

New Jersey Guards Union and Otis Elevator Company**New Jersey Guards Union and Nilsen Detective Agency, Inc.**

Cases Nos. 22-CC-37 and 22-CC-40. October 1, 1959

DECISION AND ORDER

On July 21, 1959, Trial Examiner John F. Funke issued his Intermediate Report in this proceeding, finding that the Respondent had engaged in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent and Nilsen Detective Agency, Inc., filed exceptions to the Intermediate Report, and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with these cases to a three-member panel [Chairman Leedom and Members Bean and Fanning].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the entire record in these cases, including the Intermediate Report and the exceptions and briefs, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Upon the entire record in these cases and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the Respondent, New Jersey Guards Union, Newark, New Jersey, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from picketing the premises of Otis Elevator Company, 1000 First Street, Harrison, New Jersey, or in any other manner encouraging or inducing the employees of Otis Elevator Company, or any other employer, to engage in a strike or a concerted refusal, in the course of their employment, to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is to force or require Otis Elevator Company to cease doing business with Nilsen Detective Agency, Inc.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

- (a) Post at its offices and meeting halls copies of the notice attached hereto marked "Appendix."¹ Copies of the said notice, to be

¹ In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

furnished by the Regional Director for the Twenty-second Region, shall, after being duly signed by the Respondent's representatives, be posted by them immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter in conspicuous places, including all places where notices to members of New Jersey Guards Union are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director for the Twenty-second Region signed copies of the said notice for posting by Otis Elevator Company, it being willing, at places where it customarily posts notices to its employees.

(c) Notify the Regional Director for the Twenty-second Region in writing, within 10 days from the date of this Order, what steps it has taken to comply herewith.

APPENDIX

NOTICE TO ALL MEMBERS OF NEW JERSEY GUARDS UNION AND ALL EMPLOYEES OF OTIS ELEVATOR COMPANY

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT establish or maintain a picket line at the premises of Otis Elevator Company at Harrison, New Jersey, nor in any other manner encourage or induce the employees of Otis Elevator Company, or any other employer, to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is to force or require Otis Elevator Company to cease doing business with Nilsen Detective Agency, Inc.

NEW JERSEY GUARDS UNION,
Labor Organization.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

STATEMENT OF THE CASE

This proceeding, with New Jersey Guards Union, herein called the Respondent or the Union, the General Counsel, Otis Elevator Company, herein called Otis, and Nilsen Detective Agency, Inc., herein called Nilsen, represented, was heard before the duly designated Trial Examiner in Newark, New Jersey, on June 9, 1959, on

the consolidated complaint of the General Counsel and the amended answer of the Respondent. The issue litigated was whether or not the Respondent, by picketing at the premises of Otis Elevator Company at Harrison, New Jersey, violated Section 8(b)(4)(A) of the Act. The parties presented oral argument and briefs were received from the Respondent and the General Counsel.

Upon the entire record in this case, and from my observation of the witnesses, I hereby make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE COMPANIES

Otis Elevator Company is a New Jersey corporation having its principal place of business in New York, New York, and maintaining offices, plants, and warehouses in the States of New York, New Jersey, and various other States. During the past year it manufactured, sold, and distributed elevators and related equipment in a value in excess of \$10,000,000, of which more than \$1,000,000 were shipped from its plant at Harrison, New Jersey, to points outside the State of New Jersey.

Nilsen Detective Agency, Inc., is a New Jersey corporation maintaining its office and principal place of business at Elizabeth, New Jersey. It is engaged in providing guard and plant protection services for some 68 industrial plants in the State of New Jersey. Its revenues from such services to industrial plants in New Jersey for the past year was in excess of \$750,000. Each of a majority of said plants for which Nilsen provided services sells, handles, and ships goods valued in excess of \$50,000 to points outside the State of New Jersey.

I find that Otis and Nilsen are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The facts*

This is one of those happy cases in which the facts are brief and substantially undisputed. From a period beginning November 12, 1956, until January 31, 1959, Otis had a contract with the William J. Burns International Detective Agency, Inc., hereafter called Burns, by which Burns undertook to furnish uniformed guard plant protection service to Otis at its premises at 1000 First Street, Harrison, New Jersey.¹ Under this contract the guards were employed by Burns, uniformed by Burns, and supervised by Burns. All social security taxes, Federal and State unemployment taxes, workmen's compensation and public liability insurance were paid by Burns. Burns indemnified Otis against liability arising from any action committed by Burns, its agents, or employees. Otis paid Burns compensation for its services on a rate based on the hours of services provided by the Burns guards. The profit to Burns resulted from a typical "cost-plus" formula, i.e., the profit to Burns would result from the difference between the contract rate for services charged to Otis and the actual rate paid by Burns to its guards. Apart from the contract, testimony confirmed that the guards were hired by Burns, assigned by Burns, and that all direct and immediate supervision and disciplinary authority were vested in the Burns supervisors. Although the conduct of the guards while on duty was regulated by a "Set of Standard Rules" agreed upon between Otis and Burns, such control as was reserved to Otis was no more than that required to insure that the services supplied by Burns would provide satisfactory protection to Otis. In view of the nature of the services it is natural that Otis would require some safeguards with respect to the conduct of the guards and some warranty that the protection afforded would meet its needs. There is nothing in the record to establish that Otis could do more than ask for the replacement of a guard whose conduct was unsatisfactory and nothing to establish that such a request would result in his discharge by Burns. Contrary to the contentions of the Respondent, ably advanced by its counsel, I find that Burns was an independent contractor and the guards were employees of Burns.²

Pursuant to the 60-day notice required, Otis terminated its contract with Burns on January 31, 1959, and engaged Nilsen under a similar but not identical contract.³

¹ A copy of this contract is attached hereto as Appendix A.

² See 80th Cong., 1st sess., H. Rept. 245.

³ A copy of this contract is attached hereto as Appendix B.

The guards employed by Nilsen were not presented by any labor organization but there is no evidence that Nilsen was selected for that reason. The assertion by Otis that it was dissatisfied with Burns and sought a change which it hoped would prove for the better is the only motive found in the record.

At about 12:01 a.m. on February 1, 1959, the Respondent established a picket line at the Otis plant at Harrison. This picket line continued until 4 p.m. on February 4 when it was discontinued voluntarily by the Respondent.⁴ While the picketing continued placards were carried by the pickets reading, "This plant unfair to organized labor. Union guards being replaced by non-union guards." The pickets also passed out leaflets requesting that the picket line be respected.⁵ The appeals of the pickets were directed to Otis employees entering the plant and also to drivers of trucks and other persons entering the plant. The testimony is clear that drivers of trucks owned by employers other than Otis were urged not to enter and that in some instances drivers left without entering. It was not established that any employees of Otis refused to cross the picket line.

Some of the pickets were identified as guards who had been employed by Burns at Otis in the past, and Morrison, president of the Respondent, was identified as present at the picket line during the picketing. Respondent admitted authorizing the picketing.

Those are the material and relevant facts on which this case must be decided.

B. *The objective of the picketing*

No labor dispute existed between Respondent and Burns or between Respondent and Nilsen. The dispute between Respondent and Otis was directed to the action of Otis in cancelling its contract with Burns and engaging an agency which did not employ Respondent's members or recognize the Respondent. The immediate result of this action was that there was less work available for Respondent's members and, temporarily at least, unemployment might result for the guards who had been employed at Otis. It is clear from the testimony of Respondent's president that had Otis engaged an agency which employed Respondent's members there would have been no dispute since employment opportunities for its membership would not have been diminished. As Respondent's president so frankly testified, the objective of the picketing was to cause Otis to terminate its contract with Nilsen and reengage Burns or contract with some other agency which employed Respondent's members. The question is not whether this objective—the protection of employment opportunities for its membership—was laudable but whether it was lawful.

The single issue presented to the Board is, therefore, whether or not the picketing of the Otis plant in furtherance of that objective violated Section 8(b)(4)(A). Since I believe that question has been answered by the Board I see no need for extended discussion. The situation here differs in no aspect from the usual one in which a union strikes an employer because he uses a nonunion product or the services of a nonunion employer. In *Bonded Freightways*⁶ the union struck an employer, Industrial, with whom it had a contract to force Industrial to assign overflow work to a union carrier rather than to Bonded, which was nonunion. The Board found that objective unlawful and the union in violation of Section 8(b)(4)(A). I find that case and the cases cited therein controlling here. Had the guards been employees of Otis when the contract with Nilsen was signed a far different question would have been presented but, based on the finding I have made that Burns was an independent contractor, I find the Respondent in violation of Section 8(b)(4)(A).

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Otis Elevator Company described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes obstructing commerce and the free flow of commerce.

⁴ The line was discontinued when notification was received by the Respondent that the Joint Council of Teamsters of Newark was withdrawing its sanction of the picket line upon instructions from the International Brotherhood of Teamsters.

⁵ General Counsel's Exhibit No. 4.

⁶ *Local 294, International Brotherhood of Teamsters, etc. (Bonded Freightways, Inc.)*, 121 NLRB 924. See also *Local 47, International Brotherhood of Teamsters, etc. (Texas Industries, Inc.)*, 112 NLRB 923.

V. THE REMEDY

Having found the Respondent engaged in certain unfair labor practices, it shall be recommended that they cease and desist therefrom and take certain affirmative action which will effectuate the policies of the Act. Because it appears from the record herein that action found unlawful is unlikely to be repeated and because there is no evidence that such unlawful action has been used against other employers by the Respondent, the recommended order will be limited accordingly.

