

Kearn's union affiliation had nothing to do with the discharge; it did, of course, prevent her from accepting part-time work. It is significant that there were no allegations of independent 8(a)(1) violations, and no direct evidence of union animus on the part of Respondent.

There is substantial, credible evidence that the discharge was solely because Kearn could not accept part-time work. Inasmuch as there is no determination that Respondent violated Section 8(a)(5), the discharge cannot be found to be a violation of 8(a)(3) on the basis of a contract violation, which theory appears to be the substantial one on which the General Counsel proceeded.

On the basis of the evidence and circumstances, discussed above, and the inferences to be drawn therefrom, and the whole record, I find and conclude that there was no violation of Section 8(a)(3) of the Act in Kearn's discharge.

For all of the reasons hereinbefore appearing, it is recommended that the complaint be dismissed.

Security Guard Service, Inc. and Paul R. Ashmore. *Case No. 28-CA-1091. July 27, 1965*

DECISION AND ORDER

On March 10, 1965, Trial Examiner William E. Spencer issued his Decision in the above-entitled proceeding, finding that 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 Trial Examiner's Decision. Thereafter, Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Members Fanning, Brown, and Jenkins].

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 Trial Examiner's Decision and the entire record in the case, including the exceptions and brief, and hereby adopts the findings, conclusions,¹ and recommendations of the Trial Examiner.²

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Order recommended by the Trial Examiner, and orders that Respondent, Security Guard Service, Inc., its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

¹ In adopting the Trial Examiner's conclusions herein, we are cognizant of Respondent's reference to Ashmore in its October 19, 1964, letter to NASA's contracting officer as "one of our guard supervisors"

² See our Order issued this day in *Security Guard Service, Inc.*, 154 NLRB 33

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This proceeding, with all parties represented, was heard before Trial Examiner William E. Spencer in El Paso, Texas, on December 10 and 11, 1964, upon the complaint of the General Counsel of the National Labor Relations Board, the latter herein called the Board, dated September 2, 1964, and the duly filed answer of Security Guard Service, Inc., herein called the Respondent. The complaint, based on a charge filed by Paul R. Ashmore, an individual, on May 19, 1964, alleged in substance that in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, herein called the Act, the Respondent discharged employee Ashmore because of his union and concerted activities, and engaged in other specified conduct violative of Section 8(a)(1) of the Act. The Respondent in its amended answer denied that Ashmore was an employee within the meaning of the Act and that his discharge violated the Act, but in all other respects admitted the allegations of the complaint.

Upon the entire record in the case, after consideration of the informative and generally excellent briefs filed with me by the General Counsel and the Respondent, respectively, and upon my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Security Guard Service, Inc., a Texas corporation, at all times material has maintained its principal office and place of business in El Paso, Texas, and various other places of business and facilities in Texas and New Mexico, including the National Aeronautics and Space Administration, Propulsion System Development Facility at White Sands Missile Range, herein called NASA location, New Mexico, and at all material times has been continuously engaged at said places of business and facilities in the business of providing and performing guard and security services and related services. Respondent's NASA location at the White Sands Missile Range is its only facility involved in this proceeding.

During the past 12-month period, in the course and conduct of its business operations described above, the Respondent performed services valued in excess of \$50,000 to enterprises, each of which annually handles, produces, and ships goods valued in excess of \$50,000 directly out of the State wherein said enterprises are located, or which annually receives from directly without the State wherein said enterprises are located, goods or services valued in excess of \$50,000.

During the past 12-month period, in the course and conduct of its business operations, the Respondent performed and furnished services valued in excess of \$30,000 which had a substantial impact on the national defense.

II. UNFAIR LABOR PRACTICES

The principal issue litigated here is the supervisory status of Respondent's shift supervisors, known also as sergeants. This matter has previously been litigated in a representation hearing in Case No. 28-RC-1211, wherein the Respondent took the same position that it takes here; i.e., its shift supervisors are supervisors within the meaning of the Act. On the basis of the hearing in the said representation case, the Board's Regional Director issued his Decision and Direction of Election dated August 19, 1964, which read, in material part:

The parties stipulated to the appropriateness of the unit, but disagreed as to the unit placement of employees classified as shift supervisors or sergeants, herein referred to as sergeants. The Employer would exclude them from the unit on ground they are supervisors within the meaning of the Act, whereas Petitioner would include them as rank-and-file employees. The parties also could not agree as to the inclusion or exclusion of the visitor control guard, but neither took a position with respect to the unit placement of this employee.

