

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 prohibit our employees from engaging in union activities on plant premises during nonworking time when employees are normally at the plant.

WE WILL NOT question our employees about their union activities or the union activities of others so as to interfere with the right of our employees to engage in union activities.

WE WILL NOT refuse to grant benefits to employees just because they are engaged in union activities or have joined a union.

WE WILL NOT promise or grant employee benefits in order to discourage employees from joining or assisting a union.

WE WILL NOT engage in, or create the impression of, surveillance of the union activities of our employees.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in their right to join or assist International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, or any other labor organization.

PRECISION PRODUCTS & CONTROLS, INC,
Employer.

Dated _____ By _____
(Representative) (Title)

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

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 110 West Fifth Street, Fort Worth, Texas 76102, Telephone 335-4211, Extension 2145.

American District Telegraph Company of the Cleveland Company and Communications Workers of America, AFL-CIO, Petitioner. *Case 8-RC-6105. September 14, 1966*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Bernard Levine. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer and the Petitioner filed briefs.

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

Upon the entire record, 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. A question affecting commerce exists concerning the representation of employees of the Employer with the meaning of Sections 9(c) (1) and 2(6) and (7) of the Act.

4. The Petitioner seeks to represent all full-time and part-time servicemen 1, 2, and 3¹ employed in the Cleveland area at the Employer's three central stations,² its Hamilton Avenue shop, and five affiliated guard stations; background music supervisor; and porters.

The Employer contends that all of the servicemen are guards within the meaning of Section 9(b) (3) of the Act and under the terms of that provision may not be represented by the Petitioner, a labor organization which admits to membership persons other than guards. In the event that the Board finds the S-2's to be guards as defined in the Act, the Petitioner states that it would accept a unit excluding them.

The Employer,³ an Ohio corporation with its principal office and place of business in Cleveland, is one of a number of wholly owned subsidiaries of American District Telegraph Company, which are engaged in the business of furnishing to customers protective services against industrial process interruptions, fire, and unlawful entry to premises, by means of electric, electronic, and electromagnetic devices that are installed and maintained by ADT.⁴ Most of these devices on the customers' premises are connected to the three central stations which receive and monitor signals.⁵ ADT also provides to a small number of customers services which are wired to police or fire stations or to a telephone answering service. In addition, some local alarms provided by ADT merely activate a bell outside of customers' buildings.

The following employees have some part in furnishing the foregoing services in the Cleveland area. About 57 full-time S-1's,⁶ with two exceptions,⁷ work on the 8 a.m. to 4:30 p.m. shift Monday through Friday, but are subject to emergency call during other hours or on the weekend. About 40 to 44 of them are stationed at the Hamilton shop, and the remaining S-1's are at Cleveland East and West. About

¹ Herein called S-1's, S-2's, and S-3's

² The central stations are known as Cleveland Main, East, and West

³ Herein called ADT.

⁴ ADT in October or November 1965, also established a new one-man division which sells background music and communications systems.

⁵ The individual guard stations have no monitoring devices but are connected by telephone with one of the central stations

⁶ S-1's were classified as plant employees prior to 1960.

⁷ W. Irvine and Joseph Kovach are special S-1's whose duties are described below.

36 full-time and 7 part-time S-2's are assigned to the central stations where they provide round the clock 7-day-a-week coverage, with most of these employees working on the second (4 p.m. to midnight) or third (midnight to 8 a.m.) shifts. About 11 full-time and 9 part-time S-3's, many of whom are females, work at the central stations on a round the clock 7-day-a-week basis, with a majority assigned to the second and third shifts.⁸

The hourly pay range is \$2.11 to \$2.98 for S-1's, \$2.11 to \$2.88 for S-2's, and \$2.01 to \$2.73 for S-3's. The fringe benefits such as holidays, vacations, and death payments are the same for all servicemen.

S-3's

The function of the S-3's, who do not wear uniforms or carry guns, is to monitor the signals received at the central stations. If there is an indication of an abnormal condition at a customer's premises such as a fire or a burglar alarm signal or the omission of a regularly scheduled watchman's signal, the S-3 brings it to the attention of his supervisor who determines whether the customer or the fire or the police department should be notified. When a delinquent watchman, i.e., one who for some reason fails to activate the night watch signal according to a prearranged schedule, is not reached by telephone by the S-3 or the supervisor, an S-2 is generally sent out to the customer's premises to ascertain the cause of the delinquency.

S-2's

All S-2's wear uniforms with cap and badge, carry pistols, are bonded,⁹ and have special police commissions from the city of Cleveland. As already indicated, S-2's are dispatched any time of the day, night, or week to customers' premises in response to a burglar or fire alarm, other signals, or telephone calls directly from customers, to determine the cause of the difficulty and, if necessary, to repair and restore to normal operation the particular protection system involved.¹⁰ In addition, S-2's in the course of their regular patrolling of those premises which are not wired into a central station, stop to investigate if there is an indication of trouble or malfunction of equipment.

The parties stipulated to the following description of S-2 duties with respect to burglar alarms:

When an S-2 is dispatched on a burglar alarm run pursuant to the receipt of a signal at the central office, the cause of which

⁸ However, there is no S-3 on duty on the first shift at Cleveland West.

⁹ All classifications of servicemen are covered by a blanket fidelity bond.

¹⁰ According to a list compiled by the Employer, there were, from January through October 1965, 20,880 "emergency" assignments, of which 16,433 (78.7 percent) were made by S-2's, and 4,477 (21.3 percent) by S-1's.

is either unknown or may not be determined to a certainty at that office, his primary duty or objective is to ascertain, either alone or together with another S-2, or together with the police, whether an intruder or intruders are on the protected premises; and if so, to detain the intruder or intruders. Only after this function is performed does it become the S-2's duty to determine whether the alarm was caused by . . . faulty protective equipment or other circumstances such as an open door, an open window, or an animal intrusion, wind, or storm action, and the like.

While at times intruders are found on the protected premises, their apprehension is infrequent. The number of apprehensions, however, bears no relation to the number of attempted intrusions, known or unknown, which have set off or may have set off an alarm signal.

In contrast to earlier years when the police were called upon by ADT in 95 percent of the burglar alarm cases, they were asked to respond in 1964 and 1965 in about 50 to 60 percent of such cases.¹¹ In the absence of police at a customer's premises, S-2's may not fire at an intruder except in self-defense. However, S-2's have at times leveled their guns at intruders and have with varying degrees of success directed them to halt. On a number of occasions when S-2's have been instrumental in detaining intruders, or have aided the police in apprehending them, they have been given capture awards by ADT.¹²

As indicated above, it appears that S-2's may not leave the customers' premises until they make any necessary repairs or adjustments such as closing a window or a door or removing an obstruction to an electric eye to restore the protective equipment to operation. In order to verify the fact that only authorized persons are on the premises, S-2's must obtain the signature and passcard number of individuals who claim that they are the owner, his employee, or the plant watchman or guard.¹³

S-1's

As noted above, the 57 S-1's, with the exception of Kovach and Irvine, are on the day shift from 8 a.m. to 4:30 p.m. Monday through Friday. Although S-1's in common with other servicemen are bonded, they do not ordinarily wear a full uniform or a badge and are not

¹¹ The ADT supervisor bases his decision as to whether to call the police on the nature of the occupancy, such as a jewelry store, the hour of the alarm, and the location of the premises involved.

¹² Although most awards are made to S-2's, the record shows that such special S-1's as Kovach have been among the recipients.

¹³ The insurance underwriters require that this procedure be followed when a certificated installation is involved. In such cases, ADT must dispatch to the premises either two servicemen or one serviceman and a policeman.

armed.¹⁴ They are responsible for new installations, periodic inspections, and maintenance and repairs of ADT's protective equipment. They also do stock work, material handling, and care for incoming trucks.

According to Thomas J. Norton, the foreman of the S-1's at the Hamilton shop, these employees normally perform the foregoing tasks on the customers' premises. And although S-1's at Hamilton are not called upon during or after their regular shift hours to "answer alarms," they have been sent out after 4:30 p.m. to "check out" and repair various types of equipment on such special occasions as occurred in 1959 when storms caused considerable damage.

Similarly, Anthony Frank Marzola, an S-1 working in a separate tool and supply area at Cleveland West for the past three years, testified that he normally inspects and repairs fire and burglar alarm equipment during his regular hours, and only occasionally after 4:30 p.m. Marzola wears the shirt and trousers of the uniform but he does not go out to answer alarms. Zack Davis Tilton, an S-1 at Hamilton since 1964, testified corroboratively that he had never answered an alarm. According to Tilton, it is only on very rare occasions that he works beyond his normal day shift to clear up a trouble condition on a customer's alarm or protective device.

As stated above, S-1's made 4,447 emergency calls during the first 10 months of 1965. Procaccini defined an emergency run as a call involving the protective nature of ADT's business, where it is essential to investigate emergency signals promptly, to restore service promptly, and to do anything necessary to avoid interruptions of service for customers. Although Procaccini explained that he listed as emergency runs by S-1's only those made after 4:30 p.m., he conceded that some of the calls included in the emergency category were made during the day shift.

According to Procaccini, ADT in September 1960, instituted a cross-training program, which was carried out on an irregular basis, to enable S-1's and S-2's to perform each others' functions. In this connection, Norton testified that during the last 5 years not one S-1 working out of Hamilton had received cross-training after 4:30 p.m. However, on cross-examination by counsel for the Employer, Norton stated that practically all of his men had received cross-training which involved going over technical bulletins and rules and regulations at the Hamilton shop, and visiting a central office where they were given an explanation of procedures. But Tilton asserted that he had never been given instruction in S-2 work, and Marzola denied that he had been exposed to the type of cross-training described by Norton.

¹⁴ However, District Manager Anthony Procaccini stated at the hearing that virtually all S-1's have received training in the handling of firearms

Special S-1's

Kovach is classified as an S-1 and is assigned to the guard station at Hamilton where he works from 4 p.m. to midnight Monday through Friday. Kovach, who is armed and wears a uniform and badge, spends most of his time repairing and restoring to service equipment at customers' premises when there are late closing alarms and trouble closings. In investigating the latter, Kovach searches the premises if he does not find the customers on the premises. He also goes out on burglar alarms and night watch service alarms.

Irvine, the only other S-1 who works regularly on the 8-hour shift ending at midnight, is stationed at Cleveland East where he monitors signals in the same manner do S-3's. In addition, he goes out on burglar alarm calls and searches the premises. Although there appears to be no indication in the record as to whether Irvine wears a uniform or carries a gun, the Petitioner in its brief states that he does both.¹⁵

Background Music Supervisor

As noted above, about October or November 1965, shortly before the hearing herein, the Employer established a new one-man division which sells background music and communications systems. J. Bornancin, a former S-1, was given the title of background music supervisor with responsibility for installing and maintaining the background music systems. Although he was placed under Procaccini's supervision, he is on a separate payroll and reports by telephone to the general manager of the background music division which is located in New York City. Bornancin works on the day shift Monday through Friday, has the same fringe benefits as the servicemen, and is paid at a higher rate than he received as an E-1. While the record contains no evidence as to his work station, the Employer states in its brief that Bornancin, unlike the servicemen, works in the Employer's administrative office which is located in a building separate from the various ADT stations.

As indicated above, the Petitioner contends that none of the classifications of servicemen described above are guards within the meaning of Section 9(b) (3) of the Act.¹⁶ In so doing, the Petitioner is asking the Board to overrule those decisions wherein it was found that employees, who were formerly known as guard-operators and are now

¹⁵ Alan L. Bickford, an S-1 stationed at Hamilton, was assigned to Cleveland West to work as a replacement for vacationing S-2's from May to October 1965. However, the record shows that thereafter he returned to Hamilton where he works on the day shift performing the S-1 tasks of installing new alarms and dismantling old ones.

¹⁶ This section provides in pertinent part, "that the Board shall not . . . decide that any unit is appropriate . . . 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 . . ."

classified as S-2's, were guards under the Act.¹⁷ It is also asking the Board to overrule, or at least distinguish, those decisions which have held to be guards the plant employees now classified as S-1's.¹⁸

The Employer takes the position that, except for one Board decision¹⁹ respecting plant employees that it is requesting the Board to overrule or distinguish, the cases support its argument that all servicemen in any way associated with modern protective techniques are guards under the Act.

In 1953, the Court of Appeals for the Third Circuit²⁰ held, contrary to the Board's decision in *American District Telegraph Company of Cleveland*, 100 NLRB 155, that Section 9(b)(3) of the Act is not limited to guards employed to protect property belonging to *their own employer* or to guards who protect against the conduct of fellow employees. In reaching the conclusion that Section 9(b)(3) does not confine the concept of a guard to one who guards the premises of his *own employer*, the court construed the language of that section as follows: The guard to whom the statute refers is one who enforces rules to protect the property of "*the employer*"—not *his employer*. These rules are enforced "against employees and other persons," not against *fellow employees*. Furthermore, the duties of a guard who comes within Section 9(b)(3) of the Act include the protection of "the safety of persons on *the* [not his] employer's premises." [Emphasis supplied by the court.] Finally, the court pointed out that the legislative history of Section 9(b)(3) reveals that Congress was seriously concerned with preventing the creation of divided loyalty by not permitting guards to join "a production workers union."

The Board adopted the decision of the court and on the basis of the rationale therein has consistently found since 1953 that guard-operators such as the S-2's herein are guards within the meaning of the Act. The Board now reaffirms its agreement with the court's findings as to legislative intent and statutory construction. Accordingly, we do not find persuasive the Petitioner's argument that Senator Taft's repeated reference to plant guards²¹ shows that Congress was concerned *only* with the status of plant guards as distinguished from ADT servicemen who respond to burglar alarms and fire alarms at customers' premises. Nor do we agree with the Petitioner's argument

¹⁷ *N.L.R.B. v. American District Telegraph Co. of Pa.*, 205 F.2d 86 (C.A. 3); *Armored Motor Service Company*, 106 NLRB 1139; and *A.D.T. Company*, 112 NLRB 80, herein called *ADT (112)*.

¹⁸ *ADT (112)*; *American District Telegraph Company of Cleveland Company*, Case 8-RC-2836, herein called *ADT (Cleveland)*.

¹⁹ See *American District Telegraph Company*, 128 NLRB 345, herein called *ADT (128)*, wherein plant employees were found not to be guards because their duties were significantly different from such employees in *ADT (112)* and *ADT (Cleveland)*.

²⁰ *N.L.R.B. v. American District Telegraph Company*, *supra*.

²¹ 2 Leg. Hist. 1541, 1544, 1572 (1959).

that the "real danger" in finding the S-2's to be guards is that a conflict of interest with customers' plant watchmen would occur if S-2's joined the guard union to which the watchmen belonged. We also find no merit in the Petitioner's alternative contention that on the basis of the evidence in the instant case the S-2's cannot be found guards as defined in the Act. Although the Petitioner asserts that S-2's are primarily mechanics and have only incidental and minor duties with respect to the detention or apprehension of intruders, the stipulation of the parties clearly states that the reverse situation prevails, i.e., that their "primary duty or objective is to ascertain, either alone or together with the police, whether an intruder or intruders are on the protected premises, and if so, to detain the intruder or intruders."

In view of the foregoing, including the fact that the S-2's are uniformed and armed, and have as their primary duty the protection of customers' property, we find that the S-2's are guards within the meaning of Section 9(b)(3) of the Act.

Although Kovach and Irvine are nominally S-1's, we find that they, too, are guards within the meaning of the Act as they, like the S-2's, are armed and uniformed, go out on burglar and night watch service alarms, search customers' premises for intruders, and have been among the recipients of ADT capture awards.²²

As to plant employees who are currently classified as S-1's, the Petitioner, as already noted, asserts the S-1's herein are similar to the plant employees who in a number of ADT cases²³ were not deemed to be guards because the purpose of their visits to customers' premises was to do installation and maintenance work on protective equipment. However, the Employer relies on *ADT (112)* and *ADT (Cleveland)* wherein the Board found ADT plant employees to be guards because they had, in addition to their basic job of installation, testing, and repair or replacement of protective equipment, the further responsibility of responding to a number of emergency calls, guarding the premises if necessary, and reporting any violations by the customers' employees of the latter's rules and regulations. (1) The Employer contends that the emergency functions performed by the S-1's herein are, if anything, even more pronounced than they were in 1957 when plant employees of the Employer in Cleveland were found to be guards because of their emergency runs. (2) The Employer also emphasizes the cross-training program in Cleveland

²² Although Bickford performed guard duties as a substitute for vacationing S-2's, we do not find him to be a guard as he had returned to customary S-1 duties as of the time of the hearing.

