UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

GREATER SOUTHEAST COMMUNITY
HOSPITAL CORPORATION I[1]

Employer

and Case 5-RC-15786

UNITED FEDERATION OF SECURITY
OFFICERS, INC.

Petitioner

DECISION AND DIRECTION OF ELECTION

ISSUE

The sole issue in this proceeding is whether the petition filed by United Federation of Security Officers, Inc. ("Petitioner") on October 22, 2004 to become the exclusive bargaining representative of the bargaining unit[2] of employees employed by Greater Southeast Community Hospital Corporation I ("Employer") should be dismissed because of the Employer's imminent cessation of its guard operations through subcontracting that work to Securitas Security Services of America ("Securitas").

PETITIONER'S POSITION

The Petitioner contends that the petition should be processed and an election directed because the Employer's asserted plans to cease providing security at the Hospital and to subcontract that work to Securitas is purely speculative. In support of its position the Petitioner relies on the following factors: (1) the lack of any evidence that Employer and Securitas have reached any written agreement or any meeting of the minds with respect to subcontracting security work; (2) the Employer's admitted failure to notify its

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[1] The Employer's name appears as amended at the Hearing.

[2] At the hearing, the Parties stipulated to the following classifications of employees as constituting an appropriate unit:

> all full-time and regular part-time security officers, special police officers, and dispatchers, and/ or visitor monitors, but excluding all other employees, office clerical employees, professional employees, managerial employees, security captains, security lieutenants, and other supervisors, as defined by the Act

The Parties further stipulated that the above unit currently consists of approximately ten employees, including nine special police officers and one visitor monitor.

employees of a decision to subcontract the security work; and (3) the Employer's admitted failure to notify Blackhawk Security Services ("Blackhawk")[3] of its decision to cease subcontracting security work to it, and of its intention to subcontract that work to Securitas.

At the hearing, the Petitioner called as witnesses Fazoumana Sanogo and William Patterson, both security officers employed by the Employer.

EMPLOYER'S POSITION

The Employer contends that the Petition should be dismissed because the Employer's plans to cease providing security services and to subcontract that work is certain and imminent. The Employer relies on the following factors in support of its position: (1) after receiving proposals from three different contractors, including a proposal that it received on about October 8, 2004, from Securitas, the Employer made the decision to subcontract security work to Securitas; (2) the Employer is involved in ongoing negotiations with Securitas; and, (3) the Employer has made the decision that by no later than December 31, 2004, the security work will be subcontracted, and all of its current security force will no longer be employed by the Employer.

At the hearing the Employer called as its witness Eugene Currotto, Vice President of Support Services.

CONCLUSION

For the reasons that follow in this decision, and after careful consideration of the totality of the record evidence and the Employer's factual and legal positions set forth in its post-hearing brief, I find that the Employer has failed to present sufficient evidence to establish that its decision to cease security operations and to subcontract that work is certain and imminent.

FACTUAL SETTING

The Employer's security department consists of approximately twenty-eight security officers. About one-half of those officers is employed directly by the Employer. The other half of the security officers is contracted by the Employer to Blackhawk.[4]

Beginning in early September 2003, the Employer solicited proposals from contractors to provide security services at the Hospital. On October 8, 2004, the Employer received a letter and proposal from Joseph Passmore, Business Development

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[3] Blackhawk is contracted by the Employer to provide approximately one-half of the Employer's security work. Although the contract between Blackhawk and the Employer has expired, the parties have continued the relationship on a month-to-month basis.
[4] Neither party contends that Blackhawk's employees should be included in the stipulated bargaining unit.

Manager, Securitas Services USA. After receiving that letter and proposal, several of the Employer's management team, including Joan Phillips, CEO, Errol Newport, Senior Vice President, Doug Shepard, Executive Vice President, and Eugene Currotto, Vice President of Support Services, met on several occasions and allegedly made a decision to subcontract the entire security department out to Securitas. At no time has the Employer informed either its own employees or Blackhawk and its employees of its intent to subcontract the security work.