The Employer is responsible for providing guard and security services on a site comprising approximately 87 square miles. The guard routine primarily is performed in a 5-mile area within the larger area, called the tech area, comprising that part of the site which has been developed to date. The guard complement at the site consists of one Captain, one visitor control guard, four sergeants, seven guards, and one office clerical employee. The parties agreed that the Captain and the office clerical employee are excluded from the unit.

The record discloses that the Employer operates three shifts continuously on a 24-hour basis—7 a.m. to 3 p.m., 3 p.m. to 11 p.m., and 11 p.m. to 7 a.m. Generally, there are three guards and one sergeant on duty during the first shift, two guards and one sergeant on duty during the second shift, and one guard and one sergeant during the third shift. The Captain is generally on duty throughout the first shift and remains until about 4:30 p.m. The Employer's site headquarters is located in the main administration building where the Captain maintains an office which also contains a desk used in common by the sergeants for those portions of their respective shifts when they are present to receive orders and complete reports.

The sergeants spend the majority of their time with the guards at the guard house which is located some distance from the main administration building, and where all vehicles and persons entering or leaving the site are checked. The principal duties of the guards consist of either manning the guard house or patrolling the tech area and the site perimeter. The evidence reflects that the sergeants spend the majority of their time performing the same site patrol and guard functions as do the guards, but additionally are required to maintain daily activity logs and keep the time cards of the guards assigned to their shift. Additionally, the evidence reflects that the sergeants are responsible for relaying daily instructions from the Captain to the employees on the shift. All shift assignments are made by the Captain, including the assigning of sergeants to particular shifts.

Sergeants, like the guards, are paid by the hour and receive overtime pay, although their hourly rate of pay is approximately 25% higher than that of the guards. The Captain is paid monthly and receives approximately 50% more than the sergeants, but is not compensated for any overtime work.

Although the Employer maintains that the sergeants have the authority to hire and fire and/or effectively recommend such action, the authority to promote, discipline and adjust grievances, there is no evidence that such authority has even been exercised. Further, though there is some evidence reflected in the record that the sergeants were at one time or another advised that they possessed some of the above indicia of supervisory authority, such evidence alone is not dispositive. The Board has held that the mere issuance of a directive to alleged supervisors, setting forth supervisory authority, is not determinative of their supervisory status. *Connecticut Light and Power Co.*, 121 NLRB 768, 770; *Cincinnati Transit Co.*, 121 NLRB 765. The absence, for all practical purposes, of the exercise of such authority negates its existence. *Southern Bleachery and Print Works, Inc.*, 115 NLRB 787, *Sperry Gyroscope Co.*, 136 NLRB 294, 296.

The Employer further contends that the sergeants have the authority responsibly to direct the activities of the guards; however, the record indicates that the directions are generally of a routine nature, requiring no independent judgment, and that the sergeants primarily act as conduits for instructions from the Captain. *Mayfair Industries, Incorporated*, 126 NLRB 223. Although there is some evidence that on one or two occasions a sergeant has recommended that an employee be promoted, and that such recommendations has been followed by the Captain, such limited evidence is not sufficient for a finding that the sergeants are supervisors within the meaning of the Act. *William J. Burns International Detective Agency, Inc.*, 138 NLRB 447. Accordingly, on the basis of the foregoing and the entire record, I find that the sergeants are not supervisors within the meaning of Section 2(11) of the Act and shall therefore include them in the unit. *Sanborn Telephone Company, Inc.*, 140 NLRB 512.

The Employer (the Respondent herein) having filed no request for a review of the Regional Director's Decision and Direction of Election as provided for in the Board's Rules and Regulations, Series 8, as amended, Section 102.67(b), (c), and (d), an election was held and shift supervisors voted without challenge. Pursuant to election results, a certification of representative issued on September 17, 1964, in the following unit: "All guards employed by the Employer at the NASA site at Organ, New Mexico, excluding office clerical employees and supervisors as defined in the Act." There is no evidence that the Respondent has at any time since the representation hearing contested its shift supervisors' right to be included in the bargaining unit.

On May 6, 1964, the Respondent discharged Shift Supervisor Paul R. Ashmore. This discharge, it is noted, preceded the filing of the election petition dated May 13 in Case No. 28-RC-1211. The hearing on the petition was conducted on June 22 and 24, July 31, and August 4, 1964. The charge which initiated this proceeding was filed on May 19, and the complaint herein issued September 2.

