

In the Matter of BRINK'S, INCORPORATED, EMPLOYER *and* TRUCK DRIVERS UNION LOCAL No. 541, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, PETITIONER

Case No. 17-UA-8.—Decided June 17, 1948

Mr. T. E. Frazee, of Kansas City, Mo., for the Employer.

Messrs. J. M. Lester and O. L. Ring, of Kansas City, Mo., for the Petitioner.

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Kansas City, Missouri, on November 21, 1947, before Harry L. Browne, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Brink's, Incorporated, an Illinois corporation with its principal office in Chicago, Illinois, is engaged in the armored-car business, in the course of which it transports money, valuables, and securities, and handles pay rolls and the cashing of checks for its customers. It has 65 branch offices located in 26 States of the United States and in the District of Columbia, employing approximately 2300 service employees. The local branch office located in Kansas City, Missouri, the only one involved in this proceeding, employs approximately 29 employees, and operates under contracts with various firms and concerns located in Greater Kansas City, which includes Kansas City, Missouri, and Kansas City, Kansas. Service charges made by the local office during the past 12 months amounted to in excess of \$100,000, approximately 15 percent being charges for business concerns located in Kansas

City, Kansas. In connection with its business operations, the local office transports securities, money, and other valuables for business concerns under contract to, among others, the United States Post Office, express agencies, and banks, for further transportation to other destinations located within and without the State of Missouri.

The Employer admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

The Petitioner is a labor organization affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, which in turn is affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

III. QUESTION CONCERNING AUTHORIZATION OF A UNION-SHOP ELECTION

In October 1947 the Petitioner, as the exclusive collective bargaining representative of the employees covered by the petition herein,¹ entered into its fourth agreement with the Employer, which stated that it was to become effective on November 9, 1947, and to be automatically renewed from year to year, absent 60 days' written notice. The contract contained a provision that the Employer "agrees that it will not keep in its employ or will it employ in the future any regular employee who shall not be or who shall not become a member of the union in good standing and within thirty days after the date of his employment as a regular employee or the effective date of this agreement, whichever is later."² The contract provides further, however, that this union-shop provision was not to become effective until the Board "shall have certified to the employer that the union is qualified to enter into an agreement with the employer respecting the subject matter contained therein."

The petition herein alleges that more than 30 percent of the employees in the unit desire to authorize the Petitioner to make an agreement with the Employer requiring membership in the Petitioner as a condition of employment in such unit, which allegation was

¹ The petition herein was filed pursuant to Section 9 (e) (1), which provides as follows :

"(1) Upon the filing with the Board by a labor organization, which is the representative of employees as provided in Section 9 (a), of a petition alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment in such unit, upon an appropriate showing thereof the Board shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organizations and to the employer "

² The petition alleges that the Employer and the Petitioner have had closed-shop contracts for several years covering the employees herein involved.

supported by documentary evidence submitted by the Petitioner for examination by Board agents.

The Employer having recognized the Petitioner, we find that no question affecting commerce exists concerning the representation of employees of the Employer in the unit sought by the Petitioner. The preliminary requirements for a union-shop authorization election, set forth in Section 9 (e) (1), have been met.

IV. THE APPROPRIATE UNIT

The Petitioner seeks a unit composed of all the guards, drivers, messengers, paymasters, and assistant cashiers of the Employer, excluding all office employees and supervisors. All the employees in the unit are uniformed, wear sidearms, are commissioned as special officers while on duty, are hourly paid, work the same number of hours, are generally subject to the same working conditions, and are directly responsible to the branch manager. The assistant cashiers dispatch the armored trucks, have charge of customers' securities which are stored overnight in the Employer's vault, and at times accompany the armored-truck crews. All the other employees in the unit work on the armored trucks, picking up, transporting, guarding, and delivering valuables belonging to the Employer's customers. There is frequent interchange among these employees.

The office employees and supervisors, who are not included in the unit, are the only other categories employed by the Employer.

Inasmuch as all the employees in the unit are classified as guards or have the responsibility of guarding valuables temporarily in the possession of their Employer, and inasmuch as the Petitioner is affiliated with an organization which admits to membership employees other than guards, it is necessary to determine whether the prohibitions contained in Section 9 (b) (3)³ are applicable to guards of the type herein involved.⁴ Their employer is itself engaged in the business of guarding the property of others.

During the Senate debates on Section 9 (b) (3), the employees to whom the section was to be applicable were frequently referred to

³ This Section provides :

"That the Board shall not . . . decide that any unit is appropriate for such purposes 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 persons on the employer's premises ; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards "

⁴ Nowhere in the legislative history of the Labor-Management Relations Act, 1947, is there any specific reference to armored truck guards

specifically as "*plant guards*."⁵ The report on the original House bill, in explaining why certain categories were barred from inclusion in units with other employees, stated that "*Plant* policemen and guards prevent disorders and report misconduct of employees and of unions and their members." H. Rept. No. 245, 80th Cong., 1st Sess., 1947, p. 16. [Emphasis supplied.]

