

ferent from those at the Bedford plant, and lower than its own, were the result of a bargaining contract, when in fact there was no agreement on wages until a later time.

In *Hollywood Ceramics Company, Inc.*,¹ we set aside an election where a union made a similar misrepresentation. The rule of that case is equally applicable here. Accordingly, this conduct of the Employer is sufficient ground for setting aside the election.

The Regional Director further found that other statements of the Employer were typical campaign propaganda which the employees were capable of evaluating. We do not agree. A careful review of these assertions shows that they were designed to implant in the minds of the employees a fear of economic and physical suffering, the probability of a loss of benefits, and the hazards of collective bargaining. Specifically, the Employer indicated that the employees could expect a strike if the Union won the election. To show its economic power in this situation the Employer implied that when this occurred, it would subcontract all its production work, thus threatening the employees with loss of employment. This statement constitutes a separate, additional ground for setting aside the election.²

In view of the foregoing, we conclude that the Employer's conduct interfered with the employees' freedom of choice and warrants setting aside the election. Accordingly, we shall set the election aside and order a second one.³

[The Board set aside the election.]

[Text of Direction of Second Election omitted from publication.]

MEMBER RODGERS, concurring:

I concur in setting aside the election herein, but only for the reason set forth by the Regional Director.

¹ 140 NLRB 221

² *Somismo, Inc.*, 133 NLRB 1310.

³ In the absence of exceptions thereto, we adopt *pro forma* the Regional Director's recommendations that objections Nos. 1(a) and (c), 2(a), (b), (c), (e), and (f), 3(a) and (b), and 4 be overruled. In view of our decision herein, we find it unnecessary to rule on the issues raised by Petitioner in its exceptions to the Regional Director's recommendations as to objections Nos. 1(e) and 2(d).

West Virginia Pulp and Paper Company (Hinde & Dauch Division, Detroit Plant) and United Papermakers and Paperworkers, AFL-CIO, and its Local No. 998. *Case No. 7-R-2254.* February 7, 1963

DECISION AND ORDER CLARIFYING CERTIFICATION

On April 29, 1946, the Regional Director for the Seventh Region issued a consent determination of representatives determining that the

then incumbent Union ¹ was the exclusive bargaining representative of the following unit at the Employer's ² Detroit, Michigan, plant: "All production and maintenance employees except for supervisory employees, office and clerical employees." On April 5, 1962, the Employer filed a motion to amend and clarify certification, in which it sought, *inter alia*, to exclude guards and watchmen from the bargaining unit. The Union filed objections to the motion, contending, *inter alia*, that the two watchmen-janitors involved were not guards. On July 27, 1962, the Board issued an order remanding the proceeding to the Regional Director for the purpose of conducting a hearing on the issue raised in the Employer's motion for clarification. Thereafter, on September 11, 1962, a hearing was held before James R. McCormick, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers herein to a three-member panel [Chairman McCulloch and Members Rodgers and Leedom].

The Employer is a Delaware corporation engaged in the manufacture of pulp, paper, boxes, chemicals, and related products. This proceeding involves the Employer's Detroit, Michigan, plant. As noted, in 1946 the Regional Director for the Seventh Region issued a determination that the predecessor of the Union was representative of the employees in a production and maintenance unit. In that determination, guards were neither included nor excluded from the unit. Thereafter, the parties entered into a number of collective-bargaining agreements, the most recent of which is effective from July 7, 1962, to July 7, 1964. The watchmen-janitors were included in the bargaining unit under the parties' agreements in 1946 and 1948; they were excluded from the unit under the 1947 agreement; and in 1953 and thereafter, on the expiration of each of the parties' subsequent agreements, the Employer requested that the watchmen-janitors be excluded from the contract unit but, by agreement of the parties, they were included in the bargaining unit.³ On November 26, 1961, an arbitrator held

¹ The Union certified in 1946 was the United Paperworkers of America, CIO. In March 1957, this Union merged with the International Brotherhood of Papermakers, AFL, to form United Papermakers and Paperworkers, AFL-CIO. In its motion to amend and clarify, the Employer also requested that the Regional Director's determination be amended to show that the "certified" Union is the United Papermakers and Paperworkers, AFL-CIO, and its Local No. 998. The Union did not object to this proposed amendment. Accordingly, the determination and all formal papers herein will be amended to reflect the correct name of the Union.

² The determination listed the name of the Company as the Hinde & Dauch Paper Company. The Employer, the successor thereto, also moved that the determination be amended in this respect, and the Union concurred in this proposed amendment. We shall accordingly amend the determination and all formal papers herein to reflect the correct name of the Employer.

³ Article XXVI of the current contract between the parties provides that the status of the watchmen-janitors, as to whether they shall be included in or excluded from the bargaining unit, "will be determined" by the Board's decision on the Employer's instant motion for clarification.

that the Employer had violated the agreement between the parties by installing a mechanical (ADT) system for detecting fires and unauthorized entries on its premises, thus eliminating the jobs of the watchmen-janitors, and he sustained the Union's request that the watchmen-janitors be reinstated. As noted in April 1962, the Employer filed the instant motion to exclude the watchmen-janitors from the unit as guards.

The Union initially contends that in view of the long period of time which has elapsed since the Regional Director's determination, the issue herein should be decided through a petition for a new election. However, where, as here, the unit sought to be clarified has not changed in any significant manner and the sole issue before the Board is whether certain employees should be excluded from the unit as guards by command of the Act, the mere fact that considerable time has passed since the original "certification" is insufficient grounds for denying the motion for clarification.⁴ The Union further contends that under the *Spielberg*⁵ rule, the Board is precluded from adjudicating the matter in view of the foregoing arbitration proceeding. We find no merit in this contention. The arbitration proceeding relied on by the Union related solely to the issue whether watchmen-janitors were covered by the then applicable collective-bargaining agreement between the parties and, therefore, whether the Employer violated that agreement by eliminating the job of watchman-janitor. The issue in the instant case, however, is whether the watchmen-janitors are guards within the meaning of the Act. As the 1961 arbitration proceeding dealt with an issue which is different from that which is involved in this proceeding, we find that the arbitration proceeding does not foreclose a determination of the Employer's motion for clarification.⁶

We shall now turn to the question of whether the watchmen-janitors are guards within the meaning of the Act.⁷ The record establishes that the Employer's production and maintenance employees, about 70 in number, work on 2 shifts, namely, from 7 a.m. to 3:30 p.m. and from 3:30 p.m. to 12 midnight. The Employer's watchmen-janitors are on duty during the week between the hours of 10:30 p.m. and 6:30 a.m., and almost continuously on weekends. There are no other employees in the plant during most of the time that the watchmen-janitors are on duty. The watchman-janitor on duty makes hourly

⁴ See *Sonotone Corporation*, 100 NLRB 1127; *The Mountain States Telephone and Telegraph Company*, 130 NLRB 388; *Monon Stone Company*, 137 NLRB 761, relied on by the Union, is inapposite. There, the Board, in dismissing motions to amend certain certifications on the ground that they raised questions concerning representation, expressly relied on the fact that the unit claimed was "substantially different" from the unit previously certified.

⁵ *Spielberg Manufacturing Company*, 112 NLRB 1080.

⁶ See *Montgomery Ward & Co., Incorporated*, 131 NLRB 1436, 1438.

⁷ Section 9(b)(3) of the Act defines a guard as an individual who is employed 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"

rounds of the 14 key stations in the plant. Each of these rounds takes between 20 to 25 minutes. He is required, *inter alia*, to check all doors, including the railroad gate and door and gate entrance to the boiler-room, to "be alert for fire hazards, horseplay and destruction of property," to check the parking lot, and to "let no one in without a pass."⁸ While the watchmen-janitors generally are required to report untoward circumstances or incidents to their supervisors, as described more fully below, they also have authority to take action themselves in certain situations. They are not, however, armed, deputized, or uniformed. The watchmen-janitors also perform janitorial services, including the sweeping of the plant, cleaning out of restrooms, and similar functions.⁹ When not otherwise occupied, the watchmen-janitors are instructed to remain in the Employer's production office, where the Employer maintains a listing of the telephone numbers of the police department, fire department, and other emergency services.

The Union contends that, although the watchmen-janitors possess certain responsibilities respecting the protection of the Employer's property against intruders, they are not guards because they have been instructed to report violations of company rules to their supervisors. We find no merit in this contention. In a number of cases, the Board has held that where the employees in question otherwise meet the statutory requirement for guards, the fact that they do not take personal affirmative action against violators of company rules is immaterial. For example, in *St. Regis Paper Co.*,¹⁰ although the disputed employees were not authorized to use force or violence in the discharge of their duties, and were instructed, with respect to violations of company rules, to call a deputized guard, the Board found that these employees were guards.¹¹ In any event, the record establishes, and we find, that the watchmen-janitors are authorized to take personal action to enforce company rules and have in fact exercised such authority. Thus, the watchmen-janitors are authorized to call the police or other emergency services if the situation requires;¹² they are responsible for apprehending persons who are on company property without permission and who are found removing company property without

⁸ These instructions are contained in a memorandum from the Employer to the watchmen-janitors, dated January 8, 1958. In another memorandum, dated October 21, 1955, the Employer stated: "Your job primarily is plant protection, which includes the protection and safety of the grounds, buildings, and equipment, and anything that happens to affect the safety and well-being of the plant, [it] is your job to report immediately." The record does not indicate that there has been any change in the responsibilities of the watchmen-janitors since these memorandums were issued.

⁹ The record does not indicate what percentage of their time is spent in performing this janitorial work.

¹⁰ 128 NLRB 550, 552.

¹¹ To the same effect see *Watchmanitors, Inc.*, 128 NLRB 903, 904-905; *The Carter's Ink Company*, 109 NLRB 1042; *General Motors Corporation, AC Sparkplug Division, Milwaukee Plant*, 101 NLRB 521, 522, footnote 2.

¹² It is apparently for this purpose that the employer maintains telephone listings for the police and other emergency services in its office.

permission; and on one occasion, a watchman-janitor, without consulting his supervisor, barred an employee of the Employer from entering company premises after hours without a pass. As the watchmen-janitors herein are responsible for enforcing the Employer's rules for the protection of the Employer's property, we find that they are guards within the meaning of the Act and we shall, accordingly, exclude them from the unit.¹³

[The Board clarified the Regional Director's Determination of Representatives by excluding from the unit "watchmen-janitors and all other guards as defined in the Act," and further amended the aforesaid Determination and all formal papers by substituting the name "West Virginia Pulp and Paper Company (Hinde and Dauch Division, Detroit Plant)" in place and stead of the name "Hinde & Dauch Paper Company," and by substituting the name "United Papermakers and Paperworkers, AFL-CIO and its Local No. 998" in place and stead of the name "United Paperworkers of America, CIO," wherever they appear therein.]

¹³ *Threads-Incorporated*, 121 NLRB 1507, 1510; *International Furniture Company*, 119 NLRB 1462. The fact that the watchmen-janitors are not armed, deputized, or uniformed, and that they spend an unstated portion of their time in performing janitorial duties, does not require a contrary finding. *Armstrong Cork Company, South Gate Plant*, 117 NLRB 262; *Walterboro Manufacturing Corporation*, 106 NLRB 1383. Our recent decision in *The Centor Company*, 136 NLRB 1506, is not to the contrary. There the Board found that certain "landing men," who had been instructed to keep "trespassers" away from the Employer's barges, were not guards. However, as the Board pointed out in *Centor*, those "trespassers" were almost invariably children playing in the area. Further, unlike the instant case, the "landing men" in *Centor* were not instructed to request strangers to identify themselves and they were not given specific instructions as to what action, if any, to take in the event of emergency.

**Schill Steel Products, Inc. and United Steelworkers of America,
AFL-CIO. Case No. 23-CA-1445. February 8, 1963**

DECISION AND ORDER

On November 28, 1962, Trial Examiner Phil Saunders issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Rodgers and Fanning].

The Board has reviewed the rulings of the Trial Examiner made 140 NLRB No. 106.