

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

SECURITY WASHINGTON, INC.^{1/}

Employer

and

NATIONAL ASSOCIATION OF SPECIAL
POLICE AND SECURITY OFFICERS

Petitioner

Case 5-RC-15058

DECISION AND DIRECTION OF ELECTION

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; hereinafter referred to as the 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.^{2/}
3. The Petitioner involved claims to represent certain employees of the Employer.^{3/}
4. A 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.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:^{4/}

All full-time and regular part-time security officers employed by the Employer at the FAA Building, 800 Independence Ave., S.W., the Department of Transportation Building, 400 7th Street S.W., and the Coast Guard Building, 2100 2nd Street, S.W., Washington, D.C., excluding all other employees, project manager, captain, lieutenants, assistant supervisors and shift supervisors as defined by the Act.

DIRECTION OF ELECTION

An Election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for

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cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by

**NATIONAL ASSOCIATION OF
SPECIAL POLICE AND SECURITY OFFICERS**

LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

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 14th Street, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by **SEPTEMBER 1, 2000.**

Dated August 18, 2000

at Baltimore, Maryland

/s/ ALBERT W. PALEWICZ
Acting Regional Director, Region 5



1/ The name of the Employer was amended at the hearing to conform to the Decision and Order that issued in Case 5-RC-15026.

2/ The Board has determined that it best effectuates the policies of the Act, and promotes the prompt handling of cases, to assert jurisdiction in any case in which an employer has refused, upon reasonable request by a Board agent, to provide the Board with information relevant to the Board's jurisdictional standards where the record at a hearing establishes that the Board has statutory jurisdiction, irrespective of whether the record demonstrates that the employer's business satisfies the Board's jurisdictional standards. Tropicana Products, 122 NLRB 121, 123 (1959).

The Employer stipulated to commerce in the Decision and Order in Case 5-RC-15026 which issued on June 2, 2000, another case between the same parties as herein. The Employer stipulated in that case that Security Washington, Inc. (the Employer), a District of Columbia corporation with a principal office and place of business in Washington, D.C. is engaged in the business of providing security services to various firms and institutions, including the United States Department of Transportation pursuant to a contract with the United States Department of Transportation, an agency of the federal government. Annually, the Employer has performed the above-described services valued in excess of \$50,000 to the United States Department of Transportation pursuant to the contract with that agency.

The petitioned-for employees work for the Employer under the Service Contract Act pursuant to a contract with the United States. The approximately 95 employees in the petitioned-for unit are paid \$11.20 per hour. The payroll for these employees exceeds \$50,000 annually. The record clearly shows, and I find, 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/ Caleb Burriss, President of the National Association of Special Police and Security Officers (the Union or Petitioner), testified about the Union's status as a labor organization. Burriss testified that the Union has been in existence since 1993 and that it represents employees of different companies. The Union has contracts with Areawide Security, USEC Security and Startech. These collective bargaining agreements address wages, hours and other terms and conditions of employment. Employees participate in the Union by being members, attending meetings, working on committees, and being on the Board of Directors.

I conclude that Petitioner is a **labor organization** within the meaning of Section 2(5) of the Act.

The record clearly shows, and I find, that the Union is an organization in which employees participate. The record also shows, and I find, that the Union admits

employees to membership and represents employees in collective bargaining with employers, concerning wages, hours, and working conditions. I find that the Union exists for the purpose, in whole or in part, of dealing with employers concerning wages, hours and other terms and conditions of employment, and the Union is a Section 2(5) labor organization. Alto Plastics Mfg. Corp., 136 NLRB 850, 851-852 (1962); Butler Mfg. Co., 167 NLRB 308 (1967); Michigan Bell Telephone Co., 182 NLRB 632 (1970).

4/ This case is the third time the Petitioner has filed a petition for this unit in the past several months. In Case 5-RC-15026, a Decision and Order issued dismissing the petition as the Petitioner failed to appear at the hearing. Another petition was withdrawn one day before the hearing when the Petitioner indicated he would not be able to attend the hearing. The Petitioner appeared at the hearing in the instant case, but the Employer did not. By letter dated July 17, 2000, to the Petitioner and copied to the Employer, the Hearing Officer confirmed that in light of the Petitioner's failure to proceed with the earlier petitions, the Employer told the Hearing Officer he would not participate in this hearing. The Hearing Officer, at 9:20 a.m. on the morning of the hearing herein, called the Employer's Project Manager who is located in Washington D.C. to determine if he was going to attend the hearing and upon receiving no response left him a voice mail message. At 11:00 a.m. the Hearing Officer called the Employer's headquarters in Oakland, California to speak with the Employer's representative, Tim Weldon. Mr. Weldon was not yet in his office and the Hearing Officer left a message for him regarding the hearing. The hearing opened at 11:24 a.m. and closed at 1:09 p.m. without any appearance or contact from the Employer.

At the hearing the Petitioner amended its petition and now seeks to represent the following unit:

All full-time and regular part-time security officers employed by the Employer at the FAA Building, 800 Independence Ave., S.W., the Department of Transportation Building, 400 7th Street S.W., and the Coast Guard Building, 2100 2nd Street, S.W., Washington, D.C., excluding all other employees, project manager and supervisors as defined by the Act.