²³ *American District Telegraph Company*, 83 NLRB 517; *American District Telegraph Company of Missouri*, 83 NLRB 1139; *American District Telegraph Company*, 89 NLRB 1228; *ADT (128)*, *supra*.

given S-1's for the purpose of eliminating interdepartmental barriers between them and the S-2's. (3) The Employer further contends that even if the S-1's did not perform emergency assignments, they should nevertheless be found guards because their mechanical work in installing and maintaining ADT's protective equipment requires the care and trustworthiness and undivided loyalty that are the prerequisites for properly carrying out emergency runs.

As to (1), it is clear from the record in the instant case that the *present* duties of the S-1's in Cleveland are significantly different from those of the plant employees set forth in the Board's 1957 decision. Thus, there is no evidence that the regular S-1's, who are not uniformed or armed, have any responsibility for seeking, apprehending or detaining intruders, guarding customers' premises, reporting any violations by the customers' employees of their rules or regulations, or requesting passcard numbers and signatures from individuals claiming to be on customers' premises by virtue of their status as owner or employee. Although the S-1's make a number of emergency calls to customers' premises after their regular day shift hours or on weekends, that aspect of their work is not in any way indicative of guard status as it appears that their tasks on such runs are limited to restoring service quickly by making the necessary repairs to protective equipment.

As to (2), the record discloses that such cross-training as does occur is provided for the S-1's on an irregular basis, appears to be restricted to going over technical bulletins and observing equipment, and has little, if any, impact on the traditional mechanical character of the S-1's duties.

As to (3), the Board's decisions make it plain that S-1's, merely by working on ADT's protective equipment, do not come within the statutory definition of guards as they are not individuals who enforce rules to protect property or the safety of persons on customers' premises.

As the regular S-1's herein have the traditional ADT plant department duties of installation, inspection, maintenance, and repair of protective equipment, we conclude that these employees are not guards as defined in the Act.

As noted above, S-3's are not uniformed or armed, and have the function of monitoring the signals received at the central station at which they are located. We find in agreement with the Petitioner that these employees whose work is confined to the central stations are not guards within the meaning of the Act. As for the Employer's contention that S-3's are guards because of their role as an integral part of ADT's protective team, we find that there is nothing in the language of Section 9(b) (3) to warrant such a finding.

There remains for consideration the unit placement of Bornancin, the background music supervisor, and the two porters.

Contrary to the Employer, we find Bornancin, the only individual in the music department in Cleveland, has none of the statutory indicia of supervisory status. As he appears to have a sufficient community of interests with the regular S-1's and S-3's, we shall include Bornancin in the nonguard unit herein found appropriate. Finally, we find in agreement with the parties that the porters also belong in the unit.

Accordingly, we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and part-time servicemen 3 and servicemen 1 employed in the Cleveland, Ohio, area, in the central stations at 14835 Emery, 812 Huron Road (the Caxton Building), and 2067 East 102 Street, the shop at 1304 Hamilton Avenue, and the affiliated guard stations at 1304 Hamilton Avenue, 2000 West 25th Street, 3901 Chester Avenue, Harvard and Broadway, and 2300 St. Clair Avenue; background music supervisor; and porters; excluding all servicemen 2, special servicemen 1, any other guards, confidential employees, professional employees, foremen, relief supervisors, assistant supervisors, supervisors at Hamilton Avenue, and any other supervisors as defined in the Act.²⁴

[Text of Direction of Election omitted from publication.] ²⁵

²⁴ The exclusions not discussed above conform to the stipulation of the parties.

²⁵ An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 8 within 7 days after the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear, Inc.*, 156 NLRB 1236.

Sutter Mutual Water Company and Local Union 1245, International Brotherhood of Electrical Workers, AFL-CIO, Petitioner. *Case 20-RC-6976. September 14, 1966*

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held in the above-entitled proceeding before Hearing Officer Shirley N. Bingham. The parties were represented by counsel, and each was given full opportunity to be heard, to examine and cross-examine witnesses, and to introduce