

The Wackenhut Corporation and Congreso Central De Trabajadores Y Oficinistas De Puerto Rico, Distrito 475, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Petitioner. Case 24-RC-4511

April 12, 1972

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS JENKINS AND KENNEDY

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Joseph M. Chandri. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, by direction of the Regional Director for Region 24, this case was transferred to the National Labor Relations Board for decision. No briefs have been filed.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner and Intervenor¹ are labor organizations within the meaning of the Act.

3. The Employer is a multinational company engaged in the business of providing services for management and the professions, including guard and security services on a contract basis. The Petitioner has filed a petition seeking an election in a unit of all toll booth operators employed by the Employer at the Express Highways San Juan-Ponce and San Juan-Arecibo in Puerto Rico, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act. Both the Employer and Intervenor contend that the employees in the unit sought are guards within the meaning of the Act and that under the proviso contained in Section 9(b)(3) of the Act the Petitioner, which represents employees other than guards, is not qualified to represent these employees.² The Employer further contends: (1) that

its contract with the Intervenor, covering these employees, is a bar to an election; and (2) that the petition is untimely filed as the unit now is composed of only 40 employees, whereas it will eventually expand to 500 employees.³

In August 1971, the Employer entered into a contract with the Puerto Rico Highway Authority of the Commonwealth of Puerto Rico whereby the Employer agreed to provide the services of employees to be designated as security toll operators at the express highways named above. Originally the Highway Authority desired to have the toll barriers manned by state policemen, but this proved impracticable because of the prohibitive cost of providing special training to the large number of such operators that would ultimately be required. The Authority therefore contracted the services of the Employer's security guard organization "to give the physical security to the barrier" and "to enforce the regulations that have been incorporated into the toll road."⁴

The security toll operators are stationed at cabins in the expressway toll barrier. They do not themselves collect the tolls. Rather, each vehicle driver casts the toll into a special collection basket and if the amount is correct a red light will automatically turn to green, thus indicating to the driver that he may proceed. The operators' functions in this respect consist of (1) classifying vehicles approaching the barrier in order to determine the amount of toll to be paid,⁵ (2) making change for drivers when necessary, (3) keeping records relating to the collection and accounting of tolls and vehicles processed, and (4) cleaning and policing the toll booth and immediate area.

Further, the operator is required to check visually each car as it approaches his cabin to determine whether or not it should be afforded access to the turnpike. The operator checks for physical defects which might make the vehicle a hazard on the turnpike, such as worn tires, defective lights, broken windshields, or missing fenders. And he also scrutinizes the vehicles for drunk drivers. In any of these

² If, however, the employees are found *not* to be guards within the meaning of the Act, then as a practical matter the Intervenor, as the incumbent guard union, would not seek further to represent these employees.

³ In view of our decision herein that the employees sought are guards within the meaning of the Act, we find it unnecessary to reach, and do not pass on, the issues of contract bar and timeliness of the petition.

⁴ The above is from the testimony of the Highway Authority's director of toll facilities. The Employer's job description of the classification of security toll operator here involved states, in part, that such operator "is charged with the enforcement of Public Law 141 governing all vehicles, patrolman and employees and personal property of the Las Americas Turnpike. He is further responsible for the enforcement of all rules and regulations to protect property and secure the safety of persons within the perimeter of the toll pike authority."

⁵ This involves estimating the number of axles (15 cents is charged for each axle over two) and pressing the appropriate button on a console. If this agrees with the number determined electronically by treadle equipment upon which the vehicle has stopped, a lighted sign will disclose the exact toll. If there is a discrepancy the operator must verify his own determination. Also a special button is pressed for vehicles exempted from toll charges.

¹ International Union United Plant Guard Workers of America, and its Amalgamated Plant Guard Local 112, intervened at the hearing on the basis of a contract with the Employer alleged to cover the employees involved in this proceeding.

cases the operator stops the offending vehicle and informs the driver of the deficiency. If a controversy arises, the operator notifies the plaza supervisor or a policeman stationed near the barrier who makes the final disposition of the matter. The operator also is required to deny access to pedestrians, to bicycle and motorcycle riders, and to riders on horseback. The operator will watch out for acts of sabotage. Also the operator will seek to prevent a driver from making a "U" turn, reporting this to the policeman on duty when necessary. On instructions from the plaza supervisor the operator may shut down his lane to clear it for ambulance, police, or fire vehicles. The security toll operators are bonded under the insurance policy applicable to the Employer's security guards, wear distinctive uniforms and the Wackenhut badge, share the same benefits and workweek as the security guards, and receive the same employee manual. The Employer regards them as being similarly responsible for enforcing its clients' rules and regulations, in that they are required to report and describe violations when observed, trying by themselves to resolve such violations if possible, but calling the police when so required.

In light of the facts set forth above, we believe it is clear that the security toll operators are employed as guards to enforce against persons seeking to use the expressway rules to protect property and the safety of persons on the expressways premises. It is immaterial that the operators do not themselves have the power of police to ultimately determine and compel compliance by violators of the expressway rules. Rather, it

is sufficient that they possess and exercise responsibility to observe and report infractions, as this is an essential step in the procedure for enforcement of the highway rules.⁶ Likewise, it is not determinative that this is not their only function. Although the record does not reveal the frequency or the amount of time devoted to this aspect of their duties as compared to the exercise of functions more closely related to the actual collection of tolls, it is apparent that enforcement of the turnpike authority rules is a continual part of their responsibility and is a significant portion of the requirements of their job. In these circumstances we find that they are guards within the meaning of Section 9(b)(3).⁷

As we have found that the employees sought to be represented are guards within the meaning of the Act, and as the Petitioner is a labor organization which represents employees other than guards, we further find that the Petitioner is not qualified, under Section 9(b)(3), to represent the employees sought by its petition. Accordingly we shall dismiss the petition.

ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.

⁶ *West Virginia Pulp and Paper Co.*, 140 NLRB 1160; *St. Regis Paper Co.*, 128 NLRB 550, 552; *Watchmanitors, Inc.*, 128 NLRB 903; *Burns Security Systems, Inc.*, 188 NLRB No. 25

⁷ *Watchmanitors, Inc.*, 128 NLRB 903; *Laundry Owners' Association of Greater Cincinnati*, 123 NLRB 543, 546, 547; *International Furniture Co.*, 119 NLRB 1462, 1465; *H. N. Thayer Co.*, 112 NLRB 792, 793; *Walterboro Manufacturing Corp.*, 106 NLRB 1383, 1384.