

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
(Vallejo, California)

PROFESSIONAL TECHNICAL SECURITY SERVICE, INC.

Employer

and

INTERNATIONAL UNION, SECURITY, POLICE AND FIRE
PROFESSIONALS OF AMERICA (SPFPA)

Petitioner

and

SERVICE EMPLOYEES UNION LOCAL No. 1877,
AFFILIATED WITH THE SERVICE EMPLOYEES
INTERNATIONAL UNIO, AFL-CIO 1/

Limited Intervenor

Case 20-RC-17834

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 2/ 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. 3/
2. The Employer 4/ is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 5/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 6/
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. 7/
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: 8/

All full-time and regular part-time security employees, including trainee I, trainee II, basic, advanced I, advanced II, assistant supervisor (admin. Assist.), shift supervisor, supervisor and senior supervisor employed by the Employer at the Embarcadero Center in San Francisco, California; excluding employees in the Adams Unit, all office employees, and supervisors 8/ within the meaning of 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. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. 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 cause since the designated payroll

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period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced 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 **INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA)**.

LIST OF VOTERS

In order to insure that all eligible voters may 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 which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB. Wyman-Gordan Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that with 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. **North Macon Health Care Facility**, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, 901 Market Street, Suite 400, San Francisco, California 94103, on or before **April 14, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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, DC 20570-0001**. This request must be received by the Board in Washington by **April 21, 2003**.

Dated April 7, 2003

at San Francisco, California

Regional Director, Region 20

- 1/ The name of the Limited Intervenor appears as described in its collective-bargaining agreement with the Employer.
- 2/ By order dated March 6, 2003, the record in the instant case was reopened for further hearing. Following the close of the re-opened hearing, the parties executed a joint stipulation regarding supervisory status of certain members of the bargaining unit. On March 31, 2003, the Limited Intervenor filed a Consent Motion to reopen the record to receive the parties' joint stipulation. The Consent Motion is hereby granted and the Consent Motion and Joint Stipulation have been received into the record as Board Exhibits 4 and 5 respectively.
- 3/ I find that the Hearing Officer did not commit prejudicial error in granting the motion of the Service Employees International Union Local 1877 (the Limited Intervenor) to intervene in this proceeding on a limited basis to present evidence and argument but not to appear on the ballot.

It is undisputed that the Limited Intervenor is a labor organization that admits non-guard employees to membership and, under Section 9(b)(3) of the Act, cannot be certified by the Board as the exclusive collective-bargaining representative of a guard unit. However, the record reflects that the Limited Intervenor is currently party to a collective-bargaining agreement (the Agreement) with the Employer covering the guard employees petitioned-for herein. This agreement is effective by its terms for the period January 3, 2000 to November 12, 2003. As discussed below, the Agreement does not serve as a contract bar to this proceeding because it is for a period in excess of three years and the petition herein was filed following the expiration of the first three years of that agreement. As the Limited Intervenor is the currently recognized bargaining representative of the employees at issue and is party to a collective-bargaining agreement with the Employer covering those employees, it is clearly an interested party to this proceeding. In these circumstances, and as the Limited Intervenor can present evidence concerning the scope of the unit, the collective-bargaining history and the area bargaining patterns relevant to a determination of the appropriateness of the petitioned-for unit, I find that the Hearing Officer properly granted intervenor status to Service Employees International Union Local 1877 for the limited purpose of providing such evidence.

In its post-hearing brief, the Limited Intervenor argues that as the incumbent union, it should be permitted to appear on the ballot so that the arithmetic results of the election can be certified in the event that it wins a majority of votes in any election that may be directed herein. This request is denied as the Limited Intervenor admittedly admits non-guard employees to membership and, under Section 9(b)(3) of the Act, cannot be certified as the collective-bargaining representative of a unit of guards. See *University of Chicago*, 272 NLRB 873 (1984).

- 4/ On the first day of the hearing, the Limited Intervenor asserted that Boston Properties, the owner and property manager of the Embarcadero Center, was a joint

employer of the security employees at issue herein. As Boston Properties had not been given notice of the hearing, the record was reopened for the purpose, among others, of ensuring that Boston Properties received notice of and an opportunity to participate in this proceeding. Although the record reflects that Boston Properties was served in writing and notified by telephone of the time, date, and place of the hearing, it did not appear at nor participate in the hearing. Further, while the Limited Intervenor presented some evidence regarding the joint employer issue at the re-opened hearing, in its post-hearing brief, it withdrew its contention that Boston Properties is a joint employer of the employees in the petitioned-for unit. In these circumstances, I find that there is no need to address the joint-employer issue.

- 5/ With regard to whether the Employer meets the Board's jurisdictional standards, the parties stipulated to the commerce facts set forth in the Decision and Direction of Election that issued in *Professional Technical Security Service, Inc.*, Case 20-RC-17822, (February 6, 2003). In that decision I found, based on a stipulation of the parties therein, that the Employer is a Delaware corporation with its main place of business located in San Francisco, California, where it is engaged in providing security services to commercial property management companies; on an annual basis, the Employer provides services valued in excess of \$50,000, to Cushman & Wakefield and Prentiss Properties respectively each of which meets the Board's standards for the assertion of jurisdiction on a direct basis; that the Employer is engaged in commerce and that it would effectuate the purposes of the Act to assert jurisdiction over the Employer in that case. Based on the parties' stipulation to the commerce facts as found in Case 20-RC-17822, I find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes and policies of the Act to assert jurisdiction in the instant case.
- 6/ The parties stipulated, and I find, that the Petitioner and the Limited Intervenor are each a labor organization within the meaning of the Act.
- 7/ As noted above, the Employer and the Limited Intervenor are parties to a collective-bargaining agreement covering the Employer's guard employees petitioned-for herein. This agreement is effective by its terms for the period January 3, 2000 to November 12, 2003. The parties stipulated, and I find, that this agreement does not serve as a contract bar to this proceeding because it for a period in excess of three years and the petition herein was filed following the expiration of the first three years of that agreement. See *Dobbs International Services, Inc.*, 323 NLRB 1159, 1160 (1997) (contract in excess of three years duration may serve as a bar to a petition only for the first three years of its term.).
- 8/ By its amended petition, the Petitioner seeks to represent a unit comprised of the Employer's security employees that is coextensive with the unit covered under the collective-bargaining agreement in effect between the Employer

and the Limited Intervenor. The parties do not dispute the appropriateness of the petitioned-for unit. The record in the instant case supports a finding that the petitioned-for unit is an appropriate unit as it is not only consistent with collective bargaining history but is also supported by the fact that these security officers have common supervision; receive similar pay and other benefits; have similar working conditions; have similar skills and work duties; and have significant interchange and contact with each other. Thus, the record shows that the 80 to 90 security employees sought to be represented by the Petitioner are covered under the Agreement; all work in the four Embarcadero buildings in San Francisco; all are cross-trained for all four Embarcadero buildings and all positions; and all are managed and supervised by the Employer's Co-Owners Michael Harrison, Robert Keays and Sergio Reyes and Director of Operations Bill Dusek. Further, there is no showing that the security employees working at the Embarcadero Center have any regular contact or interchange with security officers who work at any other location where the Employer provides security services. Accordingly, I find that the petitioned-for unit is an appropriate unit.

The parties stipulated, and I find, that the petitioned-for unit does not include a group of employees called the Adams Unit. In this regard, the record reflects that the Adams Unit is a group of active duty and retired policemen from the San Francisco Police Department who are apparently employed by Boston Properties to provide security and investigative services to the Embarcadero Center. The record contains no evidence that the employees in the Adams Unit share a community of interest with employees in the petitioned-for unit. Accordingly, they shall be excluded from the unit.

- 9/ The unit covered under the Employer's collective-bargaining agreement with the Limited Intervenor includes employees in the classifications of trainee I, trainee II, basic, advanced I, advanced II, assistant supervisor (admin. asst.), shift supervisor, supervisor, and senior supervisor. In their post-hearing stipulation, the parties stipulated that neither shift supervisors, senior supervisors nor any other individual in the bargaining unit are supervisors within the meaning of the Act. In this regard, the record reflects that the shift supervisors and senior supervisors are covered under the terms of the collective bargaining agreement between the Employer and the Limited Intervenor; possess common skills and functions as other unit employees; have similar terms and conditions of employment; share common supervision and management; and have frequent contact with the other unit employees. Accordingly, I find, that the shift supervisors, supervisors and senior supervisors are not statutory supervisors and that they are properly included in the unit. The job classifications listed in the unit description appear as described in the collective-bargaining agreement between the Employer and the Limited Intervenor.

Decision and Direction of Election
Professional Technical Security Service, Inc.
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