UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

US SECURITY ASSOCIATES, INC.,[1]
Employer

- and - **Case No. 2-RC-23467**

FEDERAL CONTRACT GUARDS OF AMERICA, FCGOA,
Petitioner

- and -

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 550,
Intervenor

DECISION AND DIRECTION OF ELECTION

US Security Associates Inc., ("the Employer") provides uniform guard services to clients throughout the New York Metropolitan area. The Federal Contract Guards of America, FCGOA, ("Petitioner") filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent the security officers employed by the Employer at a single location at the Fashion Institute of Technology, 227 West 27th Street, NY, NY. Petitioner claims that the single-location unit is presumptively appropriate. In contrast, the International Brotherhood of Teamsters, Local 550, ("Intervenor"), in agreement with the Employer, argues that a multi-location unit composed of guards from all locations served by the Employer in the New York metropolitan area, including the Fashion Institute of Technology, has been covered by collective-bargaining agreements between the Employer and Intervenor since 1976.[2] Accordingly, the Intervenor and the Employer argue that the only appropriate unit is the historical multi-location unit.

Upon a petition filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

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[1] At the outset of the hearing, the names of the parties were corrected.
[2] Intervenor is a labor organization that admits to membership guards and non-guards and thus may not be certified by the Board as the representative of a guard unit. Intervenor participated in the hearing to advocate that the only appropriate bargaining unit is the historical multi-location unit as set forth in the collective bargaining agreement.

Based upon the entire record in this matter[3] and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings are free from prejudicial error and hereby are affirmed.[4]

On April 20, 2010, 13 days after the close of the hearing in this matter, Petitioner filed a motion to reopen the record in order to submit new evidence regarding the scope of the unit. Petitioner claims that it had further investigated the facilities covered by the multi-location agreement between the Employer and the Union and had concluded that during the hearing the Employer's witness intentionally misled the Board concerning the number of locations serviced by the Employer in the New York metropolitan area and the number of total guards in the unit. On April 20, 2010, both the Employer and Intervenor filed motions in opposition to Petitioner's motion to reopen the record arguing, among other things, that Petitioner failed to demonstrate the existence of any extraordinary circumstances, did not explain why Petitioner had not introduced this evidence during the hearing, and did not claim that it could not have produced this evidence during the hearing.

After considering the motions, I have concluded that Petitioner failed to meet the requirements of Section 102.65(e)(1) of the Board's Rules for reopening the record, and thus the motion must be denied. The Board's rule permits the reopening of the record only where there were "extraordinary" circumstances. The Board's Rules specifically state "No motion for reconsideration, for rehearing, or to reopen the record will be entertained by the Board or by any Regional Director with respect to any matter which could have been but was not raised pursuant to any other section of these rules." In the ensuing provision the Rules states that any motion to reopen the record must briefly set forth the "error alleged" that requires a rehearing, the prejudice to the movant that resulted from the error, the additional evidence that would be adduced, why it was not previously presented, and what result it would require if adduced and credited. The Rule states "Only newly discovered evidence – evidence which has become available only since the close of the hering – or evidence which the Regional Director or the Board believes should have been taken at the hearing will be taken at any further hearing."

Petitioner did not explain why it failed to present this rebuttal evidence at the hearing, did not claim that that the evidence was previously unavailable, and did not demonstrate "extraordinary circumstances" to justify reopening the record. Furthermore, Petitioner is unable to establish that this alleged new evidence would necessitate a different result since Petitioner

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[3] The briefs filed by the parties have been duly considered.

[4] At the conclusion of the hearing, the Employer offered to recall its witness to testify that there is substantial interchange of employees among the various locations in the multi-location unit. The Hearing Officer explained that such evidence was not necessary based on the evidence already in record. Thereafter, the Employer proffered that had its witness been re-called, she would have testified that the Employer has central control of the labor relations of all the locations in the multi-location unit, there is substantial interchange of employees between the locations in the multi-location unit, that all the employees have identical skills between the various locations, and that these employees terms and conditions of employment are governed by the identical collective bargaining agreement. This proffer was rejected by the hearing officer as unnecessary. As explained more fully in this Decision and Direction of Election, Petitioner failed to present compelling circumstances to overcome the presumption that the multi-location bargaining unit is appropriate. Thus, the Hearing Officer did not err in failing to allow the Employer to recall its witness.

concedes in its proffer of evidence in support of its motion that the Employer still operates several locations that are covered by the multi-location agreement. For these reasons, Petitioner's motion to reopen the record is denied.