The Respondent admits, for purposes of this proceeding, that it discharged Ashmore because of his union and concerted activities, and further admits various allegations of 8(a)(1) violations of the Act. As aforesaid, it contends that Ashmore was a supervisor within the meaning of the Act and therefore without the Act's protection in his union and concerted activities.

At the outset of the hearing herein, the General Counsel's representative took the position that under the Board's Rules and Regulations, Section 102.67(f), the Respondent was precluded from relitigating the issue of the supervisory status of shift supervisors or sergeants. The rule in question reads:

The parties may, at any time, waive their right to request review [of the Regional Director's Decision and Direction of Election]. Failure to request review shall preclude such parties from relitigating, in any related subsequent unfair labor practice proceeding, any issue which was, or could have been, raised in the representation proceeding. Denial of a request for review shall constitute an affirmation of the Regional Director's action which shall also preclude relitigating any such issues in any related subsequent unfair labor practice proceeding.

In 8(a)(5) cases turning on unit determination the Board has given a uniform application of its rule and has been sustained in the courts. *Pittsburgh Plate Glass Company v. N.L.R.B.*, 313 U.S. 146, 161-162. Only in cases where evidence was "newly discovered or unavailable at the time of the representation case hearing" has the Board relaxed its application of the rule. With one exception—which will be discussed hereinafter—there is no showing that the evidence received at this hearing was "newly discovered or unavailable at the time of the representation hearing" in Case No. 28-RC-1211, and that exception, standing alone, would not in my opinion justify a reversal of the Regional Director's determination that shift supervisors or sergeants are nonsupervisory. In short, if the rule quoted above is to be applied in an 8(a)(3) case such as we have here, as it has been uniformly applied in 8(a)(5) cases turning on unit determination, the Trial Examiner must accept the Regional Director's decision on the status of shift supervisors, and find, accordingly, that Respondent's discharge of Ashmore for his union and concerted activities was unlawful.

It can hardly be questioned that the issue here is, in the words of the rule, a "related subsequent unfair labor practice proceeding" because, if shift supervisors are in fact supervisors within the meaning of the Act, they are automatically excluded from a unit appropriate for purposes of collective bargaining and, accordingly, the whole matter of unit determination and the Company's duty to bargain on a unit which includes supervisors would be thrown open to question. It would be anomalous, I think, to find that sergeants are supervisors in an 8(a)(3) proceeding, and at the same time hold the Respondent to the rule applied in 8(a)(5) proceeding requiring it to bargain in a unit which includes supervisors. However, in at least two cases the Board has departed from a strict application of its rule in alleged Section 8(a)(3) violations which turn on the supervisory status of the individuals involved.

In the earlier of the two cases, *Southern Airways Company*, 124 NLRB 749, footnote 2, the Board stated that the representation proceeding did not "finally and conclusively" resolve the issue of supervisory status because "additional evidence" in the complaint case convinced it that the issue "was not so fully litigated in the representation proceeding as to preclude reconsideration herein." One may infer that had the Board been convinced in that case that the issue was fully litigated in the representation proceeding, it might have decided otherwise. In the latter of the two cases, however, *Leonard Niederruter Company, Inc.*, 130 NLRB 113, footnote 2, the Board, citing its earlier decision, stated simply that the supervisory status of an individual was not "finally and conclusively" resolved in the representation case for the purposes of a case involving alleged violation of Section 8(a)(3) of the Act.¹ The words "finally and conclusively" do not rest on evidence newly discovered, or evidence which with the exercise of due diligence could not have been presented in the representation proceeding, inasmuch as in neither case did the Board's reversal of the decisions in the representation cases rest on such showings. I do not, however, take these two cases to mean that the Trial Examiner is to accord no weight to the determination of the issue of supervisory status in a representation proceeding in deciding the same issue in a complaint case, where he is convinced, as I am here, that the

¹ In view of these decisions I rescind my ruling rejecting the transcript of proceedings in Case No. 28-RC-1211, and receive the said transcript in evidence, and overrule the General Counsel's objections to receiving evidence on the issue in this proceeding.

matter was fully litigated in the representation proceeding. The words "finally and conclusively" are words of limited application and afford no justification, in my opinion, for overturning the decision of the Board's Regional Director, respecting the supervisory status of an individual thereby opening up the whole unit determination to question, unless additional or newly discovered evidence clearly indicates error in that determination.