CONCLUSIONS OF LAW

1. Otis Elevator Company and Nilsen Detective Agency, Inc., are, and at all times material to this proceeding have been, employers within the meaning of Section 2(2) of the Act, and are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent, New Jersey Guards Union, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent, New Jersey Guards Union, had induced and encouraged the employees of Otis to engage in a strike or concerted refusal in the course of their employment to perform services for Otis with the object of forcing or requiring Otis to cease doing business with Nilsen and has thereby engaged in an unfair labor practice within the meaning of Section 8(b)(4)(A) of the Act.

[Recommendations omitted from publication.]

APPENDIX A

THIS AGREEMENT, made this twelfth day of November 1956, by and between the Otis Elevator Company, a corporation organized under the laws of the State of New Jersey, having its principal office at 260 11th Avenue, New York, New York, and THE WILLIAM J. BURNS INTERNATIONAL DETECTIVE AGENCY, INC., licensed and bonded under the laws of the State of New York, of 101 Park Avenue, New York, New York, hereinafter called "the Agency";

WITNESSETH THAT:

WHEREAS, the Otis Elevator Company desires to have the Agency undertake to furnish a uniformed, armed guard plant protection service and to protect the premises owned by the Otis Elevator Company located at 1000 1st Street, Harrison, New Jersey, hereinafter referred to collectively as "the Protected Property";

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. The Agency shall furnish uniformed, armed guard plant protection service for the proper protection of the Protected Property, the specific number, principal posts and hours of duty of the guards to be agreed upon between the parties hereto from time to time.

2. The Agency will furnish the armed guards to provide such protection service, completely outfitted with uniforms and necessary equipment, including side arms and badges.

3. Such armed guards will be employees of the Agency, and the Agency will pay all salaries and expenses of, and all Federal Social Security Taxes, Federal and State Unemployment Taxes and any similar taxes relating to, such employees.

4. The Agency agrees to furnish and keep in full force the following insurance during the term of this contract:

- (a) Workmen's Compensation Insurance covering all persons employed by the Agency engaged in the performance of the work hereunder.
- (b) Public Liability Insurance in the name of The William J. Burns International Detective Agency, Inc., covering liabilities for bodily injuries to or death of persons arising out of the performance of this contract in the stated amounts of \$100,000.00 for one person, \$300,000.00 for more than one person in any one accident.

5. The Agency agrees to hold harmless and indemnify the Otis Elevator Company from and against any liability, loss, damages, costs and expenses which it may suffer from any claim, demand, action, suit or cause of action which may be made or had against it by reason of any action committed by the Agency, its agents, servants or employees other than an act performed by the Agency, its agents, servants or employees at the specific instructions of the Otis Elevator Company.

6. Without limiting responsibility of the Agency for the proper conduct of the guards and the protection of the Protected Property, the conduct of the guards is to be guided by a set of Standard Rules as agreed upon between the Otis Elevator Com-

pany and the Agency, and such special other written instructions applicable to the services as may be issued by the Otis Elevator Company from time to time through its designated agents.

7. The Agency is responsible for the direct supervision of the guards through its designated representative at the premises to which this contract relates and such representative will, in turn, be available at all reasonable times to report to and confer with the designated agents of the Otis Elevator Company with respect to the services.

8. The Agency agrees that the plant protection services covered by this contract shall be performed by qualified, careful and efficient employees, in strictest conformity with the best practices and such standards as may be prescribed by the Otis Elevator Company from time to time. The Agency further agrees that, upon request by the Otis Elevator Company, the Agency will remove from service hereunder any of its employees who, in the Otis Elevator Company's opinion, is guilty of improper conduct or is not qualified or needed to perform the work assigned to him.

9. For the services hereunder the Otis Elevator Company will pay the Agency a rate of pay as set forth in the attached Rate Schedule.

These hourly charges are to be made without regard to any overtime charges which may be paid by the Agency to its employees. Except it is further agreed by and between the Agency and the Otis Elevator Company that where a strike condition may exist at the Protected Property, or where an emergency situation might arise, that would require the assignment of guards in excess of a normal 48 hour work week, that the Agency may reopen this contract for the purpose of negotiating a higher rate, or an overtime rate, for those overtime hours.

The Agency will furnish the Otis Elevator Company with daily time sheets and invoice the Otis Elevator Company on the first of each month. Such invoices to be mailed or delivered to such office as the Otis Elevator Company may, from time to time, direct. Such invoices are payable to the Agency by the Otis Elevator Company on or before the 30th day of the month following service.

10. It is also understood that the Otis Elevator Company will not, for a period of at least one year after the termination of this contract, hire for their own employment any employee employed by the Agency at the time.