2. The parties stipulated and I find that the Employer, a Delaware corporation, with a principal place of business in Roswell, GA, is engaged in the business of providing uniform guard services to over 3,400 clients nationwide, including clients in the New York Metropolitan area. Annually, in the course and conduct of its business operations, the Employer derives gross revenues in excess of $500,000, and provides services valued in excess of $50,000 directly to customers located outside the State of New York.

Accordingly, based upon the stipulation of the parties, I find that 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. The parties stipulated and I find that Intervenor is a labor organization within the meaning of Section 2(5) of the Act and admits to membership both guards and non-guards. The parties also stipulated and I find that Intervenor is a successor to Local 803, International Brotherhood of Teamsters.

Intervenor and Employer would not stipulate that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. Section 2(5) of the Act provides that a labor organization "means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

The Board does not require that a labor organization have a specific formal structure in order to meet the qualifications required by Section 2(5). See *Yale University*, 184 NLRB 860 (1970). The Board has set forth its basic policy in determining whether an entity satisfies the requirements of Section 2(5) of the Act in *Alto Plastics Manufacturing Corp*., 136 NLRB 850, 851-852 (1962). The record testimony establishes that Petitioner admits employees into membership and exists for the purpose of representing its members in collective bargaining with their Employers. Accordingly, the record establishes, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. See *Michigan Bell Telephone Co.*, 182 NLRB 632 (1970); *Butler Mfg. Co*., 167 NLRB 308 (1967).

Additionally, as the records show that Petitioner admits into membership only guards and security officers and is not affiliated with any labor organization that admits into membership non guards, Petitioner is a guard union certifiable under Section 9(b)(3) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c) (1) and 2(6) and (7) of the Act.

5. Petitioner seeks to represent all regular full time and part time security officers stationed at the Fashion Institute of Technology located at 227 West 27th Street, NY, NY. As evidenced at the hearing and in the briefs, the parties disagree on the scope of the appropriate unit. The Employer and Intervenor contend that a multi-location unit composed of guards from

all locations served by the Employer in the New York metropolitan area, including the Fashion Institute of Technology, is the only appropriate unit based on an over 30-year bargaining history.

I have considered the evidence and the arguments presented by the parties on this issue. As discussed below, I find that the Employer and Intervenor have rebutted the single-facility presumption and the appropriate unit is the historical unit comprised of all locations served by the Employer in the New York metropolitan area as described in the collective-bargaining agreement between the Employer and Intervenor. To provide a context for my discussion, I will first provide an overview of the Employer's operations. Then, I will present the facts and reasoning that supports my conclusions on this issue.

I. RELEVANT FACTUAL BACKGROUND

Bell Security, Inc., provided uniform guard services to clients throughout the boroughs of New York City. In about 1976, following an election and certification by the New York State Labor Relations Board, Local 803, International Brotherhood of Teamsters (herein Local 803) was recognized by Bell Security as the representative of all its full-time and part-time guards-watchmen employed at multiple locations in New York City. On June 8, 1976, Bell Security and Local 803 entered into a three-year collective-bargaining agreement and thereafter entered into successive three-year collective bargaining agreements.

In 2004, US Security Associates (the Employer) purchased Bell Security. The parties stipulated, and I find, that the Employer is the successor to Bell Security. The Employer recognized Local 803 as the representative of its employees employed in the New York metropolitan area. On May 28, 2004, the Employer signed a collective-bargaining agreement with Local 803 covering the Employer's employees stationed at 99 locations in the New York metropolitan area, including the Fashion Institute of Technology. That agreement expired on May 31, 2007, and on June 1, 2007, the Employer and Local 803 entered into another three-year collective bargaining agreement covering the Employer's employees stationed at 61 locations throughout the New York metropolitan area including the Fashion Institute of Technology.[5] The decrease in the number of locations covered by the collective-bargaining agreement is attributable to the Employer's loss of business over the last few years.

The parties stipulated that the International Brotherhood of Teamsters, Local 550 (the Intervenor) is the successor to Local 803.

The current collective-bargaining agreement is set to expire on May 31, 2010. On February 22, 2010, Intervenor served notice on the Employer of its intent to negotiate a new agreement. The Intervenor and the Employer have since commenced negotiations for a successor collective-bargaining agreement.