As to "additional evidence," the testimony taken in this proceeding—all available to the Respondent at the time of the representation hearing—is mostly a duplication or amplification of that introduced at the representation hearing and considered by the Regional Director, as shown by his decision in the matter, and not of such character as would show clearly that he was in error in deciding that sergeants were nonsupervisory and therefore properly included in the bargaining unit. The testimony of Ernest Patzkodki, if credited, would indicate that sergeants exercise some minor supervisory functions but does little to counteract the weight of evidence that in the main their functions, other than that of ordinary guard duty, are clerical or ministerial, involving only to a negligible degree the exercise of independent judgment in their direction of the two guards normally assigned to each. It would indeed be a rare occasion when one supervisor for every two employees was required, and this does not appear to me to be one of those occasions.²

The Respondent here lays considerable stress on its contractual requirements with respect to the qualifications and duties of sergeants, and references to them therein as "key" personnel. Considering the military secrecy and delicacy of Respondent's undertaking, it may very well have regarded its sergeants as well as its guard captain as key personnel, but unless they actually performed duties substantially and consistently of a supervisory or managerial nature, they should not, I think, be denied their rights under the Act as employees. As the Regional Director noted in his decision, "the mere issuance of a directive to alleged supervisors, setting forth supervisory authority, is not determinative of their supervisory status." He might have added that neither title nor job description can be dispositive of the issue where the functions actually performed over a substantial period of time are predominantly nonsupervisory in character. Because of the nature of the project on which the Respondent was engaged, its guards as well as its sergeants and captain occupied positions of more sensitivity to the requirements of management than is ordinarily the case with rank-and-file employees, but this does not constitute them supervisors within the meaning of the Act.

Coming now to evidence bearing on the supervisory status of sergeants not available to the Respondent at the time of the representation hearing, on the morning of October 13, more than a month after the issuance of the complaint in this proceeding, Guard Sergeant Edward Kasprowski suspended Guard Raymond Rodriguez for remarks which he regarded as insubordinate, pending the arrival of Guard Captain John R. Brown. On Brown's arrival at the post, Kasprowski reported to him on the incident, and the matter was straightway investigated by Brown. Kasprowski's report reads:

Upon hearing the charges and replies, Captain Brown then made a decision and placed Rodriguez under suspension from further duty for one (1) day, charging him with insubordination, Captain Brown then asked me whether I agreed with his actions? I replied substantially that I was merely relating the factors which led to the suspension, and that I would not lend any weight to whatever action he took in the matter.

From this it appears that while Sergeant Kasprowski initiated the suspension of Rodriguez, the suspension did not take on finality until after Captain Brown had made an independent investigation of the matter, hearing both Kasprowski and Rodriguez. After the investigation, Brown, not Kasprowski, ordered the 1-day suspension. It may well be said that Kasprowski's recommendation in the matter carried some weight, but it did not represent an independent exercise of the authority to suspend. It is the only incident of its kind disclosed by the entire record of proceedings in the representation case and the case at bar, and I do not believe that it should be accorded controlling weight. An isolated, sporadic, and limited exercise of supervisory function does not normally suffice to establish supervisory status such as would deprive an employee of the benefits and protection of the Act.

² The testimony of Respondent's witness, George Waggoner, elicited through leading and suggestive questions and almost entirely conclusionary in character, can be accorded little weight.

It further appears that on occasion persons referred to management by sergeants were hired. This was true in the case of Ashmore and others. In no instance did this entail a personal interview, authorized by management, between the sergeant and the prospective employee looking toward the latter's employment. Such interviews were conducted by E. Warren Pullen, Respondent's manager, or other high-ranking company official, and while the sergeant's knowledge of the applicant was sought and received, there is no reason to believe that their recommendations carried any more weight than would the recommendations of any responsible employee who enjoyed the confidence of management. There was also an incident in which a sergeant was consulted by management with respect to the promotion of a guard. On this occasion the sergeant submitted the names of three guards and from these Pullen named one. No doubt the recommendations or suggestions of the sergeants in these cases had some persuasive force but do not suffice, in my opinion, to establish that sergeants, because of their positions as sergeants as distinguished from that of guards, could effectively recommend the discharge, suspension, or hire of employees.

While the Respondent has made an able and vigorous presentation of its position in this matter, its whole defense to the Ashmore discharge appears to have come as an afterthought. Though it did assert and litigate in the representation hearing its contention that sergeants are supervisory, it waived exceptions to the Regional Director's adverse decision in the matter; permitted its sergeants to vote in the ensuing election without challenge; in its original answer to the complaint in this proceeding admitted the allegation of the complaint designating Ashmore as its employee; in its letter dated October 19, addressed to its contracting officer, stated that it discharged Ashmore because of "poor judgment and inability to maintain good performance," omitting any reference to supervisory status; and in the contracting officer's reply, dated November 2, that individual also omitted any reference to Ashmore's supervisory capacity but instead lumped sergeants and guards together in describing them as "unofficial representatives of the personnel relations department" and in setting forth the required qualifications for both. The Respondent's state of mind with respect to the supervisory status of Ashmore as thus recorded previous to the time it decided to defend on the ground that Ashmore was a supervisor, is not entirely without significance.

Upon the entire record, and according "persuasive relevance" to the Regional Director's decision in the matter, I find that Ashmore was an employee within the meaning of the Act and that the Respondent by discharging him because of his union and concerted activities violated Section 8(a)(1) and (3) of the Act.

Additionally, on the basis of the uncontested allegations of the complaint, I find that the Respondent, in violation of Section 8(a)(1) of the Act:

(a) On or about May 6, 1964, promised its employees wage increases, group insurance benefits, vacation pay benefits, and an adjustment in the method of payment of wages and other improvements in the terms and conditions of employment in an attempt to discourage union organization and other concerted activities of employees engaged in for the purpose of collective bargaining or other mutual aid or protection.

(b) On or about May 6, 1964, announced to its employees a general wage increase to be effective from May 1, 1964, and instituted said promised increase effective May 1, 1964, in an attempt to discourage union organization and other concerted activities of employees engaged in for the purpose of collective bargaining or other mutual aid or protection.

(c) On or about May 6, 1964, created the impression that the employees' union activities or other concerted activities had been kept under surveillance.

(d) On or about May 14 and 15, 1964, urged and solicited employees to abandon their union and concerted activities and urged and solicited employees to designate a preference to abandon these activities by signing a statement to that effect.

(e) On or about May 14 and 15, 1964, interrogated employees concerning their union and concerted activities and desires, and the union and concerted activities and desires of other employees.

(f) On or about May 15, 1964, urged and solicited an employee to refrain from engaging in union and concerted activities and to attempt to get other employees to abandon their union and concerted activities.

A final matter to be disposed of here is Respondent's contention that it has done all that can be required of it in offering Ashmore reinstatement. On September 29, 1964, it offered Ashmore reinstatement to his former job with Respondent, and on October 6, Ashmore agreed to accept reinstatement. Thereafter, on October 19, Respondent wrote the letter previously referred to, to the contractor's office of the National Aeronautics and Space Administration, setting forth that it had discharged

Ashmore for "not conforming to paragraph E of attachment 'A' of our NASA Contract Number 9-2123; specifically, poor judgment and inability to maintain good performance." The letter continued:

The National Labor Relations Board has taken the stand that Mr. Ashmore was fired because of union activities. This is not true since we had heard no mention of a union until 2 weeks after the dismissal of Mr. Ashmore. Nevertheless, the National Labor Relations Board has requested that we rehire Mr. Ashmore and pay him back wages. We have advised the National Labor Relations Board that we cannot rehire anyone without the written consent of the NASA Contracting Officer; this being in accordance with Part XII of said contract.

Because of the inefficiencies of Mr. Ashmore, we do not want to rehire him but would like to have your written approval or disapproval of such reinstatement.

The National Aeronautics and Space Administration, in its reply letter previously quoted in part, refused its approval of Ashmore's reinstatement. Needless to add, Ashmore has not been reinstated.

It is patent from the foregoing, I think, that no bona fide offer of reinstatement such as is required to remedy Respondent's unfair labor practice in its discharge of Ashmore, has been made. The Respondent has submitted no evidence in support of its letter of October 19 or to show that Ashmore is in any respect, other than his alleged supervisory status, ineligible for reinstatement. The usual order requiring reinstatement with backpay will accordingly be entered.

III. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section II, above, occurring in connection with the operations of the Respondent as 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 burdening and obstructing commerce and the free flow of commerce.

IV. THE REMEDY

Having found that Respondent unlawfully discharged Paul R. Ashmore, I shall recommend that it offer him immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges.

It is further recommended that Respondent make said Ashmore whole for any loss of pay suffered by reason of the discrimination against him by payment to him of a sum of money equal to that amount of wages he would have earned, but for said discrimination, from the date of the discharge, to the date he is offered reinstatement, together with interest thereon. *Isis Plumbing & Heating Co.*, 138 NLRB 716. The loss of pay shall be computed in accordance with the formula and method prescribed by the Board in *F. W. Woolworth Company*, 90 NLRB 289.

The nature and scope of Respondent's violations of the Act are such as to require a broad cease-and-desist order commensurate with the potential threat of further violations.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. The Respondent is, and has been at all times material, an employer within the meaning of Section 2(2) of the Act, and is engaged in and has been engaged in commerce and a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. By discriminating in regard to the hire and tenure of employment and the terms and conditions of employment of Paul R. Ashmore, thereby discouraging membership in a labor organization, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

3. By the aforesaid discriminatory discharge; creating the impression that its employees' union and concerted activities were kept under surveillance; interrogating its employees concerning their union and concerted activities and the union and concerted activities of others; urging and soliciting its employees to refrain from and abandon, and to attempt to get other employees to abandon, their

union and concerted activities; urging its employees to designate a preference to abandon these activities by signing a statement to that effect; and by promising wage and other benefits, and instituting a general wage increase in order to discourage union organization and other concerted activities of its employees, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. The aforesaid labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, it is hereby recommended that Respondent, Security Guard Service, Inc., El Paso, Texas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in any labor organization of its employees, by discharging or in any other manner discriminating against any employee in regard to his hire or tenure of employment or any other term or condition of employment, except as authorized in Section 8(a)(3) of the Act.

(b) Interrogating in an unlawful manner its employees concerning their union and concerted activities, and the union and concerted activities of other employees; creating the impression that its employees' union and concerted activities are kept under surveillance; urging and soliciting its employees to refrain from and abandon, and attempt to get other employees to abandon, their union and concerted activities, and urging its employees to designate a preference to abandon these activities by signing a statement to that effect; promising wage and other benefits, and instituting wage increases in order to discourage union organization and other concerted activities of its employees, and in any other manner interfering with, restraining, or coercing its employees in the exercise of rights under Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer Paul R. Ashmore immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay suffered by him as described in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due.

(c) Notify the above-named employee if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

(d) Post at its offices in El Paso, Texas, and the site of its NASA operation, copies of the attached notice marked "Appendix."³ Copies of said notice, to be furnished by the Regional Director for Region 28, shall, after being duly signed by a representative of Respondent, be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that such notices are not altered, defaced, or covered by other material.

(e) Notify the aforesaid Regional Director, in writing, within 20 days from the date of this Decision, what steps Respondent has taken to comply therewith.⁴ Unless Respondent so notifies the said Regional Director, it is recommended that the Board issue an Order requiring Respondent to take the aforesaid action.

³ If this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. If the Board's Order is enforced by a decree of a United States Court of Appeals, the notice will be further amended by the substitution of the words "a Decree of the United States Court of Appeals, Enforcing an Order" for the words "a Decision and Order".

⁴ If this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 28, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith"

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL NOT discourage membership and activity in any labor organization of our employees, by discriminating in any manner in regard to hire, tenure, or any other term or condition of employment.

WE WILL NOT interrogate our employees in an unlawful manner concerning their union and concerted activities, and the union and concerted activities of other employees; create or attempt to create the impression that our employees' union and concerted activities are kept under surveillance; urge or solicit our employees to refrain from and abandon, and attempt to get other employees to abandon, their union and concerted activities, and to designate a preference to abandon these activities by signing a statement to that effect; promise or institute wage and other benefits in order to discourage union organization and other concerted activities of our employees; or in any other manner interfere with, restrain, or coerce our employees in the exercise of the right to self-organization, to form labor organizations, to join or assist the above-named or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from engaging in any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment in conformity with Section 8(a)(3) of the Act.

WE WILL offer Paul R. Ashmore immediate and full reinstatement to his former or substantially equivalent position, without prejudice to any seniority or other rights and privileges, and make him whole for any loss of pay suffered as a result of the discrimination against him.

SECURITY GUARD SERVICE, INC.,
Employer.

Dated----- By-----
(Representative) (Title)

NOTE.—We will notify the above-named employee if presently serving in the Armed Forces of the United States of his right to full reinstatement upon application in accordance with the Selective Service Act and the Universal Military Training and Service Act of 1948, as amended, after discharge from the Armed Forces.

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

Employees may communicate directly with the Board's Regional Office, 1015 Tijeras Street, NW., Albuquerque, New Mexico, Telephone No. 247-0311, if they have any question concerning this notice or compliance with its provisions.

Butchers' Union Local 120, Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO and United Employers, Inc. *Case No. 20-CB-1174. July 27, 1965*

DECISION AND ORDER

On January 4, 1965, Trial Examiner Maurice M. Miller issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices