ARMORED MOTOR SERVICE COMPANY, INC. *and* LOCAL NO. 667, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL, Petitioner. Case No. 32-RC-656. September 18, 1953

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Seymour X. Alsher, 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 this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act for the following reasons:

The Petitioner seeks to represent a unit consisting largely of full- and part-time armored-car guard-drivers. The Employer contends that these employees are guards within the meaning of Section 9 (b) (3) of the Act,[1] and, if this is true, Petitioner cannot be certified under the statute to represent them because Petitioner admits to membership, "or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards."

The Employer is engaged in the armored-car business. It operates armored trucks to transport money and valuables for clients who request such services. The guards are uniformed, bonded, deputized, and armed. They spend 75 percent of their time at work on the armored trucks, picking up, transporting, guarding, and delivering money and valuables belonging to the Employer's customers. They spend their remaining time placing money in pay envelopes on the Employer's premises, or standing guard on the premises of customers while pay envelopes are being distributed to employees.

The appropriateness of this proposed unit must first be tested against Section 9 (b) (3) of the Act. In 1948, in the

[1] 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

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Brink's case,[2] the majority of the Board, based on its interpretation of the legislative history of this provision, concluded that armored-car guards were not "guards" within the meaning of the Act. The Board majority held that the term "guard" as used in that section applied to plant guards and not "to men employed to guard, while transporting property belonging--not to their employer--but to customers of their employer." The majority in the Brink's case reasoned that Congress was concerned with the problem of divided loyalty which was inherent in the situation where an employer's own plant guards were members of the same union as represented fellow employees whose derelictions the guards were expected to report. In view of this, the majority held that Section 9 (b) (3) did not apply to guards of any sort other than those employed to enforce rules to protect the property of their own employer, or to protect on the premises of their own employer the safety of persons. This, in effect, restricted the application of Section 9 (b) (3) to plant guards.

We do not believe that Congress intended to limit the prohibition of Section 9 (b) (3) to plant guards. The statutory language contains no such restriction, and we see no basis for giving it so narrow a construction. The danger of divided loyalty which Congress sought to eliminate may not be quite so far-reaching in the case of armored-car guards, but it is, nevertheless, present. A conflict of loyalty could arise, for example, if the guards should be called upon to deliver money or valuables to one of their customers whose employees were represented by the same union as represented the armored-car guards and the employees of the customer were on strike and picketing the premises of the customer.

Accordingly, we overrule the decision in the Brink's case, supra, and hold that armored-car guards are guards within the meaning of Section 9 (b) (3). These guards are obviously employed to protect property within the meaning of the statute, and, in view of the statutory language, we do not consider it controlling that the money and valuables which they protect belong not to their own employer but to a customer of their employer.[3]

We therefore hold that the guards here involved are "guards" within the meaning of Section 9 (b) (3) of the Act, and, since Petitioner admits to membership and is affiliated with an

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[2] Brink's, Incorporated, 77 NLRB 1182.

[3] Our holding is consistent with the recent decision of the Third Circuit Court of Appeals in N. L. R. B. v. American District Telegraph Company, 205 F. 2d 86 (C. A. 3), setting aside 100 NLRB 155, in which the court held that Section 9 (b) (3) is not limited to guards employed to protect property belonging to their own employer nor to guards who protect against conduct of fellow employees. We accept and agree with this decision as correctly interpreting the statute. We also overrule the prior Board decision in American District Telegraph Company, 89 NLRB 1228, since guards of the kind there involved also constitute guards within the meaning of Section 9 (b) (3).

organization which admits to membership employees other than guards, we shall dismiss the petition.

[The Board dismissed the petition.]

Member, Murdock, concurring:

I have always felt that the majority decision in Brink's Incorporated, 77 NLRB 1182, and American District Telegraph Company, 89 NLRB 1228, were wrong. Accordingly, for the reasons set forth in my dissenting opinions in those two cases, I concur in the result reached by my colleagues in this case and gladly join with them in reversing those two earlier decisions.

GRAND LEADER DRY GOODS COMPANY OF SOUTH BEND, INDIANA *and* RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL NO. 37, AFL, Petitioner. Case No. 13-RC-3320. September 18, 1953

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Robert H. Cowdrill, 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 this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The Petitioner and United Retail, Wholesale and Department Store Employees of America, Local 188, CIO, which intervened on the basis of its contractual interest, claim to represent employees of the Employer.

3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act for the following reasons:

On May 15, 1951, the Employer and the Intervenor executed a contract effective for a period of 2 years from May 11, 1951, with a 30-day automatic renewal provision. On January 29, 1952, the contracting parties modified the contract and, among other provisions, extended its term to May 11, 1954, with the same renewal provision. The Intervenor came into compliance with Section 9 (f), (g), and (h) of the Act on or about March 27, 1952. The instant petition was filed on April 21, 1953, about 15 days after the Petitioner advised the Employer of its claim for recognition.

The contract contains the following union-security provision: