See fn. 13 *infra*.

¹⁰ Having found that Northwest did not withdraw recognition from Local 24/7 until July 1, after the expiration of the 2000 Agreement, we need not pass on Local 24/7’s argument that it enjoyed a conclusive presumption of majority support on June 27. See *Auciello Iron Works, Inc. v. NLRB*, 517 U.S. 781 (1996) (employer may not lawfully withdraw recognition while a collective-bargaining agreement is in effect because an incumbent union enjoys a conclusive presumption of majority status during the contract term).

(1985), the Board construed Section 9(b)(3) as permitting an employer, at will, to withdraw recognition from a mixed-guard union upon expiration of a collective-bargaining agreement.¹¹ The Board observed that the policy underlying Section 9(b)(3) is to shield employers from being forced to accept the potential conflict of loyalties presented by a mixed-guard union. Given this policy, the Board reasoned that it could not find a refusal-to-bargain violation, because to do so would give the mixed guard union “indirectly—by a bargaining order—what it could not obtain directly—by certification—i.e., it compels the [employer] to bargain with the [u]nion.” 270 NLRB at 787.

The Board has since adhered to *Wells Fargo*. In *Temple Security, Inc.*, 328 NLRB 663 (1999), enf. denied sub nom. *General Service Employees, Local 73 v. NLRB*, 230 F.3d 909 (7th Cir. 2000), the Board again held that an employer of guards did not violate Section 8(a)(5) by withdrawing recognition from and refusing to bargain with a mixed-guard union upon the expiration of their collective-bargaining agreement.¹²

Applying *Wells Fargo* here leads to the conclusion that Northwest’s withdrawal of recognition from Local 24/7 was lawful because it occurred on July 1, after the expiration of the 2000 Agreement on June 30.

Significantly, the result here would not be different under the views expressed by the dissenters and the Sev-

enth Circuit in *Temple Security*.¹³ The argument that an employer may not withdraw recognition at will from a mixed-guard union upon expiration of the parties’ collective-bargaining agreement is premised on the employer having voluntarily recognized the union in the first place, thereby waiving reliance on Section 9(b)(3). That premise is absent here. The record shows that Northwest never voluntarily recognized Local 24/7. Indeed, Northwest consistently reserved its right not to recognize Local 24/7 and, in fact, Northwest did not do so prior to Local 24/7’s coercive conduct. In these circumstances, Northwest was free to disregard Local 24/7’s recognition claim.

2. Local 24/7 did not violate Section 8(b)(7)(A) by threatening to picket Northwest for recognition

Having found that Northwest did not recognize SPFP until July 1, we reverse the judge’s finding that Local 24/7 violated Section 8(b)(7)(A) of the Act. That provision makes it unlawful for a union to threaten to picket an employer for recognition where the employer has lawfully recognized another union. As found by the judge, SEIU representative Baratz threatened to picket Northwest unless it recognized and signed a contract extension with Respondent Local 24/7. Baratz, however, made the threat on June 29, prior to the July 1 effective date of Northwest’s recognition of the SPFP. As a result, the threat did not violate Section 8(b)(7)(A).¹⁴ And, on or after July 1, there was no violation of Section 8(b)(7)(A) because, although Local 24/7’s threat was still outstanding, Northwest reneged, albeit unlawfully, on its agreement to recognize SPFP.

3. Local 24/7 violated Section 8(b)(7)(C) by threatening to picket Northwest for recognition

In contrast, we agree with the judge that Baratz’s picketing threat violated Section 8(b)(7)(C). Section 8(b)(7)(C) prohibits recognition beyond a reasonable period of time (not to exceed 30 days) in the absence of a petition being filed within that reasonable period of time. In *General Service Employees Local 73 (Rainey’s Security Agency)*, 239 NLRB 1233 (1979), the Board found that a mixed-guard union violated this section by threatening to picket (and picketing) an employer for recognition because the union “had not been and could not be certified as representative of [the] employees by virtue of Section 9(b)(3).”¹⁵ The same is true of

¹¹ The actual date on which Northwest withdrew recognition is significant to the legal question whether that withdrawal was lawful. The judge extended *Wells Fargo* by finding in effect that it permitted a withdrawal of recognition on June 27, during the contract term. In fact, *Wells Fargo* itself involved only a post-expiration withdrawal of recognition, and the Board there expressly found it “unnecessary to pass on whether the [r]espondent would have been privileged to withdraw recognition within the contract term.” 270 NLRB at 787 n. 4. Given our finding that Northwest withdrew recognition on July 1, we also need not decide that issue.

¹² Member Liebman and former Member Fox dissented in *Temple Security*. Relying on the earlier dissenting opinions by former Board Member Zimmerman and Circuit Judge Mansfield in *Wells Fargo*, supra, they would have overruled *Wells Fargo* and held that a mixed-guard union, once voluntarily recognized, is entitled to the same protections afforded all voluntarily recognized unions under Sec. 8. As indicated, the Seventh Circuit Court of Appeals rejected the Board’s decision in *Temple Security*. Essentially agreeing with the dissent, the court held that the Board erred in construing Sec. 9(b)(3)’s prohibition against certifying mixed-guard unions as depriving such unions of the protections of Sec. 8. The court remanded the case to the Board for further consideration of the union’s Sec. 8 claims. On remand, the Board accepted the court’s decision as the law of the case, and found that the employer unlawfully withdrew recognition from, and refused to bargain with, the union upon the expiration of their agreement, and that the employer unlawfully recognized the new, pure-guard union. 337 NLRB 372 (2001).

¹³ Member Liebman adheres to the dissent in *Temple Security*. Accordingly, she does not rely on *Wells Fargo* in agreeing that Northwest lawfully withdrew recognition from Local 24/7.

¹⁴ Chairman Battista does not pass on the judge’s 8(b)(7)(A) finding.

¹⁵ See also *A-I Security Service Co.*, supra, 224 NLRB 434. In Member Liebman’s view, the dissenting opinions in *A-I Security* by

Local 24/7, a mixed-guard union. Accordingly, Baratz's threat to picket Northwest unless it recognized Local 24/7 violated Section 8(b)(7)(C).

4. Local 24/7 violated Section 8(b)(1)(A) and (2) by accepting recognition from Northwest and entering the June 30 Contract extension

We also affirm the judge's finding that Local 24/7 violated Section 8(b)(1)(A) and (2) by accepting recognition from Northwest and entering into the June 30 contract extension. Local 24/7's conduct was unlawful for two independently sufficient reasons: (1) Northwest's grant of recognition was coerced by Local 24/7's unlawful picketing threat; and (2) Local 24/7 was a minority union at the time.¹⁶

a. Local 24/7's coercion

Local 24/7 could not lawfully accept Northwest's grant of recognition because it was a product of Local 24/7's unlawful picketing threat. See *Wackenhut Corp.*, 287 NLRB 374 (1987) (mixed-guard union unlawfully accepted recognition from an employer where the recognition was coerced by the union's unlawful threat of picketing). As the Board explained in *Wackenhut*:

a mixed-guard union may do no more than ask an employer for recognition. When recognition is refused it cannot resort to economic weapons to obtain what the employer chooses not to grant . . . [t]hus, the Union has lawfully obtained recognition only if such recognition is as the result of the employer's free choice.

287 NLRB at 376. The Board found that the employer's recognition of the mixed-guard union was not a result of the employer's "free choice" because it was procured by the union's unlawful threat of picketing. Consequently, the Board found that the union unlawfully accepted the employer's grant of recognition and unlawfully entered a collective-bargaining agreement with the employer.

Wackenhut compels a similar finding here. Northwest consistently withheld recognition from Local 24/7 after IUSO merged with Local 24/7. Northwest recognized Local 24/7 on June 30 only after SEIU representative Baratz made clear this was the only way that Northwest could avoid picketing and disruption to its customers. Thus, Northwest's recognition of Local 24/7 was not a

Chairman Murphy and Member Fanning, with which Circuit Judge Wright agreed, credibly argue that threats to picket alone cannot violate Sec. 8(b)(7)(C). However, she adheres to that long-standing precedent and observes that no party in the case before us has sought reconsideration of it.

¹⁶ Member Liebman agrees that Northwest's recognition of Local 24/7 was unlawfully coerced. She therefore finds it unnecessary to pass on Local 24/7's majority or minority status on June 30.

result of Northwest's "free choice." We therefore find that Local 24/7 unlawfully accepted recognition and unlawfully entered into the extension of the 2000 Agreement.

b. Local 24/7's minority status

Local 24/7's conduct was unlawful for the additional reason that Local 24/7 was a minority union on June 30. See *Garment Workers (Bernard Altmann Texas Corp. v. NLRB)*, 366 U.S. 731 (1961) (a union may not lawfully accept recognition from an employer at a time when the union lacks majority support among the unit employees). On June 28, Northwest notified Local 24/7 and SEIU of the results of the June 27 card check, which showed that a majority of the unit employees had signed authorization cards designating SPFP as their representative.

We find no merit in Local 24/7's response that the card check was invalid. Local 24/7 contends that four of the signed SPFP authorization cards were tainted because an alleged supervisor, Site Supervisor Eddie Mafness, helped to obtain them. As the General Counsel points out, however, it appears that Mafness actually was a bargaining-unit employee. Indeed, Local 24/7 presented little evidence of his alleged supervisory status. Local 24/7 did not call Mafness to testify. Nor did it call any employees he allegedly supervised. As a result, we find that Local 24/7 has failed to substantiate its claim of supervisory taint.

Similarly, the evidence fails to support Local 24/7's contention that Mafness misrepresented to employees that the SPFP cards would be used only to obtain an election. The cards unambiguously state that the signer "authorizes the [SPFPA] as my exclusive representative in collective bargaining." The only evidence that Mafness even suggested another purpose is a conversation he had with Site Supervisor Ralph Olsen, who also was a unit employee. Mafness and SPFP Organizer Maritas allegedly told Olsen they were there "to have an election." As the General Counsel argues, this hardly amounts to a misrepresentation of the card, especially because Mafness and Maritas never asked Olsen to sign a card.

Last, Local 24/7 argues that, even if the SPFP cards were not tainted, the June 27 card check did not reliably demonstrate majority support for SPFP. Local 24/7 points to *Burke Oldsmobile*, 128 NLRB 79 (1960), *enfd.* in part 288 F.2d 14 (2d Cir. 1961), and *Alliant Foodservice*, 335 NLRB 695 (2001). In these cases, competing unions were contemporaneously gathering cards from the same employees. The Board concluded that the cards were not reliable evidence of support for either union. These cases are inapposite because, contrary to Local 24/7's suggestion, this is not a "dual card" situation. Although ISUO members had recently voted to merge

with Local 24/7, Local 24/7 has not established the extent of any overlap, if any at all, between those who supported the merger or otherwise affirmatively sought to be represented by Local 24/7 and those who signed cards for SPFP.

Under these circumstances, Local 24/7 could not lawfully agree to accept recognition from Northwest on June 30.

THE REMEDY

The judge properly imposed joint-and-several liability on Northwest and Local 24/7 for reimbursement of all dues collected pursuant to the unlawful June 30 contract extension. However, we find merit in Northwest's argument that Local 24/7 should be primarily responsible for reimbursing the employees because Northwest only signed the extension under the duress of Local 24/7's unlawful threat of picketing. See generally *SuCrest Corp.*, 165 NLRB 596 (1967), *enfd.* 409 F.2d 765 (2d Cir. 1969). We also find merit in the argument made by Northwest and Local 24/7 that they should not be liable for reimbursing dues paid by employees who already were members of Local 24/7 prior to June 30. See *Control Services*, 319 NLRB 1195, 1196 (1995); *A.M.A. Leasing, Ltd.*, 283 NLRB 1017, 1025 (1987). We shall modify the judge's order accordingly.

ORDER

The Respondent Employer, Northwest Protective Service, Inc., its officers, agents, successors, and assigns, and the Respondent Union, Service Employees International Union, Local 24/7 International Union of Security Officers, its officers, agents, and representatives, shall take the action set forth in the judge's Order as modified.

1. Add the following to the end of paragraphs A,2(c) and B,2(a): “; provided, that Respondent Service Employees International Union, Local 24/7 International Union of Security Officers, shall be primarily liable for the reimbursements; provided further, that neither Respondent shall be required to reimburse employees who became members of Respondent Local 24/7 prior to June 30, 2002.”

2. Delete the last clause from paragraph B,1(f), which reads: “, and another labor organization has been lawfully recognized as the exclusive bargaining representative.”

3. Substitute the attached notices for those of the administrative law judge.

Dated, Washington, D.C. September 23, 2004

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT maintain or give effect to the June 30, 2002 collective-bargaining agreement with the Service Employees International Union, Local 24/7 International Union of Security Officers (Local 24/7), or any renewal or modification thereof.

WE WILL NOT require as a condition of employment that our security guard unit employees remain or become members of Local 24/7, and WE WILL NOT deduct union dues for Local 24/7 from the wages of our security guard unit employees.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL withdraw and withhold all recognition from Local 24/7 as your representative for purposes of collective bargaining, and cease to maintain or give effect to the June 30, 2002 collective-bargaining agreement with Local 24/7.

WE WILL immediately recognize and bargain in good faith with the International Union, Security, Police and Fire Professionals of America (SPFPA) as the exclusive collective-bargaining representative of our security guard unit employees and, if an understanding is reached, embody the understanding in a signed written agreement. The appropriate bargaining unit of security guards is:

All employees employed by Northwest Protective Service, Inc. as Uniformed Security Officers (S/O) in the State of Washington, excluding all office employees and supervisory employees as defined in the National Labor Relations Act.

WE WILL, jointly and severally with the Employer, reimburse, with interest, all former and present uniformed security officers of the Employer for all dues and fees withheld from their pay starting July 1, 2002 through the date of compliance with this Order; provided, that Local 24/7 shall be primarily responsible for the reimbursements, and we shall be secondarily responsible for the reimbursements; provided further, reimbursements will not be made to employees who became members of Local 24/7 prior to June 30, 2002.

NORTHWEST PROTECTIVE SERVICE

APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist any union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT threaten to picket Northwest Protective Service, Inc. (the Employer) with an object of forcing or requiring it to recognize or bargain with us as the collective-bargaining representative of the Employer's uniformed security officers in the State of Washington.

WE WILL NOT act as the exclusive collective-bargaining representative of the Employer's uniformed security officers where we do not have the support of a majority of those employees.

WE WILL NOT maintain or give effect to the June 30, 2002 collective-bargaining agreement with the Employer, or any renewal or modification thereof.

WE WILL NOT maintain or enforce the union security or dues deduction provisions of the June 30, 2002 collective-bargaining agreement with the Employer.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, jointly and severally with the Employer, reimburse, with interest, all former and present uniformed security officers of the Employer for all dues and fees withheld from their pay starting July 1, 2002 through the date of compliance with this Order; provided, that we shall be primarily responsible for the reimbursements, and the Employer shall be secondarily responsible for the reimbursements; provided further, reimbursements will not be made to employees who became our members prior to June 30, 2002.

SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 24/7 INTERNATIONAL UNION OF
SECURITY OFFICERS

Irene Hartzell Botero, Atty., for the General Counsel.

Jerome L. Rubin, Atty. (Stoel Rives), of Seattle, Washington, for the Respondent-Employer.

Lawrence Schwerin and April L. Upchurch, Attys. (Schwerin, Campbell & Barnard), of Seattle, Washington, for the Respondent-Union.

Gordon Gregory, Atty. (Gregory, Moore, Jeagle, Heinen & Brook), of Detroit, Michigan, for the Charging Party-Union.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. I heard this case in trial at Seattle, Washington, on March 3–5, 2003. On April 9, 2003, I received two factual stipulations and closed the record. On July 2, 2002, International Union, Security, Police and Fire Professionals of America (SPFPA) filed the original charge in Case 19–CP–526 alleging that Service Employees International Union, Local 24/7, International Union of Security Officers (Local 24/7 or Respondent-Union) committed certain violations of Section 8(b)(7)(A) of the National Labor Relations Act (the Act). On July 10, 2002, SPFPA filed the first amended charge in Case 19–CP–526. On July 11, 2002, SPFPA filed the original charge in Case 19–CA–28124 alleging that Northwest Protective Service, Inc. (Respondent-Employer or Northwest) committed certain violations of Section 8(a)(5)(2) and (1) of the Act. On July 26, SPFPA filed the second amended charge against Local 24/7 in Case 19–CP–526. On August 12, SPFPA filed the charge in Case 19–CB–8856 charge alleging that Respondent-Union had violated Section 8(b)(1)(A) and (2) of the Act. The Regional Director for Region 19 of the National Labor Relations Board issued a consolidated complaint and notice of hearing against Respondent-Employer and Respondent-Union on August 14, 2002.