All three of these locations are involved in the same Service Contract Act contract. Since the record is silent as to any differences in the work assignments at these three locations, I am making my findings on the basis that the work performed at the three locations is the same as it is all under the same contract. There are approximately 95 employees in the petitioned-for unit and there is no history of collective bargaining. The Employer in Case 5-RC-15026 took the position that the project manager, lieutenants, captain and sergeants should be excluded from an appropriate unit as supervisors. The Petitioner in this case took the position that the project manager and the captains are the only two positions that are supervisors as defined by the Act and excluded from the unit. The project manager and captain, who reports directly to the project manager, have offices at the Department of Transportation Building. The Petitioner contends that sergeants and lieutenants are not

supervisors and should be included in an appropriate unit. Employed by the Employer are approximately three lieutenants, fifteen sergeants, as well as an assistant supervisor on the day shift who is a sergeant. The other two shifts have a shift supervisor who is also a sergeant. Petitioner contends that the shift supervisors are not supervisors within the meaning of the Act.

The witness for the petitioner was the assistant supervisor at the FAA Building. She testified about the Employer's operation at that building. She stated that she was not familiar with the responsibilities of the positions at the other two buildings involved in the petitioned-for unit. The Employer's operation covers three shifts: 10:00 p.m. to 7:00 a.m.; 6:00 a.m. to 2:00 p.m.; and 2:00 p.m. to 10:00 p.m. Lieutenant Rhonda Harrison is in charge at the FAA Building. Her uniform has lieutenant bars which indicates that she is in charge. Lieutenant Harrison works from 6:00 a.m. to 2:00 p.m. Assisting the lieutenant is the assistant supervisor, a position that exists only on the day shift. There are 14 security officers working on this shift plus the assistant supervisor and the lieutenant. Of these 14 security officers 4 are sergeants so that they can occasionally fill-in for the one of the other sergeants or the lieutenant. These 4 sergeants man a post as do the other security officers. Their pay is the same as the security officers except when they are filling in as the assistant supervisor. They do not direct other employees, hire, fire, transfer employees or approve time off. There are 4 security officers, including a shift supervisor, on each of the other two shifts. The security officers are paid \$11.20 per hour and the assistant supervisor receives \$13.00 per hour. The two sergeants who work as shift supervisor on the other shifts receive an hourly wage rate which is greater than the wage rate for the assistant supervisor. Each shift supervisor has the same authority.

The lieutenant works from an office, rather than a post, and is responsible for enforcing the Employer's personnel policies. The lieutenant assigns employees to their posts and determines the break schedule. Training for security officers is done by either the assistant supervisor or the lieutenant. The assistant supervisor evaluates employees, as does the lieutenant. The assistant supervisor testified that she has written evaluations for employees based on her assessment of their performance and then discussed with them how she reached those conclusions. Evaluations are not done on a regular basis. If there is a shortfall of employees on a particular shift, either the assistant supervisor, the shift supervisor or the lieutenant is responsible for filling the position. Pursuant to the request of the lieutenant, the assistant supervisor wrote up an employee for abandonment of post. If an employee had a grievance they would take it to the assistant supervisor who would take it to the lieutenant. If that matter was not resolved it would go to the project manager. If an occupant of the building has a complaint about a security guard that person would take it to the lieutenant who has the authority to resolve the problem. The lieutenant is designated on the payroll as a supervisor and the employees regard the lieutenant as a supervisor.

The assistant supervisor is not involved in hiring decisions. The assistant supervisor does not grant time off, but the lieutenant does. The assistant supervisor has filled in as the shift supervisor on the other two shifts on occasion. When she does so, the security officers on the other shifts work at her direction. If she found an employee not

performing their job she would bring it to their attention and give them a verbal warning. Employees on the other shifts call in sick to the shift supervisor on duty, the sergeant. If a security officer showed up unfit to work, the shift supervisor on duty would not let that person report for duty. The shift supervisor would do a write-up on that person and turn it into the lieutenant without taking any further action. Shift supervisors do not do rounds, rather they check to make sure that the security officers are manning their posts. The sergeants who work as supervisors have bars on their uniform and carry a weapon, which the security officers do not do. On the day shift the lieutenant, the assistant supervisor and two other officers carry weapons.

CONCLUSION

To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in Section 2(11) of the Act. Rather, possession of any one of them is sufficient to confer supervisory status. Chicago Metallic Corp., 273 NLRB 1677, 1689 (1985). Consistent with the statutory language and the legislative intent, however, it is well recognized that the disjunctive listing of supervisory indicia in Section 2(11) does not alter the requirement that a supervisor must exercise independent judgment in performing the enumerated functions. Thus, the exercise of supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner does not elevate an employee into the supervisory ranks, the test of which must be the significance of the judgment and directions. Opelika Foundry, 281 NLRB 897, 899 (1986). The Board will refrain from construing supervisory status too broadly, because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. Quadrex Environmental Co., 308 NLRB 101, 102 (1992).

The lieutenants, assistant supervisors and shift supervisors are responsible for, among other things, directing the work of employees, evaluating employees and issuing warnings to employees. I find that based on the record as a whole that **lieutenants, assistant supervisors and shift supervisors** at the three locations are supervisors within the meaning of the Act and **excluded** from the unit found appropriate herein.

The Board has held that irregular or sporadic substitution for supervisors, such as during vacations and at other unscheduled times, does not confer supervisory status. Hexacomb Corp., 313 NLRB 983, 984 (1994); Gaines Electric Co., 309 NLRB 1077, 1078 (1992). Accordingly, I find that the **sergeants who are not an assistant supervisor or shift supervisors are included** in the unit and **eligible to vote** in the election.

In summary, I find the following unit of approximately 83 employees appropriate:

All full-time and regular part-time security officers employed by the Employer at the FAA Building, 800 Independence Ave., S.W., the

Department of Transportation Building, 400 7th Street S.W., and the Coast Guard Building, 2100 2nd Street, S.W., Washington, D.C., excluding all other employees, project manager, captain, lieutenants, assistant supervisors and shift supervisors as defined by the Act.

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