

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Fort Worth, Texas

LOOMIS, FARGO & CO.¹

Employer

and

Case No. 16-RC-10609

**CURRENCY AND SECURITY
HANDLERS ASSOCIATION (CASHA)²**

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner, Currency and Security Handlers Association (CASHA), filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent all vault employees and driver guards employed at the Employer's Fort Worth, Texas location, but seeking to exclude all other employees, including guards and supervisors as defined by the Act. The Employer contends that any appropriate unit containing Fort Worth employees must also include employees at its Dallas location because the two facilities are functionally integrated and form a single identity. The Employer also asserts that any unit containing driver guards should exclude all vault employees because vault employees are not guards as defined by Section 9(b)(3) of the Act. The Employer employs approximately 58 employees in the petitioned for unit and 149 employees in the unit urged as appropriate by the Employer.

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

ISSUES PRESENTED

The issues before me are as follows: (1) has the Employer demonstrated that the Fort Worth and Dallas locations are so functionally integrated so as to require a multiple-facility unit; (2) are vault employees Section 9(b)(3) guards; and (3) if vault employees are guards, do they lack a community of interest with the driver guards sufficient to justify their exclusion from the unit.

THE REGIONAL DIRECTOR'S FINDINGS

A hearing officer of the National Labor Relations Board conducted a hearing on this matter and the parties waived post-hearing briefs. Based on the record evidence, I conclude that a unit comprising only Fort Worth employees is appropriate; however, any such unit may only consist of driver guards, as I find that the vault employees are not guards as defined in Section 9(b)(3) of the Act.

STATEMENT OF FACTS

The Employer is a nationwide company that provides armored cash-handling services for financial and commercial customers with locations in Dallas and Fort Worth, Texas. The services provided by the Employer include retrieving and delivering in armored vehicles large quantities of cash as well as servicing ATMs. The Dallas and Fort Worth locations form part of the Employer's North Texas area, which includes locations in Lubbock, Amarillo, Tyler, and Waco.

Corporate Structure

General Manager Chuck O'Brien has the general responsibility to oversee the budget and growth of the company in North Texas. He is also responsible for maintaining the integrity of

the area's policies and procedures. All other area managers are responsible to him. O'Brien, as well as the other area managers, has his offices in Dallas, Texas.

Area management is responsible for all billing, accounts payable, purchasing, payroll, and collections for the local branches. They are also responsible for loss prevention, including training employees in security and safety policies. Upon hire, all new employees attend a training session at the area office in Dallas.

The area human resources manager and the Dallas/Fort Worth human resources representative are responsible for hiring and discipline in the Dallas and Fort Worth locations. The Dallas and Fort Worth locations also have a mutual fleet manager who is responsible for maintaining and repairing vehicles and for determining which trucks are available to drivers. If either location lacks trucks sufficient to cover its routes, a vehicle may be borrowed from the other location. At the time of the hearing, the Fort Worth location was using five to seven Dallas trucks.

Each location has its own branch manager who is in charge of daily operations, including daily route assignments, ordering supplies, and other general management decisions. Each location is responsible for certain routes in the Dallas/Fort Worth area, and on occasion, the branch managers may request that a driver from the other location run a route for their location. The Dallas branch runs a route for the Fort Worth office about one time per week, while Fort Worth runs a route for Dallas about one time per month. The Fort Worth manager and Dallas manager may also solicit temporary replacement driver guards from the other when they are short-handed.

Although the human resource manager and the Dallas/Fort Worth human resource representative have the authority to make hiring decisions, they typically seek input from branch

managers in their hiring decisions. The branch managers may veto a hiring decision made by area management and may recommend discipline. Each branch has separate managers for their driver guards and vault employees who answer to the branch managers.

Driver Guards

The duties of driver guards at both the Fort Worth and Dallas locations consist of retrieving and delivering customer orders in armored vehicles, generally on established routes, as well as servicing ATMs. There are approximately 99 driver guards in Dallas and 50 in Fort Worth. Driver guards are required to be commissioned by the State of Texas to carry a firearm, which they are usually required to carry. Guards must also be certified by the Department of Transportation (DOT) as well as undergo a thorough background and drug screening. Upon hire, guards are trained in loss prevention, proper firearm use, and customer service. Driver guards wear a uniform consisting of a gray military-style shirt with logo, black pants, and boots.