Petitioner filed the instant petition on March 24, 2010, seeking to represent the security officers stationed at the Employer's jobsite at the Fashion Institute of Technology. The parties stipulated that all the employees to be included in the unit at issue are guards within the meaning of Section 9(b)(3) of the Act.

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[5] A few of the addresses specified in Schedule I.A. of the collective bargaining agreement, which names locations covered by the agreement, are actually the billing addresses for clients.

Currently there are a total of approximately 365 security officers employed by the Employer in the New York metropolitan area, of which 111 of those security officers are assigned to work at the Fashion Institute of Technology.

II. ANALYSIS

Section 9(b) of the Act states that the "Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, or subdivision thereof."

The Act does not require that a unit for bargaining be the only appropriate unit, the ultimate unit or the most appropriate unit. Rather, the Act requires only that the unit be appropriate.

Petitioner argues that a single location unit comprised of the security officers stationed at the Fashion Institute of Technology is presumptively appropriate. The Board has long held that a petitioned-for single-facility unit is presumptively appropriate, unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *Ohio Valley Supermarkets, Inc. d/b/a Foodland of Ravenswood*, 323 NLRB 665, 666 (1997); *J&L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41 (1988).

A presumption is created that a multi-location unit is the only appropriate unit when there exists a history whereby two or more of an employer's facilities are made part of a single unit in a collective-bargaining agreement. *Arrow Uniform Rental***,** 300 NLRB 246, 248 (1990). This is true regardless of whether the Employer is a successor employer, as in this matter. *Trident Seafoods*, 318 NLRB 738 (1995), citing *Indianapolis Mack Sales & Service*, 288 NLRB 1123, 1127 (1988). The Board will not sever a single facility from a historical, multi-location unit absent compelling circumstances. *Met Electrical Testing Company, Inc.*, 331 NLRB 872 (2000). The party challenging the historical unit carries a heavy burden in proving that such a unit is no longer appropriate. *Id*. "That the petitioned-for single facility units may also be appropriate, or perhaps even more appropriate, does not negate the appropriateness of the historical multi-location unit." *Arrow Uniform Rental***,** supra. at 249 (1990).

The evidence in the instant case establishes that for the past 30 years, the Employer and Intervenor and their respective predecessors have negotiated collective-bargaining agreements covering a multi-location unit of guards, including the guards stationed at the Fashion Institute of Technology.

Petitioner argues that Intervenor, as a mixed guard and non guard union, can never be certified by the Board and thus cannot avail itself of any Board protections under the Act including the presumption to rely on bargaining history. While Section 9(b)(3) of the Act prohibits the Board from certifying a Union in a unit of guards and non-guards, an employer may voluntarily recognize such a mixed guard union. *Wells Fargo Armored Service Corp.*, 270 NLRB 787 (1984). Although an employer may voluntarily recognize a mixed guards/non guards unit, the Board will not give controlling weight to the collective-bargaining history between a multi-employer association and a union representing both guards and nonguards. *Los Angeles*

Bonaventure Hotel, 235 NLRB 96 (1978). The Board reasoned that the situation was analogous to its holding that a collective-bargaining agreement covering a mixed unit would not bar an election during its term because such a unit is inappropriate under Section 9(b)(3) of the Act.

However, the collective-bargaining agreement in this matter covers a guards only unit, which is suitable under Section 9(b)(3) of the Act. Accordingly, the multi-location bargaining history in this matter is given substantial weight just as this collective bargaining agreement would also bar an election during its term. *Stay Security,* 311 NLRB 252 (1993)(a contract in an all guards unit will serve as a bar to an election during its term despite that the contract is with a mixed guard union). Thus, absent compelling circumstances, the bargaining history between the Employer and Intervenor compels a finding that the multi-location unit covered by the collective-bargaining agreement is the only appropriate unit.

Petitioner argues that a compelling circumstance for disregarding the multi-location bargaining history is that the unit is "rapidly disintegrating" due to a decline in the number of locations covered by the 2007-2010 agreement as compared with 2004-2007 agreement. Regardless of the Employer's loss of certain clients, the evidence indicates that the collective bargaining agreement still covers numerous locations in the New York Metro area serviced by the Employer.

Petitioner cites *Crown Zellerbach*, 246 NLRB 202 (1979), in which the Board did not adhere to the historical multi-location bargaining unit because all the parties to the historical relationship petitioned for a single facility unit, the parties established that the two facilities were geographically separated by 1,000 miles, utilized different manufacturing processes, and each facility took control of their own labor relations. The Board's holding in *Crown Zellerbach* is distinguishable from the facts in the instant case because in this matter the parties to the agreement oppose the single facility petition and Petitioner did not present any evidence to establish that the multi-location unit as to why a single facility unit is appropriate.

Petitioner has failed to present any compelling reason for me to ignore the lengthy multi-location bargaining history in the contractual unit. Consequently, based on the record herein, I find that the historical, multi-location unit is the appropriate unit[6].

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[6] Petitioner indicated that it would proceed to an election in any unit found appropriate. Thus, Petitioner, pursuant to Section 11031.2 of the Board's case handling manual and 102.114(g) of the Board's Rules and Regulations, shall be given 14 days to submit an additional showing of interest in the larger unit found appropriate herein.

The Employer and Intervenor argue that Petitioner's request to proceed to an election in any unit found appropriate was untimely filed outside of the 90-60 day period preceding the expiration of the contract and thus the Petitioner may not proceed to an election in the larger multi-location unit. The Employer and the Union cite *Centennial Development Co.*, 218 NLRB 1284 (1975), where the Board held that "[w]here a petitioner broadens its originally petitioned-for unit to one which is substantially larger and different in character, the broadened unit request is treated by the Board as tantamount to a new petition and as such must be supported by an adequate showing of interest timely submitted." *Centennial Development Co.*, supra at 1285 (1975).

The Board distinguished *Centennial Development Co.*, in *Brown Transport Corp.*, 296 NLRB 1213 (1989), where the Board held that a petition remained timely filed because the petitioner did not amend its petition or affirmatively seek an election in a broader unit but rather indicated that it would proceed to an election in any unit found appropriate. *Brown Transport Corp.*, 296 NLRB 1213 (1989)("At all times, the Petitioner argued that the petitioned-for unit was appropriate, and that an election should be held in that unit. Thus, because the Petitioner did not request to amend its petition to enlarge the unit at the hearing and inasmuch as the petition was filed on March 1,

UNIT

Included: All full-time and regular part-time security officers employed by the Employer at facilities in the New York Metropolitan area.

Excluded: All other employees, and all professional employees and supervisors within the meaning of the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time[7] and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and regulations.[8] Eligible to vote are those in the unit were employed during the payroll period ending immediately preceding the date of the 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 that 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 service of the United States who are in the unit 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 eligibility 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.[9] Those eligible shall vote on whether or not they desire to be

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appropriately within the 90-60-day window period, the Acting Regional Director concluded that it remained timely. We agree."). See also *Casale Industries, Inc.*, 311 NLRB 951 (1993)("The Petitioner indicated at the hearing that if the broader unit was the only unit found appropriate, it was willing to proceed to an election in the broader unit."). Here, as in *Brown Transport Corp.*, the Petitioner consistently maintained that a single facility unit is the only appropriate unit but indicated at hearing it would proceed to an election in any unit found appropriate by the Region. Accordingly, since the Petitioner never requested the broadening of its petition, the petition remains timely filed and the Region will grant the Petitioner additional time to submit the required showing of interest in the multi-location bargaining unit. In the event Petitioner is unable to submit a sufficient showing of interest in the appropriate unit, this petition will be dismissed.

[7] Pursuant to Section 101.21 of the Board's Statements of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25th and 30th day after the date of this Decision.

[8] Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 103.20(1) of the Board's Rules. In addition, please be advised that the Board has held Section 103.20(c) of the Board's Rules requires that the Employer notify the Regional Office at least five 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).

[9] In order to assure 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 that may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc*., 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, conditioned upon the submission of a sufficient showing of interest within 14 days from the date hereof, it is hereby

represented for collective bargaining purposes by Federal Contract Guards of America, FCGOA.[10]

Dated at New York, New York
April 29, 2010

/s/_____
Celeste J. Mattina
Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10278

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directed that within seven days of the date of this Decision, three copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election, **but only upon my determination that a sufficient showing of interest has been established**. I shall use this list to assist me in determining if an adequate showing of interest has been established . In order to be timely filed, such list must be received in the Regional Office at the address below, on or before **May 6, 2010, or seven days from the date that the Regional office determines that an adequate showing of interest has been submitted.** No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. In the event the Petitioner notifies me that it does not wish to proceed to an election in the unit found appropriate, the election eligibility list will not be provided to Petitioner.

[10] 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. This request must be received by the Board in Washington by no later than **May 13, 2010.** The National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with this Supplemental Decision for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlrb.gov. On the home page of the web site, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.