The Senate debates also contain statements⁶ which indicate that Section 9 (b) (3) resulted in large part from the court decisions in the *Jones & Laughlin* and *Atkins* cases.⁷ These cases involved *plant* guards.

⁵ For example, Senator Taft at one point stated that :

"We accepted a provision regarding *plant guards*. We had exempted foremen in the Senate bill, but we had not exempted *plant guards*. The House bill exempted *plant guards*, and also time-study employees and personnel forces. We did not accept any of those provisions, except that as to *plant guards* we provided that they could have the protection of the Wagner Act only if they had a union separate and apart from the union of the general employees." Cong Rec, 80th Cong., 1st Sess, 1947, p 6603.

At another point Senator Taft stated that

"By the provision of the House bill *plant guards* were completely excluded from the Wagner Act. We compromised with the House by providing that they should have the protection of the Wagner Act, but in a separate unit from the workers in *the plants*." Cong Rec, 80th Cong, 1st Sess, 1947, p 6658 [Emphasis supplied] See also footnote 6, below

⁶ The statements referred to are as follows

"Section 9 (b) is also the same as Section 9 (b) of the Senate amendment with the exception of an addition of a third clause relating to *plant guards*. As has been previously stated, the Senate rejected a provision in the House bill which would have excluded *plant guards* as employees protected by the Act. The conferees on both sides, however, have been impressed with the reasoning of the Circuit Court of Appeals for the Sixth Circuit in the *Jones and Laughlin* case in which an order of the Board certifying as a bargaining representative of guards, the same union representing the production employees was set aside. Although this case was recently reversed by the Supreme Court on the ground that the Board had it within its power to make such a holding, four of the Justices agreed with the Circuit Court of Appeals holding that this was an abuse of the discretion permitted to the Board under the Act." Extension of Senator Taft's remarks, Cong Rec, 80th Cong, 1st Sess, 1947, p 6601.

Mr MURRAY

... The conferees have adopted a new rule with respect to *plant guards* in Section 9 (b), denying them rights under present legislation. This is merely a petulant gesture at the Supreme Court which decided, while the conferees were in session, that *plant guards* were employees and entitled to the benefits of national labor legislation. I have here no time to discuss the merits of this issue, which are fully set forth in the opinions of the Supreme Court

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Mr TAFT Let me call the Senator's attention to the further facts that the Supreme Court's opinion to which the Senator has referred was only a 5-to-4 opinion, and the dissenting opinion was about as good as the majority opinion. [Cong Rec, 80th Cong., 1st Sess, 1947, p. 6658]

"Finally, the Board may not include guards in the same unit with other employees and may not certify any labor organization as the bargaining representative of guards if it admits to membership employees other than guards. This last provision was added by the conference committee after the Supreme Court's *Atkins* case." Analysis of Title I of H. R. 3020, printed in extension of Mr Murray's remarks, Cong Rec, 80th Cong., 1st Sess, 1947, p. 6663 [Emphasis supplied.]

⁷ *N. L. R. B. v Jones & Laughlin Steel Corp*, 154 F. (2d) 932 (C. C. A. 6), 331 U. S. 416, *N. L. R. B. v Atkins & Co*, 155 F. (2d) 567 (C. C. A. 7), 331 U. S. 398.

Furthermore, it appears, from the language in the original House bill,⁸ as well as from the legislative history generally, that in imposing restrictions upon guard units, the Congress was concerned with the possibility that if guards were included in production units, their loyalty to fellow union members might conflict with their duty to report to their employer derelictions of duty or violations of rules by fellow employees.

The conclusion that the Congress, in enacting Section 9 (b) (3), had *plant* guards in mind is further demonstrated by the description of "guards" in that section. Although it describes their duties as including enforcement of rules against "other persons" as well as against employees, this phrase, read with the phrase "on the employer's premises," which appears in the same section; indicates that Congress was referring to employees and to other persons who had access to the *employer's* premises. There are no references to men employed to guard, while transporting property belonging—not to their employer—but to customers of their employer.⁹

Accordingly, we find that all the guards, drivers, messengers, paymasters, and assistant cashiers of the Employer, excluding all clerical employees and supervisors, constitute a unit appropriate for the purposes of Section 9 (e) (1) of the Act.¹⁰

⁸The House bill defined "supervisors" to include any employee "with police duties or who is employed to act in other respects for the employer in dealing with other individuals employed by the employer" H R 3020, 80th Cong., 1st Sess., 1947, Sec. 2 (12) (b). The House Report explained that the bill excluded the several categories of employees defined as "supervisors" because "there must be in management and loyal to it persons not subject to influence or control of unions" In describing the classifications to be excluded for this reason, the report stated that "Plant policemen and guards prevent disorders and report misconduct of employees and of unions and their members" H Rept No 245, 80th Cong., 1st Sess., 1947, p. 16.

⁹ See, however, the Statement of the Managers on the Part of the House, with reference to Section 9 (b) (3):

"The conference agreement . . . provides that the Board cannot decide that any unit is appropriate for collective bargaining if it includes, together with other employees, an individual employed as a guard to enforce against employees and other persons rules to protect property belonging to the employer *or for which the the Employer is responsible*, or to protect the safety of persons on the employer's premises" House Conf. Rept No 510, 80th Cong., 1st Sess., 1947, pp 47-48 [Emphasis supplied]

There is no explanation of the italicized clause It not only does not appear in any of the bills or in the Act as passed, but it also does not appear in any of the Senate interpretations of Section 9 (b) (3) or in any other House statement on this subject It might have been intended to refer to plants leased and operated by an employer In any event, in view of the language of Section 9 (b) (3) and its entire legislative history, it would not seem reasonable to conclude that the House Managers intended by this isolated use of the phrase in question to include armored-truck guards in the applicability of Section 9 (b) (3)

¹⁰ See *Matter of Giant Food Shopping Center, Inc.*, 77 N L R B 791 Chairman Herzog and Member Houston regard the *Giant Food* decision as a holding by the Board that the unit appropriate for Section 9 (e) purposes may be different from that appropriate for the purposes of Section 9 (a), and consider themselves bound thereby. They therefore raise no objection to the fact that the finding in the present case refers only to Section 9 (e).

DIRECTION OF ELECTION

Pursuant to Section 9 (c) (1) of the National Labor Relations Act, as amended, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director of the Seventeenth Region, and subject to Section 203.61 of National Labor Relations Board Rules and Regulations—Series 5, among the employees of Brink's, Incorporated, Kansas City, Missouri, in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to authorize Truck Drivers Union Local No. 541, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, to make an agreement with Brink's, Incorporated, Kansas City, Missouri, requiring membership in the aforesaid labor organization as a condition of employment in such unit.

MEMBER MURDOCK, dissenting:

I am unable to agree with the conclusion of my colleagues that the armored-truck guards in the unit found appropriate herein do not fall within any of the prohibitions of Section 9 (b) (3) of the Act, in view of the construction placed upon that section by our unanimous opinion in *Matter of C. V. Hill & Company, Inc.*¹¹

As the majority opinion demonstrates, it is possible to make an argument from the legislative history that in enacting Section 9 (b) (3) Congress' concern was with plant guards whose duty it is to report derelictions of duty or violations of rules by other employees, the theory being that if such guards are included in units with other employees, their loyalty to fellow union members might conflict with the strict performance of their duty. It is possible that Congress actually may have intended to write into law the distinction between monitorial employees (typically plant guards) and non-monitorial employees (typically watchmen) and a different treatment of them which the Board itself applied in some respects prior to the recent amendment of the Act.¹² Nevertheless, the wording of Section 9 (b)

¹¹ 76 N. L. R. B. 158

¹² The Board placed monitorial employees in separate units, but non-monitorial employees such as simple watchmen were included in production and maintenance units. See Eleventh Annual Report, 1946, p. 32; Tenth Annual Report, 1945, pp. 34-35.

(3) broadly covers "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 persons on the employer's premises." (Emphasis supplied.) In the *C. V. Hill* case, the Board accepted a literal interpretation of the foregoing language to cover watchmen having a duty to protect property of the employer against theft "whether by employees or by 'other persons'." The Board there implicitly rejected an interpretation under which the scope of Section 9 (b) (3) would be limited to the kind of guards who enforce rules against other *employees*.

The mere fact that Congress may have had plant guards primarily in mind in framing Section 9 (b) (3) does not prove that armored-truck guards do not come under the section if they fall within the definition of "guard" contained therein. Armored-truck guards protect property of the employer against theft by "other persons" and protect "the safety of persons on the employer's premises."¹³ They accordingly come within the definition of "guards" to whom Section 9 (b) (3) applies. The basic considerations which the majority present for not including armored-truck guards within the prohibition would require the same result for simple watchmen. Yet in the *C. V. Hill* case the Board applied a strict interpretation of Section 9 (b) (3) to include watchmen in its scope. Having adopted the strict interpretation of the section in that case, it seems to me that the Board should consistently follow it.

Accepting the position of the majority that there is no problem here of including guards "together with other employees" in the same unit because of the composition of the unit herein, we are still faced with the second prohibition of Section 9 (b) (3) which states that "no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, employees other than guards." Even if the petitioning local herein should be limited to guards, it is affiliated with an international union which admits to membership employees other than guards. We would therefore be precluded by Section 9 (b) (3) from certifying the petitioner as the representative of a unit of guards. If we could not certify the petitioner because of the restriction laid down in Section 9 (b) (3) I do not believe that we should direct a union authorization election on its petition. Clearly the privilege of negotiating a contract

¹³ Clearly it would be their duty to protect the employer's truck from theft. Nor do I think the contents of the truck can be treated as not the employer's property merely because they may be bailed to the employer. It is also obviously the duty of the guards to protect the safety of the driver, messengers, and paymasters who are "on the employer's premises" when they are riding in the employer's armored trucks.

containing a union security clause is an additional privilege which Congress intended might be secured under the specified conditions by a union which had been certified or could qualify for certification. It would be unreasonable to conclude the Congress ever intended that the added benefits of the union authorization election procedure should be made available to a union which Congress would not permit to be certified in the first place. Accordingly, I would dismiss the petition herein.