Driver guards are paid between \$11-14 per hour, with Dallas drivers receiving about 10 cents more per hour than Fort Worth drivers. Dallas driver guards receive overtime pay after working 50 hours in one week. Fort Worth driver guards receive overtime upon working the sixth and seventh days in a given week. All driver guards receive the same health benefits, sick and holiday leave, and access to a 401(k) plan.

Driver guards drive two types of trucks. Commercial armored cars are used for small cash retrieval from commercial customers. The more heavily armored bank trucks are used for large cash retrieval from banks. Drivers are required to have a commercial driver's license (CDL) to drive bank trucks, but not commercial armored cars.

The guards work in pairs with one guard driving the vehicle and the other in the rear with the cargo. The passenger guard is responsible for carrying items to and from the vehicle. The driver remains with the vehicle while the passenger guard makes the deliveries or retrievals.

Driver guards start their workday at about 7:30 a.m. and they usually work until about 6:00 p.m. Upon starting the day, the guard designated to drive picks up his assigned truck and conducts a pretrip check of the vehicle. After completing the pretrip, he drives to the door of the vault to pick up his partner for the day, as well as the initial delivery load.

While the driver is conducting the pretrip, the passenger guard goes to the vault and obtains from a vault employee the initial delivery load. The vault employee passes to the passenger guard over a counter each individual item in the load. The passenger guard checks off on a printout the items he received. After this process is complete, the passenger guard and the vault employee double-check the order for accuracy. Upon completing the second check, the passenger guard takes his order to the truck and loads it into the back. He then climbs into the back of the vehicle and the driver departs. Throughout the day, guard teams make from 40 to 50 deliveries or retrievals and may return to the vault to drop off or pick up additional items. On occasion, especially on the weekends, driver guards may work in the vault.

Vault Employees

Vault employees' duties include auditing, processing, balancing and sorting items in the vault. There are approximately eight vault employees in Fort Worth. They are not required to be DOT certified or commissioned to carry a firearm, but must submit to a background and drug screening. According to the testimony of the North Texas Area general manager, the vault employees are employed to sort, not guard assets.

Vault employees wear the same uniform as the driver guards, except they are allowed to wear shoes instead of boots. They are paid between \$11-14 dollars per hour and receive overtime after 40 hours of work in one week.

The Employer has two types of vaults. Both Dallas and Fort Worth maintain transit vaults where guards take smaller cash deliveries for auditing and processing. Dallas has an additional cash vault that handles larger cash deliveries. In addition to servicing Dallas drivers, the cash vault also receives deliveries from between five and six Fort Worth guards each day. On the weekends, the Fort Worth vault is closed requiring all transactions to pass through the Dallas vaults on those days.

Vault employees may work one of two eight-hour shifts. Throughout the day, they receive items from driver guards, count items for accuracy, record and ensure consistency of the amounts and item numbers of in-coming and out-going orders, and maintain proper inventories in the vault. The vault employees spend the majority of their day in the vault and do not interact with customers.

ANALYSIS

In evaluating the appropriateness of a bargaining unit under Section 9(b) of the Act, the Board has broad discretion to decide whether or not a unit is appropriate for the purposes of collective bargaining. *So. Prairie Construction v. Operating Engineers Local 627*, 425 U.S. 800 (1976). The statute does not require that a unit be the only appropriate or the most appropriate unit, rather, the Act only requires that the unit be “appropriate.” *Overnite Transportation Co.*, 322 NLRB 723 (1996). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless “an appropriate unit compatible with that requested does not exist.” *P. Ballantine & Sons*, 141 NLRB 1103 (1963).

In determining whether a petitioned-for unit is appropriate, the unit sought by the petitioning union is always a relevant consideration. *The Lundy Packing Co., Inc.*, 314 NLRB 1042, 1043 (1994).

Single v. Multiple-facility Unit

As referenced above, the Employer seeks a multiple-facility unit consisting of all guard drivers at its Dallas and Fort Worth locations. The Petitioner maintains that a Fort Worth only unit would be appropriate.

The Board has long held a single-facility unit presumptively appropriate for collective bargaining. *D&L Transportation*, 324 NLRB 160 (1997); *J&L Plate, Inc.*, 310 NLRB 429 (1993); *Bowie Hall Trucking, Inc.*, 290 NLRB 41, 42 (1988). The presumption in favor of a single-facility unit may be overcome “by a showing of functional integration so substantial as to negate the identity of the single facility.” *Bowie Hall Trucking*, at 41. In determining whether substantial functional integration has occurred, the Board considers several factors including: 1) the degree of employee interchange; 2) centralized control over daily operations and labor relations; 3) the similarity of employee skills, functions, and working conditions; 4) geographic separation; and 5) bargaining history if any exists. *New Britain Transportation Co.*, 330 NLRB 397 (1999). The burden is on the party seeking the multiple-facility unit to present evidence sufficient to overcome the presumption. *J&L Plate*, 310 NLRB 429 (1993).

1. Employee Interchange and Interaction

Among the factors considered in determining whether the single-facility presumption has been rebutted, the Board views the absence of employee interchange as a critical factor. *First Security Services Corp.*, 329 NLRB 235 (1999). The Board has stated that “a relatively low degree of actual employee interchange among different plants [is] a strong indication that there is

no collective 'community of interests' among a proposed multi-plant bargaining unit." *Cell Agricultural Manufacturing Co.*, 311 NLRB 1228, 1238 (1993) citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1981). Additionally, data alone without context, such as the percentage of the total number of routes involving interchange or the percentage of total employees involved, carries minimal evidentiary value. *New Britain*, supra at 398. Although the record reflects that interchange occurs between the Fort Worth and Dallas locations, the record fails to provide sufficient context to help determine the extent of the interchange.

The record reveals that when either the Dallas or Fort Worth branch is understaffed, the branch manager may request from the other the temporary transfer of replacement drivers. However, the Employer failed to provide sufficient data to show how frequently this happens. The Employer also failed to establish other indicia of employee interchange, such as permanent or extended transfers between the facilities.

The record shows that approximately one time per week a Dallas driver guard runs a route for Fort Worth, and approximately one time per month a Fort Worth driver guard runs a route for Dallas. Depending on the circumstances, a driver may also be required to pick up a single customer for the other branch. Fort Worth and Dallas drivers may communicate with each other via a radio network and interact at company sponsored events.

Although the record shows that there is interchange and interaction between the two locations, the Employer failed to present any statistical evidence to demonstrate the impact of such interchange on daily operations. As indicated in *New Britain*, supra, without such data, the extent of functional integration between the two facilities cannot be determined and, therefore, the single-facility presumption has not been overcome.

2. Centralized Control over Daily Operations and Labor Relations

The Employer maintains some centralized control over labor relations in Fort Worth and Dallas. North Texas Area management is responsible for hiring, discipline, loss prevention, safety and security training, payroll, and wages and benefits. Centralized control over labor relations, however, “is not sufficient to rebut the single-location presumption where the evidence demonstrates significant local autonomy over labor relations.” *New Britain*, 330 NLRB at 397.

The record shows that branch managers have significant control over the daily operations of their location. Branch managers make daily route assignments and ensure that absent drivers are replaced by authorizing temporary transfers when needed. They may also recommend discipline and, in addition to participating in the hiring process, have the authority to veto area management’s hiring decisions.

The record reveals that the Fort Worth vault is closed on the weekends and all routes are dispatched out of Dallas on those days. However, the record is silent as to the effect of this on Fort Worth employees. Dallas’ authority over Fort Worth employees on weekends cannot, therefore, be relied on to justify a multiple-facility unit. Although the Employer exercises some central control, the significant local autonomy exercised by each location over labor relations is sufficient to justify a single-facility unit.

3. Employee Skills, Function, and Working Conditions

Employees at Fort Worth and Dallas share similar required skills, functions, and working conditions. Driver guards at both facilities go through the same new-hire training, work under the same job description, and perform the same daily skills, as do all vault employees. All employees wear basically the same uniform, have the same health, vacation and sick leave benefits, have access to a 401(k) program, and are paid roughly the same wage.

Only two notable distinctions exist between Dallas and Fort Worth employees regarding their wages. First, Dallas driver guards receive about 10 cents more per hour than the Fort Worth drivers. Second, Dallas drivers receive overtime pay after working 50 hours and Fort Worth driver guards receive overtime pay upon working the sixth and seventh days of a week.

4. Geographic Separation and Bargaining History

The Fort Worth facility is located approximately 28 miles from the Dallas facility. There is no prior bargaining history between the Employer and the Union at these locations.

Based on the record, I conclude that the Employer has not rebutted the presumption of a single-facility unit. Although the record shows some centralized control of labor relations and similarities in skills, functions, and working conditions, these factors are outweighed by the lack of evidence showing significant employee interchange and by the substantial local managerial autonomy exercised by the branch managers.

In sum, I find that the evidence presented does not establish that the Dallas and Fort Worth facilities have been so effectively merged or that they are so functionally integrated that they have lost their separate identities to the point where the presumptive appropriateness of the petitioned-for unit has been rebutted. Therefore, I decline to find a multiple-facility unit appropriate and I conclude that a unit containing only Fort Worth employees is appropriate.

9(b)(3) Guard Status of Vault Employees

The Employer contends that vault employees should be excluded from the bargaining unit because they are not Section 9(b)(3) employees. Section 9(b)(3) states that the Board shall not “decide that any unit is appropriate . . . if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of the persons on the employer’s premises.”

Board precedent is well settled that employees who perform functions similar to those performed by the driver guards in the instant case are guards under Section 9(b)(3). *Armored Motor Service Company, Inc.*, 106 NLRB 1139 (1953); *Teamsters Local 639 (Dunbar Armored Express)*, 211 NLRB 687, 689 (1974); *Rapid Armored Corp.*, 323 NLRB 709, 709-710 (1997).

Based on the record, vault employees do not perform the essential functions of protecting property or people's safety necessary to be classified as statutory guards and I will, therefore, exclude them from the bargaining unit.

Although precedent regarding vault employees as statutory guards is minimal, the Board has resolved the issue in other circumstances that provide guidance in the present case. In *Purolator Courier Corp.*, 300 NLRB 812 (1990), the Board found that unarmed couriers were not statutory guards because "courier-guards receive only minimal training and instruction regarding the protection and safety of customer property; they are not trained or authorized to use physical force or weapons; they have job duties that merely require the pickup, transport, and delivery of customer property with minimal access to customer premises; they are minimally accountable to the Employer for the property involved; and they are held out to the public by the Employer as delivery persons and not guards." *Id.* at 815.

The jobs performed by the vault employees in the instant case are strikingly similar to those of the courier-guards in *Purolator*. The record shows that the main duties of vault employees include auditing, processing, balancing and sorting items in the vault. Vault employees are not required to be certified to carry a firearm, as are driver guards, and are not trained nor expected to use force to protect the property of the employer or customers. Vault employees spend most of their day within the vault and have no access to the customers' premises. Unlike driver guards, vault employees perform duties ordinarily associated with a

clerical checking function and only protect the Employer's property as an incident to their primary duties. See *Tac/Temps*, 314 NLRB 1142 (1994).

Unlike the vault employees in *Brink's Inc.*, 272 NLRB 868 (1985), the vault employees in the instant case are not bonded or qualified by the Employer to use a firearm to protect property in the vault. Although one of the Employer's vaults does have two or three shotguns hanging on the wall, vault employees are not trained or expected to use them. The record does not reveal whether firearms are present in either of the other two vaults.

The record reveals that one Fort Worth vault employee drives or rides with a truck that takes money to banks every evening. The record is not clear as to the duration of this duty or the extent of protection the vault employee provides while on the route. This one example alone, in light of the countervailing facts, is insufficient to justify including vault employees in the bargaining unit. See *Tac/Temps*, supra. (sporadic substitution by a checker for a guard was not a substantial part of the checkers' duties, but incidental to their clerical functions).

Because vault employees perform duties that are clerical in nature and because they are not trained or expected to use force to protect the property of the Employer or customers, I conclude that vault employees are not guards under Section 9(b)(3) of the Act and are, therefore, excluded from the bargaining unit.

CONCLUSION AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The parties stipulated, and I find, that the Employer, a Texas corporation, is engaged in the business of cash-handling services in Fort Worth, Texas. During the past 12-month period, it purchased and received goods valued in excess of \$50,000 directly from suppliers outside the state of Texas. Based on the foregoing, 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 in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. The parties stipulated to the petitioner's status as a labor organization.
5. 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.
6. The following employees of the Employer constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:
Included: All driver guards employed by the Employer's facility at its Fort Worth location.
Excluded: All other employees, including vault employees and supervisors as defined by the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Currency and Security Handlers Association (CASHA).

The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before 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. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) 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 (3) employees who are engaged in an economic strike that began more than 12 months before the election.

B. Employer to Submit List of Eligible Voters

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).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Fort Worth Regional Office, Federal Office Building, Room 8A24, 819 Taylor Street, Fort Worth, Texas 76102 on or before October 12, 2004. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 817-978-2928. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club*

Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

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, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington DC by 5:00 p.m., EST on October 19, 2004. The request may **not** be filed by facsimile.

Dated: October 5, 2004

/s/ Curtis A. Wells
Curtis A. Wells, Regional Director,
National Labor Relations Board
Region 16
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