

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

STILLWATER MINING COMPANY

Employer,

and

Case No. 27-RC-8040

PACE INTERNATIONAL UNION

Petitioner.

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Undersigned.

Upon the entire record in this proceeding, the Undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, for the following reasons:

## STATEMENT OF FACTS:

Stillwater Mining Company, is a Delaware corporation engaged in the mining industry. It operates an underground mine at its facility in Nye, Montana. It also operates a smelter at Columbus, Montana, a base metals refinery, and a facility known as the East Boulder project. The only facility at issue herein is the Nye, Montana mine facility. During the past 12 months, the Employer received goods and materials at its Nye, Montana facility valued in excess of \$50,000 directly from points located outside the State of Montana. In accordance with the stipulation of the parties, I find that the Employer is engaged in interstate commerce within the meaning of Section 2(6) and (7) of the Act.

On April 28, 2000, the Petitioner filed the instant petition seeking to represent a unit of employees classified as dispatchers performing work for the Employer at the Employer's Nye, Montana facility. At the hearing, the Petitioner amended its petition to seek to represent the following Unit:

All fulltime and regular parttime dispatchers employed at the Nye, Montana facility; excluding all other employees, office clerical employees, casual employees, temporary employees, contractor employees, managers, guards and supervisors as defined in the Act.

Although agreeing that a unit consisting of dispatchers would be appropriate, the Employer contends that the petition should be dismissed, because the dispatchers are guards as defined by the Board. Since the Petitioner represents nonguards throughout the United States, as well as at the Employer's Nye mine facility, the Employer argues that pursuant to the provisions of Section 9(b)(3) of the Act, the Petitioner cannot be certified to represent these guard employees. There is no dispute that the Petitioner is

a labor organization that represents nonguards. The Employer and the Petitioner's local union affiliate, Local 8-001, currently are parties to a collective bargaining agreement, in effect by its terms from July 1, 1999 to July 1, 2004. The Parties stipulated that the existing unit which includes employees at the Nye mine, Columbus and East Boulder facilities, is described as follows:

All production and maintenance workers, warehouse workers, lab technicians and custodians, excluding temporary employees, student summer hires, professional employees, technical employees, office clerical employees, guards, dispatchers, supervisors and those above the rank of supervisor.

Facts:

The manager of safety and security for the Employer is Al Stuart. Stuart reports directly to the President of the Employer. Reporting directly to Stuart is safety administrator for the Nye mine, Lori Stewart. She works in the administration building at the mine, supervising the dispatchers, the contract security guards employed by Guardian Security (hereinafter, referred to as contract guards), and Medcore which is the on-site contract paramedic service. Stewart also administers the Employer's self-insured workers' compensation program.

Reporting to Stewart are four fulltime and three parttime dispatchers. They work rotating 12-hour shifts from 6:00 to 6:00, to provide 24-hour, 7-day per week coverage. There is also one contract guard working each 12-hour shift. The contract guards have a desk next door to the dispatch office in the ambulance barn. The contract guards, however, spend most of their time either driving or foot patrolling areas of the property.

From approximately 1987 when the mine began operation until 1995, the dispatchers worked in a guard shack, because their responsibilities included investigating all in-coming automobiles to ensure compliance with the mine's federal operating permit requirement that there not be less than three persons in automobiles arriving at the mine. Thereafter, they were moved to a newly constructed facility, attached to the administration building. The dispatch office is constructed in such a way as to have a "bird's nest" view of the parking lot used by all in-coming employees and visitors in both cars and buses. In this regard, it is elevated above the parking lot, has three picture windows to the east and one to the north, giving the dispatchers a full view of the parking lot and roadway leading up to that lot. The sole entrance to the administration building and to the mine itself leads past the dispatchers' office, which is kept locked. Communication with visitors and employees is through a sliding window in the dispatch room door. Various logs are maintained on a shelf by that sliding window, including the visitor log and emergency personnel log. In the near future, however, the dispatchers will again be moved to a guard shack, which will be constructed at the mine entrance, because more stringent permit provisions are again going into effect. The other duties of the dispatchers, as outlined below, are not expected to change when the dispatchers are relocated to a guard shack.

The dispatchers, who are not allowed to leave their workstation until relieved by another dispatcher, monitor various radio systems and coordinate safety and security matters. Specifically with regard to security, they ensure that all visitors to the mine sign in and out and have the proper pass issued by the Employer at its Columbus, MT facility before entering the facility. This sometimes involves investigating the nature of the visit

and receiving actual authorization via fax or e-mail prior to allowing a visitor to enter the facility, if such authorization was not previously obtained. The dispatchers also issue hard hats and safety glasses to visitors, as needed. The dispatchers monitor the parking lot with binoculars for suspicious behavior of employees and visitors. Such monitoring includes ensuring compliance with the Employer's requirement that all hunting rifles left in automobiles be registered with the dispatchers. Such registration includes the name of the owner, serial number of the rifle and vehicle license plate number. If the dispatchers observe something suspicious, they radio the contract guard to check it out or they call a supervisor. Suspicious behavior includes rifles in unregistered vehicles, strangers in the parking lot and vandalism to vehicles. The dispatchers also have a direct radio to the Stillwater County sheriff's office, and they are responsible for calling for intervention when directed to do so by a supervisor or the contract guard. The dispatchers also are in direct contact with MSHA and other governmental agencies for certain accidents and incidents that require immediate reporting. These include power outages, fatalities and mine fires. The dispatchers are required to keep a detailed log of all such outside contacts, which are then used by the governmental agencies for investigatory purposes, or internally for disciplinary actions and grievance and arbitration matters. With regard to blasting activities, the dispatchers are required to be informed before any blasting occurs and to log all blasting that occurs at the mine.

The dispatchers also monitor a Multi-Plexor video surveillance device stationed in their area. That monitor is a real-time view of 12 areas of the mine property, including the powder magazine. The dispatchers log any suspicious activity seen on the screen

and radio the contract guard to check it out. The recordings from the system are kept for future review in investigations. Suspicious activities are either radioed to the contract guard by the dispatchers for investigation, or radioed to the dispatchers by the contract guard for additional assistance from management or outside sources. The dispatchers are also responsible for logging all such activities.

Employees calling in their absences due to illness or unavailability, do so through the dispatchers. The dispatchers, in turn, fill out a form, which is given to the employee's supervisor. That form includes the name of the employee and supervisor, dates the employee will be off, telephone number where the employee can be reached, and observations by the dispatcher as to anything suspicious about the call such as background noise inconsistent with the stated reason for the absence.

The dispatchers have control of master keys for the facility, including all of the doors to all of the buildings, the powder magazine, the primer magazine which houses the detonators for the explosives, and all of the mine vehicle keys. Some of these keys are kept in a locked box accessible only to the dispatchers. All keys are logged in and out by the dispatchers. The dispatchers also secure incoming and outgoing lab samples and other types of deliveries from the lab, refinery or smelter.

While the contract guards wear uniforms, this is not a requirement imposed by the Employer. The dispatchers are not required to wear uniforms. Both the dispatchers and contract guards are unarmed except for pepper spray, and both groups are instructed to not use physical force when attempting to detain individuals. Instead, both dispatchers and contract guards are instructed to immediately contact management and the County sheriff's office when incidents out of their control arise.

With regard to safety matters, the dispatchers monitor the Gaitronics underground mine radio system, including line five which is reserved for emergencies. The dispatchers then call for appropriate intervention, including the on-site ambulance service. The dispatchers also notify Central Mine Rescue and Help Flight, an emergency helicopter service, from St. Vincent's Hospital in Billings, Montana, to either call for assistance or put them on standby notice. If Help Flight is called, the dispatchers monitor wind speeds and outside temperatures on equipment in their office and communicate directly with the helicopter via radio to assist in landing of the helicopters at the facility helipad.

The dispatchers also are notified of all power outages in the mine. They then notify the appropriate supervision of the existence of a problem, communicate directly with electricians regarding the problem, and standby for possible evacuation. In this regard, the dispatchers check out devices, which test for CO, NO<sub>2</sub> and oxygen levels. During power outages, the dispatchers record these levels, which are radioed to them. The dispatchers can and do call for evacuations based on the levels they record. In doing so, they use the Gaitronics radio system, which is a direct broadcast into the mine, to either inform employees of fresh air areas or to instruct employees to evacuate. The dispatchers are also notified of all fires in the mine. They, in turn, notify appropriate managers and supervisors and contact Central Mine Rescue.

#### ANALYSIS AND CONCLUSIONS:

Based on the foregoing and the record as a whole, I conclude that the dispatchers are guards within the meaning of the Act. To be a "guard," an employee

must enforce against employees and other persons rules to protect the property of the employer's premises. **Petroleum Chemicals**, 121 NLRB 630 (1958). It is not, however, the percentage of time which employees spend on guard like duties, but the nature of those duties which is controlling. Moreover, the fact that the employees have not been deputized and do not carry a gun is not dispositive. Instead, it is sufficient that they possess and exercise responsibility to observe and report infractions, rather than to apprehend individuals or otherwise take action. **Blue Grass Industries, Inc.**, 287 NLRB No. 28, (1987), citing **Supreme Sugar Co.**, 258 NLRB 243, 245, (1981). Thus, watchmen who make plant rounds, punch clocks, enforce company rules, and prevent unauthorized individuals from entering plant property are "guards" within the definition. **Jakal Motors**, 228 NLRB 730 (1988).

Recently, the Board held that employees confined to a guard shack or monitoring room, as is the case herein, are also guards. Specifically, in **Rhode Island Hospital**, 313 NLRB 343 (1993), the Board found that security dispatchers with duties similar to the dispatchers at issue were guards within the meaning of the Act. In that case, the security department included security officers from an outside contractor, and security dispatchers, shuttle van drivers and traffic control guards, all employed by the hospital. The security dispatchers received calls from employees needing a ride to their car, needing a door opened, or reporting suspicious persons or a family problem. In turn, the dispatchers contacted security officers in the field to respond to these calls. The security dispatchers also monitored the fire alarm system and checked out license plate numbers when requested. They also were responsible for passing out keys in their control to security officers. The security dispatchers in **Rhode Island Hospital** never

directly investigated calls or confronted employees or individuals to enforce hospital rules. In **Rhode Island Hospital**, the Board found the dispatchers to be guards and stated as follows:

In monitoring the Hospital's closed circuit TV system, they are directly responsible for being alert to any incident, situation, or problem which needs responsible action and for reporting such incidents to the proper authorities. . . . They are also the individuals whom employees and other people call for assistance with problems and emergencies, including those involving security and safety. The fact that the dispatchers do not personally confront employees or others, but rather merely report violations, does not defeat their guard status. Because the dispatcher's authority to observe and report infractions is not merely incidental to their other duties, but instead constitutes one of their primary responsibilities which is an essential link in the Hospital's effort to safeguard its employees and enforce its rules, the dispatchers are guards. **A.W. Schlesinger Geriatric Centers, Inc.**, 267 NLRB 1363, 1364 (1983), and **Crossroads Community Correctional Center**, 308 NLRB 558, 562 (1992).

In **MGM Grand Hotel**, 274 NLRB 139 (1985), the Board also found the operators of the J.C.-80 fire-safety system to be guards within the meaning of the Act. This system was installed after the 1980 fire at the hotel. The monitoring system was installed in a room adjacent to the security department and operated by two operators per shift. The sole duties of the operators of that system involve monitoring the fire detection portions of the system, the door alarm, and motion detection systems. Nonetheless, the operators were found to be guards, because they were closely involved with the security officers in safeguarding the premises.

In **PECO Energy Company**, 322 NLRB 1074 (1997), the Board held that a former janitor, now stationed at a guard shack because of epilepsy, was a guard within the meaning of Section 9(b)(3). That employee worked the day shift and provided the same services as contract guards in other shifts. Specifically, that employee monitored

security cameras placed throughout the property, operated the motorized security gates, and was responsible for checking people into the property and for reporting any infractions or suspicious situations to the shift manager for investigation. The Board in **PECO**, cited **Crossroads Community Correctional Center**, 308 NLRB 558 (1992), for the proposition that the employees at issue were guards because they kept unauthorized individuals off the property, even though they did not take direct action against violators of company rules, but instead reported them to a third party. The employees found to be guards in **Crossroads** also did not wear guard uniforms or badges, nor did they carry weapons. The employees did, however, have primary responsibility for monitoring all ingress and egress to the facility, including guarding the door, frisking all visitors and residents, searching all parcels, logging all visitors and residents upon entry or exit and monitoring various cameras placed at all exits and entrances, including fire escapes. In **PECO**, the Board also cited **A.W. Schlesinger Geriatric Centers, Inc.**, 267 NLRB 1363 (1983), in which the Board found that two maintenance workers were guards, because they spent 50 to 70 percent of their time on security functions, including locking and unlocking gates and doors at set times and observing shift changes to assure the safety of employees as they arrive at and leave work and to determine which employees were carrying packages. In **PECO**, the remainder of the time spent by the two maintenance employees at issue was on duties unrelated to security.

I find that the dispatchers in the instant matter are guards within the meaning of the Act. Because the petition was filed by a labor organization that represents nonguard employees, I shall dismiss the petition. In reaching this conclusion, I

particularly rely on the fact that the duties and responsibilities of the dispatchers are similar to the security dispatchers found to be guards in **Rhode Island Hospital**, supra. In this regard, while the dispatchers in the instant matter are confined to the dispatch room, their sole function relates to security of the Employer's property and safety of the employees and visitors.

### **ORDER**

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington DC by **June 19, 2000**.

Dated at Denver, Colorado, this 5th day of June 2000.

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