11. It is further agreed by and between the Agency and the Otis Elevator Company that the Agency or the Otis Elevator Company may reopen this contract at any time for the purpose of negotiating a higher or lower rate for the service the Agency herein undertakes to furnish the Otis Elevator Company.

12. The term of this agreement shall commence on and shall continue in full force and effect until terminated by sixty (60) days' written notice from either party to the other.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

OTIS ELEVATOR COMPANY.

----- By -----
 (Witness)

THE WILLIAM J. BURNS INTERNATIONAL
 DETECTIVE AGENCY, INC.

----- By -----
 (Witness)

SCHEDULE OF RATES

Location	Guard	Guard Sgt.	Supervisor
1000 1st Street Harrison, New Jersey-----	\$1.75	\$1.90	\$475.00 Per Month

APPENDIX B

THIS AGREEMENT, made this 1st day of February 1959, by and between OTIS ELEVATOR COMPANY, a Corporation of New Jersey, having its principal office at 260 11th Avenue, New York City, and hereinafter called "THE COMPANY", and the Nilsen Detective Agency, Inc., located at 233 Broad Street, Elizabeth, New Jersey, hereinafter called "THE AGENCY";

WITNESSETH THAT:

WHEREAS, the Company desires to have the Agency undertake to furnish a uniformed, unarmed guard plant protection service and to protect the premises owned by the Company, known as the Harrison Plant, and located at 1000 First Street, Harrison, New Jersey, hereinafter referred to collectively as "the Protected Property";

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. This agreement covers the terms under which the Agency shall perform service for the Company, including the furnishing of plant protection for the proper protection of the Protected Property twenty-four hours a day, seven days a week, utilizing such numbers of guards as may be directed by the Company; including competent trained guards, bonded individually for \$50,000.00, dressed in neat, blue uniform, and including a weekly report of the protection service rendered.

2. The Agency shall comply with all State and local rules, regulations and requirements having jurisdiction over the service as performed by said Agency.

3. The Company shall designate the number of guards to be employed by the Agency.

4. The Agency shall carry and keep in force at all times, public liability and workmen's compensation insurance with such reliable insurance companies and in such amounts as the Company may from time to time approve, so properly endorsed or conditioned as to protect the interests of the Agency and the Company as they appear and such as will meet the requirements of Federal and State regulatory bodies having jurisdiction.

5. It is mutually understood and agreed by and between the Agency and the Company, that the Agency is an independent contractor and not an employee of the Company, and that all persons employed by the Agency are employees of the Agency and not employees of the Company.

6. Without limiting responsibility of the Agency for the proper conduct of the guards and the protection of the Protected Property, the conduct of the guards is to be guided by a set of standard rules as agreed upon between the Company and the Agency, and such special other written instructions applicable to the services as may be issued by the Company from time to time through its designated agents.

7. The Agency is responsible for the direct supervision of the guards through its designated representative at the premises to which this contract relates and such representative will, in turn, be available at all reasonable times to report to and confer with the designated agents of the Company with respect to the services.

8. The Agency shall pay all sickness disability, unemployment insurance and old age taxes and Federal Withholding taxes pursuant to State and Federal Law, and evidence of the payment of these taxes shall be submitted to the Company at any time upon its request.

9. It is mutually agreed that the charges for service performed by the Agency shall be as follows: Captain of the Guards, one dollar and eighty-five cents (\$1.85) per manhour; Sergeants of the Guards, one dollar and eighty cents (\$1.80) per manhour; and guards, one dollar and seventy-five cents (\$1.75) per manhour; further, the Agency will furnish the Company with daily time sheets or time records and invoice the Company on the first day of each month. Such invoices to be mailed or delivered to such office as the Company may, from time to time, direct. Invoices are payable to the Agency by the Company on or before the thirtieth (30) day of the month following service.

10. It is further agreed that, in the event of a labor dispute, culminating in a strike against the Company by the Company's employees, the Agency will continue to furnish guard service as requested by the Company during the course of such strike with no increase in the charges per manhour to the Company.

11. It is further agreed upon between the Company and the Agency, that the Company will not hire or employ any of the Agency's guards employed by the Agency as a guard at the Company's premises until such guard has terminated his connection with the Agency for a period of at least six months.

12. The term of this Agreement shall commence on February 1, 1959, which shall be the effective date of this Agreement, and shall continue until terminated by either party giving to the other thirty (30) days written notice of termination.

13. This Agreement shall be binding upon the heirs, administrators, executors, assigns and successors of both of the parties hereto.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed and to become effective this 1st day of February 1959.

OTIS ELEVATOR COMPANY.

By _____ 1/5/59

(Witness)

NILSEN DETECTIVE AGENCY, INC.

By _____

(Witness)