

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

DAIMLERCHRYSLER CORPORATION

Employer

and

Case 7-RC-22449

**NATIONAL UNION OF
SECURITY PROFESSIONALS (NUSP)**

Petitioner

and

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

Intervenor SPFPA

and

**UNITED GOVERNMENT SECURITY OFFICERS OF
AMERICA INTERNATIONAL UNION (UGSOA)^{1/}**

Intervenor UGSOA

APPEARANCES:

Gregory S. Purtell, Attorney, of Auburn Hills, Michigan, for the Employer.
Ellen F. Moss, Attorney, of Southfield, Michigan, for the Petitioner.
Gordon A. Gregory, Attorney, of Detroit, Michigan, for Intervenor SPFPA.
Ronald A. Mikell, of Portland, Oregon, for Intervenor UGSOA.

¹ Intervenor UGSOA did not appear at the April 30, 2003, hearing, but did participate at the September 8 and 9, 2003, hearing.

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

Background

On April 15, 2003, Petitioner filed the petition in this matter seeking to represent a unit of approximately 310 full-time and regular part-time fire security officers (FSOs) employed by the Employer at about 34 facilities at which Intervenor SPFPA is currently recognized by the Employer as the exclusive collective-bargaining representative; but excluding about 100 fire security specialists (FSSs) and senior fire security specialists (SFSSs), and supervisors as defined in the Act, and other nonguards. At a hearing conducted on April 30, 2003, the parties litigated (1) whether Petitioner is a labor organization within the meaning of Section 2(5) of the Act; (2) whether Petitioner is qualified under Section 9(b)(3) of the Act to represent guards because it is affiliated, either directly or indirectly, with the Service Employees International Union, AFL-CIO (SEIU), which represents nonguard employees; (3) whether FSSs and SFSSs were guards as defined by Section 9(b)(3); (4) whether Intervenor SPFPA is disqualified under Section 9(b)(3) of the Act from representing the petitioned-for unit because it currently represents and admits to membership, as part of the existing bargaining unit, fire security specialists and senior fire security specialists who are not guards; and (5) whether FSSs and SFSSs, if found to be guards, share a sufficient community of interest with the fire security officers to require their inclusion in the petitioned-for unit.

On May 27, 2003, I issued a Decision and Direction of Election finding that Petitioner is a labor organization within the meaning of Section 2(5) and is not, either directly or indirectly, affiliated with SEIU, and is therefore not disqualified from representing the petitioned-for employees. I further found that Intervenor SPFPA is not disqualified by Section 9(b)(3) from representing the current bargaining unit as it has not been shown by clear and definitive evidence that the existing bargaining unit consists of guard and nonguard employees. In addition, I found that FSSs and SFSSs share a sufficient community of interest to require their inclusion in the petitioned-for unit, based on the history of collective bargaining, their common supervision, similar wage progression, similar hours, performance of similar work, and similar training.

By an Order Remanding dated August 11, 2003, the Board, citing *Boeing Co.*, 328 NLRB 128 (1999) and *Burns International Security*, 300 NLRB 298 (1990), enf. denied 942 F.2d 519 (8th Cir. 1991), remanded this proceeding for further consideration of the duties performed by FSSs and SFSSs in order to ascertain whether those classifications are guards under Section 9(b)(3) of the Act. The Board's Order Remanding was limited to that issue.

Petitioner and Intervenor UGSOA contend that the FSSs and SFSSs are not guards. Intervenor SPFPA argues that they are.

The Evidence

On September 8, 2003, the hearing was reopened. Pursuant to an Order issued on August 29, 2003, the scope of the reopened hearing was limited to the subject matter of the Board's remand, and I ordered that the hearing be limited to witness testimony, other than job classifications, concerning the duties and responsibilities of FSSs and SFSSs, and more specifically, what rules they enforce, what duties relate to fire protection and prevention for the protection of persons and property, what security-related duties they perform, and whether any of these duties are a minor or incidental part of the overall fire protection responsibilities of the position.

Upon consideration of the entire record in this proceeding,² I find that the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.³ I also find that the enforcement of security and safety rules is an essential, and not a minor or incidental, part of the FSSs' and SFSSs' overall responsibilities. Thus, I find they are guards under Section 9(b)(3) of the Act.

The Employer employs approximately 410 FSOs, FSSs, and SFSSs at its 34 facilities located throughout the United States. The majority of witnesses testified that the job descriptions discussed in the undersigned's original Decision and Direction of Election accurately described their duties and responsibilities.

All FSS and SFSS witnesses testified that they perform daily tasks related to fire prevention. These include inspection, testing, and maintenance of fire equipment and fire systems, issuing or approving burning and welding permits, checking for fire and safety violations, and writing reports on fire prevention inspections. All FSSs and SFSSs respond to medical emergencies. In addition, the testimony established that the FSSs and SFSSs perform some security functions, including monitoring the entrance gates, performing turnstile duty (which entails inspecting packages for Employer property, weapons, drugs and alcohol, checking identification, and ensuring employees do not commit time card fraud), unlocking doors when employees have forgotten their keys, surveillance of employees, escorting discharged or disciplined employees from the plant,

² The Petitioner, Intervenor SPFPA, and Intervenor UGSOA filed briefs, which were carefully considered.

³ Petitioner challenges the Hearing Officer's decision to revoke its subpoena, which required the Intervenor SPFPA to produce certain records concerning Bell Helicopter Textron. The Hearing Officer granted Intervenor SPFPA's petition to revoke on the grounds that the subpoenaed information was outside the scope of the Board's remand, and was irrelevant to the instant proceedings. I hereby affirm the Hearing Officer's decision for the reasons stated.

escorting vendors within the plant, ensuring confidential materials remain secure, investigating fire, safety, and security rule infractions, writing reports on rule infractions, testifying in court against employees, and conducting raids.

The extent to which the FSSs and SFSSs perform the security duties described above varies greatly, and not all FSSs and SFSSs perform all of the same duties. Some FSSs work at the turnstiles or gates daily or several times a week, some FSSs regularly relieve FSOs at the turnstiles or gates for comfort breaks, and some FSSs never work the turnstiles or gates. Most FSSs and the SFSS testified that they escort discharged or disciplined employees from the plant, and unlock doors when employees have forgotten their keys. An SFSS testified that he has investigated theft and that FSSs engage in surveillance of areas where sabotage has been occurring. An FSS testified that he has conducted raids searching for drugs and in response to an employee selling food on the premises. Another FSS testified that he had engaged in surveillance of an employee suspected of dealing drugs. Two FSSs testified that they had been called to testify in court against employees. The witnesses variously testified that fire prevention work amounted to 50% to 100% of their work. They all testified that the remainder of their time was spent performing the security duties described earlier.

All FSS and SFSS witnesses testified that they conduct patrols of the Employer's premises. During these patrols, they inspect fire equipment, inspect fire systems, look for persons in unauthorized areas, and are responsible for enforcing the Employer's Standards of Conduct. The witnesses consistently testified that they are responsible for enforcing the Standards of Conduct "100 percent of the time." The Standards of Conduct are a set of 34 rules distributed to employees upon hire. They outline behavior that, if engaged in, constitute grounds for discipline, up to and including discharge, and consist of both security and fire/safety violations. The 34 rules are: providing false and/or misleading information to the Employer; time card fraud; unexcused absence or tardiness from the plant or workstation; leaving or failing to return to one's workstation without permission; failure to exert normal effort on the job, wasting time, loitering, loafing, or sleeping on the job; failure to follow supervision's instructions; leading, instigating, supporting, or taking part in any strike, work stoppage, or picketing in violation of the collective bargaining agreement; harassment of another person based on sex, race, religion, age, disability, national origin, sexual orientation, or membership in another protected class; production of excessive scrap or inferior work; negligent or deliberate damage, destruction, misuse or unauthorized use of Employer property; immoral or indecent conduct; use, sale, possession, or being under the influence of drugs or alcohol; unacceptable conduct due to alcohol or drug abuse; threatening, intimidating, coercing, harassing, retaliating, or using abusive language to others; fighting, "horseplay," or unruly conduct; creating or contributing to unsafe or unsanitary

conditions; smoking or parking in an unauthorized area; unauthorized solicitation except as protected by the NLRA; posting, removing, or defacing notices on bulletin boards without management approval; unauthorized use, possession, or removal of, or access to, Employer records; engaging in conduct constituting or appearing to constitute a conflict of interest; theft or attempted theft; gambling; possessing weapons on Employer property; failure to show proper identification; permitting improper use of one's badge or identification; failure to permit inspection of lockers, vehicles, packages, lunch boxes, or purses; failure to follow safety procedures or to wear required safety equipment; failure to work assigned overtime; removing or altering safety equipment; conducting a check cashing service or loansharking; unauthorized use or access to the Employer's computer systems and software; failing to observe the dress code; failure to comply with environmental standards or regulations.

All FSS and SFSS witnesses testified that they are responsible for taking action if they observe any violation of the Standards of Conduct. Upon observing a rule infraction, their responses vary depending on the type of infraction and the position of the perpetrator. If they can handle the violation on their own, they do. For example, FSSs testified that if they observe an employee smoking, they tell the employee to put out the cigarette. If they see an employee, visitor, or vendor in an unauthorized area, they either ask the person to leave, or detain the person and call for backup or for a supervisor, depending on the circumstances. For more serious offenses, like drug use or fighting, FSSs testified that they call a supervisor and escort the perpetrator to Labor Relations. At some facilities, FSSs and SFSSs are required to write reports on rule infractions they observe; at other facilities a supervisor writes up a report.

At times when a strike is possible, the Employer creates a strike plan. In the event of a strike, the plan increases the length and number of shifts for FSOs, FSSs, and SFSSs to 12 hour shifts, 7 days a week. This permits more of them to be on duty at all times. In addition to their fire prevention duties, the strike plan calls for FSSs and SFSSs to patrol the fence lines, do picket counts, and monitor the gates, the parking lots, the inside of the plant, and high hazard areas. Shortly prior to the remanded hearing, during national contract negotiations with the International Union, UAW, the Employer disseminated a strike plan either orally or by e-mail. FSSs who have been involved with a strike stated that they look for sabotage and unauthorized persons during their patrols.

The FSSs and FSOs receive most of their training together.⁴ They receive training in authority and responsibility, report writing, sexual harassment prevention, severe weather, homeland security, vehicle and pedestrian control, fire

⁴ An SFSS testified that he trains the FSSs and FSOs at his facility.

training, emergency response, information protection, first aid, CPR and bloodborne pathogens, special extinguishing systems, conflict resolution, and hazardous material training. FSSs and SFSSs also receive firefighter certification, and SFSSs must be emergency medical technicians. One FSS testified that in his jurisdiction, St. Louis County, Missouri, he is required to be, and is, a licensed security officer.

As discussed in the original Decision and Direction of Election in this matter, FSOs' uniforms consist of dark blue pants and a light blue shirt. FSSs and SFSSs wear dark blue pants and a dark blue shirt. On certain occasions, FSOs may wear a polo shirt. At the hearing on September 8 and 9, 2003, an FSS testified that all classifications' shirts state "Fire Security Operations" on them.

Legal Analysis

Section 9(b)(3) of the Act prohibits a combined unit of guards and non-guards, and defines a guard as "any individual employed to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises." *Boeing Co.*, 328 NLRB 128, 129-130 (1999). The Board has long held that in cases where an employer has charged certain employees with duties that are arguably security-related for only a portion of their working hours, of central concern is not a numerical accounting of the percentage of time employees spend on such duties, but rather the specific nature of the duties themselves. *Id.* at 130 (1999); *Rhode Island Hospital*, 313 NLRB 343, 346 (1993); *Waterboro Mtg. Corp.*, 106 NLRB 1383, 1384 (1953). Thus, the Board has determined that employees are guards if they are charged with guard responsibilities that are not a minor or incidental part of their overall responsibilities. *Boeing Co.*, supra; *Rhode Island Hospital*, supra, at 347. Guard responsibilities include the enforcement of rules against other employees, the possession of authority to compel compliance with those rules, training in security procedures, participation in security rounds or patrols, the monitor and control of access to the employer's premises, and wearing guard-type uniforms. *Boeing Co.*, supra. Guard responsibilities are minor or incidental when the enforcement of security and safety rules is not an essential part of the employees' responsibilities. *McDonnell Aircraft Co.*, 279 NLRB 357, 358 (1986).

While most of the FSSs and SFSSs spend the majority of their time performing fire prevention work, they also perform some security duties. Significantly, all of the FSSs testified that they are responsible for enforcing the Employer's Standards of Conduct 100 percent of the time. During their patrols, FSSs and SFSSs are looking for violations of the Standards of Conduct in addition to performing inspections and maintenance of fire equipment, and if they observe a violation, they are responsible for enforcing the rule whether it is fire, safety, or

security-related. Cf. *Burns Security Services*, 300 NLRB 298 (1990), enf. denied 942 F.2d 519 (8th Cir. 1991) (firefighters were not guards where the regulations they enforced pertained exclusively to fire and safety).

The Petitioner argues that while the FSSs possess the authority to enforce plant rules, they often fail to exercise that authority, or do so infrequently, similar to the firefighters in *Boeing Co.*, supra. However, the firefighters in *Boeing*, when assigned increased patrols during a strike, expressed their concern about their lack of training or experience in confronting suspicious individuals or situations, and, as a result, the employer instructed the firefighters to notify security if confronted with suspicious persons or activities rather than deal with the situation themselves. In contrast, here, the FSSs and SFSSs are always responsible for handling unauthorized individuals and other security situations, and most FSSs testified that they had done so. In addition, unlike the firefighters in *Boeing*, many FSSs testified that at their facility, they alone were responsible for patrolling inside the plant, while the FSOs manned the gates outside. Further, FSSs who testified that they did not often enforce rules stated this was because they infrequently observed employees violating the rules, not due to an unwillingness to exercise their authority to enforce the rules.

Finally, the Employer's strike plans call for the FSSs and SFSSs to perform a greater number of guard duties. The Board examines the nature of an employee's strike-related duties in the same manner that it examines their nonstrike related duties; that is, whether the disputed employer engages in guard responsibilities that are not a minor or incidental part of their overall responsibilities. *Id.* at 130, *Rhode Island Hospital*, supra at 347. Here, the guard responsibilities during a strike are not minor or incidental. Cf. *Burns Security Services*, supra (where there was no probative evidence that the employer had a plan to use firefighters to augment patrols in the event of a strike).

The testimony adduced at hearing establishes that the FSSs and SFSSs enforce the rules embodied in the Employer's Standards of Conduct, which include fire, safety, and security rules, against other employees, possess the authority to compel compliance with those rules, have training in security procedures, participate in security rounds or patrols, monitor and control access to the Employer's premises, and wear indicia of guard status. I find that the enforcement of security and safety rules is an essential part of the FSSs' and SFSSs' responsibilities and is not a minor or incidental part of the overall fire protection responsibilities of their positions. Thus, they are guards under Section 9(b)(3) of the Act.⁵

⁵ Petitioner argues that the SFSSs and FSSs do not share a sufficient community of interest with the FSOs, and their inclusion in a common unit would render the unit inappropriate for collective bargaining. This

Based on the foregoing, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, and I hereby direct an election therein:⁶

All full-time and regular part-time fire security officers, fire security specialists, and senior fire security specialists employed in those plants of DaimlerChrysler Corporation for which the International Union of Security, Police and Fire Protection Professionals of America (SPFPA) is currently recognized by the Employer; but excluding all supervisors as defined in the Act and all other employees.

Those eligible to vote shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 24th day of October 2003.

(SEAL)

/s/ Stephen M. Glasser
Stephen M. Glasser, Regional Director
National Labor Relations Board
Seventh Region
Patrick V. McNamara Federal Building
477 Michigan Avenue-Room 300
Detroit, Michigan 48226

Classification Numbers

177 3950 9000
339 7575 7575

argument is outside of the scope of the Board's remand, and, for the reasons set forth in the original Decision and Direction of Election in this matter, I reaffirm that their inclusion is appropriate.

⁶ Following issuance of the original Decision and Direction of Election in this matter, Petitioner submitted an additional and sufficient showing of interest in the larger unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of this office 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 employees 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 an 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 a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Employees who are otherwise eligible but who are in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who quit or are discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike, who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) 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:

NATIONAL UNION OF SECURITY PROFESSIONAL (NUSP)

OR

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

OR

**UNITED GOVERNMENT SECURITY OFFICERS OF AMERICA
INTERNATIONAL UNION (UGSOA)**

OR

NONE

LIST OF VOTERS

In order to ensure 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 v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **4** 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. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before October 31, 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, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by November 7, 2003.

POSTING OF ELECTION NOTICES

a. Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. */

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

*/ Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.