After making that decision, the Employer and Securitas purportedly entered into negotiations on or about the date of the hearing in the instant matter to bargain about the terms and conditions of a contract. To date, the Employer and Securitas have failed to reach any agreement concerning the subcontracting of security work.

ANALYSIS

The Board's longstanding policy is that it will not conduct an election where permanent layoff is imminent and certain. *Larson Plywood Company*, 223 NLRB 1161 (1976) Although there is no bright-line test in making that determination, the Board looks to the totality of circumstances and requires that an employer's stated intention to cease operations is based on evidence that is more than speculative. See, *Canterbury of Puerto Rico, Inc*. 225 NLRB 309 (1976).

In *Hughes Aircraft*, 308 NLRB 82 (1992), the Board relied on a number of factors in reaching its decision that the representation petition should be dismissed because the employer's cessation of operations was certain and imminent. The Board took note of the fact that for several months after the decision had been made, the employer notified its employees on several occasions of its decision to subcontract out the work and that they would be subject to layoff. In reaching its decision, the Board also took note of the fact that the employer presented the actual signed agreements between the employer and the subcontractors.[5]

In the instant case, the Employer admits that it has not informed its own employees and Blackhawk about any decision to subcontract the security work. In fact, the Employer has failed to present sufficient probative evidence that its decision to subcontract the security work currently performed by Blackhawk and to lay off its existing security force is beyond even nascent stages. The only evidence the Employer

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[5] The Employer relies on *Liberty Homes, Inc*. 257 NLRB 1411 (1981) and the underlying representation case in that matter (18-RC-12417) for the proposition that finality and certainty of an employer's decision to subcontract work and cease certain operations is not affected by the fact that the employer has not yet entered into an agreement as of the date of the hearing, or even until after the date of a Decision. The facts in *Liberty Homes* are distinguishable from the instant case in that in *Liberty Homes* the employer had made a certain and imminent decision to cease delivery operations and to subcontract that work well prior to its employees' decision to seek union representation because of "mounting economic losses" that it had suffered for over a year.

introduced at the hearing of imminent cessation, aside from testimony that the parties had begun negotiations on November 8, 2004, the very same day that the hearing was held in this matter, is an October 8, 2004 letter from Securitas to the Employer thanking the Employer for the opportunity to present for consideration its qualifications to provide the Employer with security services. To date, the Employer has still failed to present a written agreement or any other concrete evidence of certain and imminent cessation of security services such that it warrants an order dismissing the petition in this matter.

Based on the facts of this case, I find that the Employer has failed to establish that cessation of operations is certain or imminent. Therefore, I find it appropriate to direct an immediate election in the stipulated bargaining unit. Accordingly the Employer's Motion to Dismiss Petition and Supplemental Motion to Dismiss are denied.

CONCLUSIONS AND FINDINGS

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

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

2. As stipulated by the parties, the Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner, United Federation of Security Officers, Inc, is a labor organization as defined in Section 2(5) of the Act, and claims certain employees of the Employer.

4. There is no history of collective bargaining between the parties.

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 parties stipulated that the Employer, Greater Southeast Community Hospital Corporation I, a Delaware corporation, is engaged in the operation of a hospital, providing inpatient and outpatient medical care. During the past twelve months, a representative period, the Employer, in conducting its business operations derived gross revenues in excess of $250,000, and purchased and received at its Washington, D.C. facility, goods valued in excess of $5,000 directly from points outside the District of Columbia.

7. The Parties stipulated and I find 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:

> All full-time and regular part-time security officers, special police officers, and dispatchers, and/ or visitor monitors employed by the Employer at its Washington, D.C. facility; but excluding all security captains, security lieutenants, office clerical employees, professional 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 **UNITED FEDERATION OF SECURITY OFFICERS, INC.**. 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 date and who have been permanently replaced.

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 Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, Baltimore, MD 21202, on or before **NOVEMBER 26, 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 (410) 962-2198. 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 by 5 p.m., EDT on **DECEMBER 3, 2004**. The request may not be filed by facsimile.

(SEAL) /s/WAYNE R. GOLD

Dated: **NOVEMBER 19, 2004**

Wayne R. Gold, Regional Director
National Labor Relations Board
Region 5