The complaint alleges that Respondent-Employer unlawfully withdrew recognition of SPFPA as the exclusive collective-bargaining representative of its statutory guards and unlawfully recognized Respondent-Union as the representative of those

employees. Further, the complaint alleges that Respondent-Union unlawfully accepted recognition as the bargaining representative of Northwest's guards. Finally, the complaint alleges that Respondent-Union threatened to picket Northwest for recognition and that said threat resulted in the alleged unlawful recognition of Local 24/7 by Northwest. Northwest admits the allegations of the complaint but alleges that it engaged in such conduct under duress due to unlawful threats by Respondent-Union. Respondent-Union filed a timely answer to the complaint, denying all wrongdoing. Further, Respondent-Union alleges that Northwest's recognition of SPFPA was unlawful and that Local 24/7 was the exclusive collective-bargaining representative of Northwest's guards.

All parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. Upon the entire record, from my observation of the demeanor of the witnesses, and having considered the post-hearing briefs of the parties, I make the following

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

The Respondent-Employer is a corporation with an office in Seattle, Washington, where it is engaged in the business of providing industrial and commercial security services. During the 12 months prior to the issuance of the complaint, Respondent-Employer in the conduct of its guard services business, purchased goods and materials valued in excess of \$50,000 from sources outside the State of Washington or from suppliers within Washington which in turn obtained such goods from sources outside Washington State. Accordingly, both Respondents admit, and I find, that the Respondent-Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Charging Party-Union, SPFPA, and the Respondent-Union, Local 24/7, are both labor organizations within the meaning of Section 2(5) of the Act. Section 9(b)(3) of the Act prohibits the Board from certifying as the exclusive bargaining representative of an employer's employees, a labor organization, if that labor organization is affiliated with an organization which admits to membership, employees other than guards. Local 24/7 is affiliated with the Service Employees International Union, a labor organization that admits to membership, employees other than guards. SPFPA is an all-guard union.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

For approximately 30 years, the International Union of Security Officers (IUSO) represented the statutory guards employed by Northwest in the Seattle and Tacoma, Washington area. The last collective-bargaining agreement between the IUSO and Northwest was effective from August 1, 2000 through June 30, 2002. This collective-bargaining agreement covered a unit consisting of only statutory guards. All the parties agree that the bargaining unit was appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act. On or about March 5, 2002, IUSO, which was a guards-only union,

merged with Local 24/7. Local 24/7 is directly affiliated with the SEIU. In the Seattle area the SEIU represents, inter alia, janitors and hospital workers. Previously, IUSO only represented statutory guards.

On May 10, 2002, Local 24/7 notified Respondent-Employer that the IUSO had voted to affiliate with the SEIU and that a charter had issued to Local 24/7. Local 24/7 notified the Employer of its recently elected officials and stated, "We have no intention of changing the nature of our current collective-bargaining relationship."

On May 28, 2002, James Shore, an attorney representing Respondent-Employer, wrote Respondent-Union agreeing to a meeting to be held on May 31. Shore specifically stated that Respondent-Employer reserved the right not to recognize "any union other than the exact same IUSO it has had a contract with for many years." Shore stated that Respondent-Employer "still retains its rights under Section 9(b)(3) of the National Labor Relations Act to recognize only a pure guard union."¹⁷ The parties met on May 31 and discussed Respondent-Employer's concerns that IUSO's affiliation with the SEIU would cause conflict of interest issues for the Employer's clients who employed nurses and/or janitors represented by the SEIU. SEIU representatives attempted to alleviate the Employer's concerns. No agreements were reached at this meeting and Respondent-Employer continued to "reserve its rights" regarding recognition of Local 24/7.

On June 21, SPFPA filed a petition with the Board to represent the Employer's security guards in Seattle and Tacoma, Washington. However, the petition was untimely because it was filed within the last 60 days of the Northwest-IUSO collective-bargaining agreement. On June 25, SPFPA, by letter, requested voluntary recognition as the exclusive bargaining representative of the Employer's security officers.

On June 27, Reverend Don Mayer of the Plymouth Congregational Church in Seattle conducted a check of the union authorization cards obtained by SPFPA.¹⁸ With representatives of the SPFPA and the Employer present, all parties compared the authorization cards to three lists of employees provided by the Employer. The lists were of employees employed more than 120 days; employees employed less than 120 days, and employees on leave of absence. The count showed that SPFPA had a card majority of 205 employees out of a unit of 401 active employees, and 207 cards out of a unit of 410 including employees listed as on leave. At trial, it was discovered that there were some discrepancies in the employee lists utilized on June 27. However, these discrepancies did not affect the nu-

¹ Between May 10, and May 28, 2002, the Employer had received numerous communications from politicians in the Seattle area expressing concern that Respondent-Employer would withdraw recognition from Respondent-Union due to the affiliation with SEIU. Respondent-Employer had replied that it had made no decision regarding recognition of Local 24/7. The Employer further stated that the fact that Local 24/7 was a "mixed union" raised "serious security issues involving divided loyalties and [was] a great concern to clients."

² There were two card checks prior to the card check conducted by Reverend Meyer. In both of these card checks, Respondent-Employer told SPFPA that it did not have a card majority.

merical majority. Reverend Mayer certified the results of the card check.

Based on the card check, Respondent-Employer and SPFPA executed an agreement whereby the Employer agreed to recognize SPFPA as the exclusive bargaining representative of the security guards effective 12:01 a.m. on July 1, 2002 (1 minute after expiration of the Employer-IUSO collective-bargaining agreement). The Employer and SPFPA further agreed to keep in effect the terms of the existing collective-bargaining agreement with the substitution of SPFPA for the IUSO. From July 1 until a bargaining agreement was negotiated, the status quo would be the terms and conditions of employment that existed in the expired contract between the Employer and IUSO.

Shore notified Local 24/7 of the execution of the recognition agreement with SPFPA by fax on June 28. Shore also telephoned Steve McClenathan, president of Local 24/7, and left a voice mail for Michael Baratz, an international representative for the SEIU.

On June 29, Shore called Baratz and informed him of the Employer's card check and recognition of SPFPA. According to Shore, Baratz said, "this isn't over. We're going to do whatever we have to do." When specifically asked if he was threatening to picket, Baratz answered, "That and more. We are going to contact customers, we're going to contact politicians, and we're going to march down the streets." Shore attempted to convince Baratz not to picket but Baratz insisted that the only way the Employer could avoid the picketing was to renege on its agreement with SPFPA and sign a contract extension with Local 24/7. Shore stated that the Employer would only sign such an agreement if Local 24/7 would agree to a hold harmless clause to protect the Employer from a lawsuit by SPFPA. Baratz said that Shore and Local 24/7's attorney could work out the language.

Shore contacted the Employer's CEO and was instructed to do whatever it took to avoid picketing of the Employer's customers. Shore called Baratz on June 29 and agreed to sign a contract extension agreement with a hold-harmless and indemnification agreement. An agreement was reached on June 30 and signed by Shore on behalf of the Employer. Baratz agreed that there would be no picketing and gave Shore the name of Respondent-Union's attorney. On June 30 Respondent-Employer and Respondent-Union executed the contract extension and hold harmless agreement.

Baratz denied that he had threatened to picket the Employer. Baratz gave no explanation for the Employer having changed its position regarding the mixed union¹⁹ issue or why the Employer would recognize Local 24/7 after having just agreed to recognize SPFPA. Shore was a credible witness and his description of these events seems much more plausible than Baratz's testimony. Accordingly, I credit Shore's version of these events.

As of the date of the trial, Respondent-Employer and Respondent-Union were applying the contract extension to the

bargaining unit of guards. That contract provided for union security and dues checkoff.

B. Conclusions

Section 9(b)(3) prohibits two specific actions: (1) the designation of a unit as appropriate that contains both guards and nonguards, and (2) the certification of a union as the representative of a unit of guards when that union also admits nonguards to membership. Since Section 9(b)(3) is silent with regard to the voluntary creation, establishment, or maintenance of bargaining relationships between employers and mixed guard unions, the Act does not prohibit a mixed-guard union from accepting recognition for a guard unit if such recognition is voluntarily extended. See *Wackenhut Corp.*, 287 NLRB 374, 376 (1987). However, a mixed-guard union may do no more than ask an employer for such recognition. When recognition is refused it cannot resort to economic weapons to obtain what the employer chooses not to grant. Id at 376.

The issue in this proceeding is the interpretation of Section 9(b)(3) of the Act. In *Wells Fargo Corp.*, 270 NLRB 787 (1984), the Board was faced with the question of whether an employer violated its bargaining obligation under Section 8(a)(5) and (1) of the Act by withdrawing recognition from a mixed guard union, which it had voluntarily recognized as representative of its guard employees during a strike following unsuccessful negotiations for a successor agreement. The administrative law judge concluded that the employer was estopped from withdrawing its voluntarily conferred recognition at the time that it did because the employer had not provided any warning to the union or employees that it was contemplating such action, was not prompted to act by valid concerns over conflict of interest or security, and that its discontinuance of the bargaining relationship was based solely on economic considerations. Thus, the judge found that the employer had violated the Act and ordered it to bargain with the union.

A Board majority reversed the judge. The Board stated that the reason Congress enacted Section 9(b)(3), in response to the Supreme Court's decision in *NLRB v. Jones & Laughlin Steel Corp.*, 331 U.S. 416 (1947), was precisely "to shield employers of guards from the potential conflict of loyalties arising from the guard union's representation of nonguard employees or its affiliation with other unions who represent nonguard employees." By requiring the employer to continue to recognize and bargain with the union, the judge was attempting to impose through the remedial process of an unfair labor practice proceeding what the Board is precluded from doing through the representation election processes—that is, impose upon an employer a bargaining partner which may have conflicting interests among the employees it represents. Thus, the Board held that while the employer and union could enter into a valid voluntary collective-bargaining relationship the employer "was privileged to withdraw from the relationship at the time that it chose to do so." The Board dismissed the complaint. On petition for review, the Second Circuit Court of Appeals upheld the Board's decision. *Teamsters Local v. NLRB*, 755 F.2d 5 (2d Cir. 1985), cert. denied 474 U.S. 901 (1985).

In *Temple Security, Inc.*, 328 NLRB 663 (1999) the Board reviewed its decision in *Wells Fargo* and concluded that the

³ A mixed guard union is one which, as described in Sec. 9(b)(3), represents or seeks to represent guards, and admits nonguards to membership or is affiliated with an organization which admits nonguards to membership.

Board's legal analysis in that case was correct and that its reasoning should continue to apply. However, on appeal, the United States Court of Appeals for the Seventh Circuit in *Service Employees, Local 73 v. NLRB*, 230 F.3d 909 (7th Cir. 2000), held that the Board erred in construing Section 9(b)(3)'s prohibition against certifying mixed guard unions as depriving such unions of the protections of Section 8. The court pointed out that Section 9(b)(3) requires the Board to refrain from doing only two things: (1) finding that a unit including guards and nonguards is appropriate; and (2) certifying mixed guard unions as representatives of guard units. The court emphasized that there is no express language in Section 9(b)(3), or the Act, requiring the Board also to withhold from mixed guard unions the protections of Section 8. To the contrary, the court pointed out, in drafting Section 9(b)(3) Congress preserved guards' status as statutory employees who are entitled to form unions and claim all the rights and protections of Sections 7 and 8.

The court found further support for its plain reading of Section 9(b)(3) in the fact that this section prohibits the certification of mixed guard unions, but does not forbid an employer from voluntarily recognizing a mixed guard union as the representative of a guard unit. The court found this distinction significant because, inasmuch as the Act establishes voluntary recognition as a legitimate way for unions to secure representative status, it shows that Congress never intended to take mixed guard unions outside the protections of the Act altogether. Rather, it shows that Congress struck a balance. That balance, the court explained, lies in the fact that, while the Act grants certified unions "special privileges," such as a 1-year irrefutable presumption of majority support, voluntarily recognized unions still enjoy "the basic protections." As the court put it, "[c]ertification gives an organization which achieves it additional rights[,] not all its rights." 230 F.3d at 915 (quoting *NLRB v. White Superior Division*, 404 F.2d 1100, 1103 fn. 5 (6th Cir. 1968)). Against this backdrop, the court found that Section 9(b)(3) plainly was intended only to preclude mixed guard unions from claiming those additional rights, not to strip them of the basic protections afforded all bargaining representatives.

The court finally observed those basic protections include the protections of Section 8, which enforces the rights of employees to join unions and to bargain collectively, whether their union was certified by the Board or voluntarily recognized by their employer. More specifically, the court emphasized, Section 8(a)(5) broadly prohibits an employer from refusing to bargain collectively "with the representatives of his employees," meaning, simply, "those unions designated or selected for the purposes of collective bargaining by the majority of the employees in [an appropriate] unit." 230 F.3d at 915 (citations omitted). For all of these reasons, the court held that the Board misconstrued Section 9(b)(3)'s directive not to certify mixed guard unions as meaning that voluntarily recognized mixed guard unions fall outside Section 8 protections altogether. The court remanded the case to the Board for further consideration of the charging party-union's Section 8 claims.

On remand in *Temple Security, Inc.*, 337 NLRB 372 (2001) the Board considered the court's remand, and decided to accept the court's decision as the law of the case. However, the Board

indicated at footnote seven of that decision that it was not overruling the Board's original decision in *Temple Security*, 328 NLRB 663 (1999) or the Board's decision in *Wells Fargo Corp.*, 270 NLRB 787 (1984).

Here, Respondent-Employer had a valid collective-bargaining agreement with the IUSO. However, after the IUSO affiliated with the SEIU, Local 24/7 a mixed union was formed. Under the Board's rationale in *Wells Fargo* and *Temple Security*, supra, the employer was no longer required to recognize and bargain with the mixed union. Thus, under Board law, Respondent-Employer was privileged to withdraw recognition from Local 24/7, a mixed guard union, on June 27. While a different result would be reached under the Seventh Circuit's rationale, I am bound to apply established Board precedent which neither the Board nor the Supreme Court has reversed. *Los Angeles New Hospital*, 244 NLRB 960, 962 fn. 4 (1979), and *Iowa Beef Packers*, 144 NLRB 615, 616 (1963), enf. 640 F.2d 1017 (9th Cir. 1981).

Next, I turn to the recognition granted to SPFPA. It is well established that an employer cannot extend recognition, and a labor organization cannot accept recognition, if the union does not in fact represent a majority of the bargaining unit employees at the time that recognition is granted. *Garment Workers (Bernard Altmann Texas Corp.) v. NLRB*, 366 U.S. 731 (1961). However, an employer is free to execute a recognition agreement with a labor organization, based on a card majority verified by a neutral, when that labor organization represents an uncoerced majority in an appropriate unit. *99 Cent Stores, Inc.*, 320 NLRB 878, 881 (1996).

Here, SPFPA established a majority of the employees in the guard unit had signed union authorization cards for SPFPA. A majority of these card-signing employees were members of Local 24/7 and Local 24/7 was seeking recognition and a contract extension. Under normal circumstances, I would find that the card check which did not include Local 24/7, the rival union,²⁰ was not sufficient to establish majority status. The Board has long held that, when an employee has signed cards for two unions, the card of neither union will be considered a valid designation that can be used to support a finding of majority support of that union, unless the record establishes that "at the time material to the determination of the issue of majority status, the dual card signer intended only one of his dual cards—and which of them—to evidence his designation of a bargaining agent." *Alliant Foodservice*, 335 NLRB 695 (2001). However, due to Local 24/7's status as a mixed union, and its ineligibility for certification, the general rules regarding competing unions do not apply. Local 24/7 could not participate in a Board conducted election.

Based on the Board's rationale in *Wells Fargo*, I find that Respondent-Employer was privileged to disregard the recognition claims of Local 24/7, a mixed union. Thus, Respondent-Employer could treat SPFPA's demand for recognition as unrivaled and could conduct the card check without notice to, or participation by Local 24/7. Accordingly, I find that the Em-

⁴ I am reluctant to characterize Local 24/7 as an incumbent union because the fundamental identity of the selected representative, IUSO, changed when the IUSO became a mixed union.

ployer's recognition of SPFPA on June 27 was lawful. I further find that Respondent-Employer and SPFPA entered into a binding collective-bargaining agreement on June 27, effective July 1, 2002.

Section 8(b)(7)(A) of the Act prohibits a labor organization from threatening to picket any employer with a recognitional object, "where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under Section 9(c) of this Act." Section 8(b)(7)(C) of the Act prohibits a labor organization from threatening to picket any employer with a recognitional object, "where such picketing has been conducted without a petition under section 9(c) of the Act being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing." In the instant case, as shown above, Respondent-Employer had lawfully recognized SPFPA. Local 24/7 could not have raised a question concerning representation because it could not be certified under Section 9(c) of the Act. As the Board stated in *Wackenhut Corp.*, 287 NLRB 374 (1987), "a mixed union may do no more than ask an employer for such recognition. When recognition is refused, it cannot resort to economic weapons to obtain what the employer chooses not to grant. Here, Baratz threatened to picket and indicated that the only way Respondent-Employer could avoid the picketing was to sign a contract extension. Thus, I find that by these threats, Respondent-Union violated Section 8(b)(7)(A) and (C) of the Act. *General Service Employees Local 73 (Rainey's Security Agency)*, 239 NLRB 1233, 1241 (1979).

As stated earlier, an employer violates Section 8(a)(2) of the Act when it recognizes a nonmajority union. This is true even when the minority union coerces its recognition. *Wackenhut Corp.*, 287 NLRB 374 (1987); see also, *Gulf Caribe Maritime, Inc.*, 330 NLRB 766 (2000). Further, a union that accepts recognition when it does not in fact represent a majority of the bargaining unit employees at the time that recognition is granted, violates Section 8(b)(1)(A) of the Act. *Garment Workers (Bernard Altmann Texas Corp.) v. NLRB*, 366 U.S. 731 (1961). In the instant case Respondent-Employer, after union threats, recognized Local 24/7 after a card check had revealed that a majority of its security guards had signed cards in favor of SPFPA. Notwithstanding Respondent-Union's claims to the contrary, Local 24/7 had knowledge that a neutral card check had established a card majority for SPFPA and that the Employer had already executed a recognition agreement with SPFPA.

I find further that Respondent-Employer violated Section 8(a)(1), (2), and (5), and the Respondent-Union violated Section 8(b)(1)(A) and (2) of the Act by entering into a collective-bargaining agreement that contained union-security and dues-deduction clauses when Local 24/7 did not represent a majority of employees in the guard unit. See, e.g., *St. Helen's Shop 'N Kart*, 311 NLRB 1281 (1993); *Caro Bags, Inc.*, 285 NLRB 656 (1987); *Safeway Stores*, 276 NLRB 944 (1985).

CONCLUSIONS OF LAW

1. Respondent Northwest Protective Service, Inc. is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Service Employees International Union, Local 24/7, International Union of Security Officers is a labor organization within the meaning of Section 2(5) of the Act.

3. The Charging Party International Union Security, Police and Fire Professionals of America is a labor organization within the meaning of Section 2(5) of the Act.

4. Local 24/7 is affiliated with labor organizations, which represent nonguards.

5. By granting recognition and executing a collective-bargaining agreement with the Respondent-Union, which contained union-security and dues-deduction authorization provisions, Respondent-Employer has violated Section 8(a)(1), (2), (3), and (5) of the Act.

6. By accepting recognition as the bargaining representative of Respondent-Employer's security guard employees at a time when SPFPA was the exclusive bargaining representative of the unit employees, and by executing a collective-bargaining agreement with Respondent-Employer that contained union-security and dues-deduction authorization provisions, Respondent-Union has violated Section 8(b)(1)(A) and (2) of the Act.

7. By threatening to picket Respondent-Employer where an object of such picketing was for recognitional and bargaining purposes and no timely election petition had been filed, the Respondent Union has violated Section 8(b)(7)(C) of the Act.

8. By threatening to picket Respondent -Employer where an object of such picketing was for recognitional and bargaining purposes and Respondent-Employer had already lawfully recognized SPFPA as the exclusive collective-bargaining representative of the bargaining unit employees, the Respondent-Union violated Section 8(b)(7)(A).

9. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent-Employer and Respondent-Union have engaged in certain unfair labor practices within the meaning of Section 8(a)(1), (2), (3), and (5) and Section 8(b)(1)(A), 8(b)(2), and 8(b)(7)(A), and (C), respectively, of the Act, they shall be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent-Employer shall be ordered to withdraw all recognition from the Respondent-Union as the collective-bargaining representative of the unit employees, and the Respondent-Union shall be ordered to cease and desist from acting as such representative. Both Respondents shall also be ordered to cease and desist from giving effect to, or in any manner enforcing the collective-bargaining agreement executed on June 30, 2002.

Both Respondents will be ordered to jointly and severally reimburse all unit employees for any moneys required to be paid pursuant to the June 30 collective-bargaining agreement between Respondent-Employer and Respondent-Union, together with interest to be computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Respondent-Union shall be ordered not to threaten to picket Respondent-Employer where an object of such picketing is to force or require that Respondent-Employer recognize or bar-

gain with the Respondent-Union as the collective-bargaining representative of its employees at a time when the Respondent-Union is not certified as such representative.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended ²¹

ORDER

A. The Respondent-Employer, Northwest Protective Service, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Assisting or contributing support to Service Employees International Union, Local 24/7, International Union of Security Officers, by granting recognition to and executing a collective-bargaining agreement with Local 24/7, which contains union-security and dues-deduction authorization provisions, at a time when Local 24/7 does not represent a majority of the unit employees.

(b) Giving effect to, or in any manner enforcing the collective-bargaining agreement between Respondent-Employer and Respondent-Union executed on June 30, 2002.

(c) Giving effect to, or in any manner enforcing the union-security and dues-deduction authorization provisions of the collective-bargaining agreement between Respondent-Employer and Respondent-Union executed on June 30, 2002.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw and withhold all recognition from Local 24/7 as the exclusive bargaining representative of its employees for the purpose of collective bargaining, and cease to maintain or give effect to the collective-bargaining agreement executed with the Respondent-Union.

(b) Immediately recognize International Union, Security, Police and Fire Professionals of America (SPFPA) as the exclusive collective-bargaining representative of the security guard unit and bargain in good faith with that labor organization as the exclusive bargaining representative of the security guard unit and if an understanding is reached, embody the understanding in a signed agreement.

(c) Jointly and severally with Local 24/7 reimburse all former and present security guard bargaining unit employees for all dues and fees withheld from their pay together with interest to be computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987) from July 1, 2002, until such time as Respondent-Employer and Respondent-Union cease giving effect to the June 30, 2002, collective-bargaining agreement.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment re-

ords, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of dues and fees to be repaid to eligible employees under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facilities in the State of Washington, copies of the attached notice marked "Appendix A."²² Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by Respondent-Employer's authorized representative, shall be posted by the Respondent-Employer immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Further, Respondent-Employer shall duplicate and mail, at its own expense, a copy of the Notice to Employees, to all former security guard unit employees employed by Respondent-Employer at any worksite at which Respondent-Employer is unable for any reason to post the Notice to Employees.

(f) Within 14 days of being furnished the same by the Regional Director, post and mail the Notice to Employees and Members marked "Appendix B" in the same manner as "Appendix A."

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent-Employer has taken to comply.

B. The Respondent Service Employees International Union, Local 24/7 International Union of Security Officers, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Accepting recognition from Respondent Northwest Protective Service, Inc., as the bargaining representative of Respondent-Employer's security guard employees at a time when the Respondent-Union does not represent a majority of the employees in the appropriate bargaining unit.

(b) Acting as the exclusive collective-bargaining representative of Respondent-Employer's security employees.

(c) Giving any effect to the collective-bargaining agreement executed with Respondent-Employer on June 30, 2002, or any extension, renewal, or modification thereof.

(d) Discriminating against or attempting to cause Respondent-Employer to discriminate against the unit employees, in violation of Section 8(a)(3) of the Act, by maintaining or implementing the terms of the union-security and dues-deduction authorization provisions of the collective-bargaining agreement executed on June 30, 2002.

(e) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

(f) Threatening to picket Respondent-Employer, where an object of such picketing is to force or require that employer to

⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

recognize or bargain with the Respondent-Union as the representative of its employees, at a time when the Respondent-Union is not the majority representative, and another labor organization has been lawfully recognized as the exclusive bargaining representative.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Jointly and severally with Respondent-Employer reimburse all former and present security guard unit employees for all dues and fees withheld from their pay together with interest to be computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), from July 1, 2002, until such time as Respondent-Employer and Respondent-Union cease giving effect to the June 30, 2002 collective-bargaining agreement.

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of dues and fees to be repaid to eligible employees under the terms of this Order.

(c) Within 14 days after service by the Region, post at the Respondent-Union's business offices and meeting places in the State of Washington, copies of the attached notice marked "Appendix B."²³ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent-Union's authorized representative, shall be posted by it immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted.

(d) Within 14 days after service by the Region, sign and return to Regional Director for Region 19 sufficient copies of the notice for posting by Respondent-Employer, if willing, at all places where notices to employees are customarily posted. Further, Respondent-Union shall duplicate and mail, at its own expense, a copy of the Notice to Employees and Members, to all former security guard unit employees employed by Respondent Employer at any time since June 30, 2002 and to all current security guard unit employees employed at any worksite at which Respondent-Employer is unable for any reason to post the Notice to Employees and Members.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent-Union has taken to comply with this Order.

Dated, San Francisco, California, June 10, 2003.

APPENDIX A NOTICE TO EMPLOYEES

⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT apply or otherwise give effect to the terms of the June 30, 2002 collective-bargaining agreement with Service Employees International Union, Local 24/7, International Union of Security Officers (Local 24/7).

WE WILL NOT require as a condition of employment that our security guard unit employees, who are members of Local 24/7, remain members and those who are not members become members and WE WILL NOT deduct union dues for that labor organization from the wages of our security guard unit employees.

WE WILL withdraw and withhold all recognition from Local 24/7 as your representative for the purposes of collective bargaining, and cease to maintain or give effect to the June 30, 2002, collective-bargaining agreement executed with Local 24/7.

WE WILL immediately recognize and bargain in good faith with the International Union, Security, Police and Fire Professionals of America (SPFPA) as the exclusive collective-bargaining representative of our security guard unit employees and if an understanding is reached, embody the understanding in a signed agreement.

WE WILL jointly and severally with Local 24/7 reimburse, with interest, all former and present security guard unit employees for all dues and fees withheld from their pay starting July 1, 2002 through the date of compliance with this Order. The appropriate bargaining unit of security guards is:

All employees employed by Northwest Protective Service as Uniformed Security Officers (S/O) in the State of Washington, excluding all office employees and supervisory employees as defined in the National Labor Relations Act.

NORTHWEST PROTECTIVE SERVICE, INC.

APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

WE WILL NOT threaten to picket Northwest Protective Service, Inc. (The Employer) with an object of forcing or requiring it to recognize or bargain with us as the collective-bargaining representative of the Employer's uniformed security officers in

the State of Washington where those security guards are lawfully represented by the International Union, Security, Police and Fire Professionals of America (SPFPA).

WE WILL NOT act as the exclusive collective-bargaining representative of the Employer's uniformed security officers where those employees are lawfully represented by SPFPA.

WE WILL NOT maintain or give effect to the June 30, 2002, collective-bargaining agreement with the Employer, or any renewal or modification thereof.

WE WILL NOT enforce the union security or dues deduction provisions of the June 30, 2002, agreement with the Employer.

WE WILL jointly and severally with the Employer, reimburse, with interest, all former and present uniformed security officers of the Employer for all dues and fees withheld from their pay starting July 1, 2002 through the date of compliance with this Order.

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 24/7
INTERNATIONAL UNION OF SECURITY OFFICERS