

BPS Guard Services, Inc., d/b/a Burns Security Services and International Union, United Plant Guard Workers of America (UPGWA). Cases 25-CA-21110 and 25-RC-8958

December 16, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On April 30, 1991, the National Labor Relations Board issued a Decision and Order in Case 25-CA-21110, finding that the Respondent had violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union in an appropriate unit for which it had been certified on December 12, 1990, in Case 25-RC-8958.¹ The unit found appropriate comprised all of the Respondent's full-time and regular part-time security officers who performed guard services for Bethlehem Steel Corporation at its Burns Harbor, Indiana facility. The unit excluded, among others, the firefighters (including drivers) employed by the Respondent at the Burns Harbor plant, whom the Board in a previous case had found not to be guards within the meaning of Section 9(b)(3).² The Respondent contended that the firefighters were guards, as it had previously, and based its refusal to bargain on the ground that the unit certified was inappropriate because it did not include all guards employed by the Respondent at the Burns Harbor facility.

On August 21, 1991, the Eighth Circuit Court of Appeals denied enforcement of the Board's Order in

Burns I.³ The court based its decision on its finding, contrary to the Board's, that the firefighters in question were statutory guards.

On July 30, 1992, the Board reopened the captioned case and advised the parties that it was reconsidering its decision and would notify them of whatever action it decided to take.

On November 3, 1992, the Board issued a Notice to Show Cause why it should not, in light of the court's decision in *Burns II*, (1) find that the Respondent's firefighters employed at the Burns Harbor facility are statutory guards, and that the only appropriate unit in Case 25-RC-8958 consists of all guards, including firefighters, employed by the Respondent at that facility; (2) revoke the Union's certification; and (3) vacate the earlier Decision and Order in Case 25-CA-21110 and dismiss the complaint. The General Counsel filed a response urging no opposition to the Board's proposed actions, and advising that the Union had filed a petition seeking to represent the firefighters involved in *Burns I* and *Burns II*.⁴

No cause having been shown why the Board should not take the actions proposed above, we find, in light of the Eighth Circuit's decision in *Burns II*, that the Respondent's firefighters employed at the Burns Harbor facility are statutory guards, and that the only appropriate unit in Case 25-RC-8958 consists of all guards, including firefighters, employed by the Respondent at that facility.

ORDER

It is ordered that Cases 25-CA-21110 and 25-RC-8958 are consolidated.

IT IS FURTHER ORDERED that the Union's certification in Case 25-RC-8958 is revoked.

IT IS FURTHER ORDERED that the Decision and Order in Case 25-CA-21110 is vacated and the complaint is dismissed.

¹ 302 NLRB No. 123 (not reported in Board volumes).

² *Burns Security Services*, 300 NLRB 298 (1990), and 296 NLRB 113 (1989) (together, *Burns I*). In the underlying representation proceeding in *Burns I* (Case 25-RC-8557), the Board found appropriate a unit of firefighters and other employees and, after conducting an election, certified the United Steelworkers of America, AFL-CIO as the bargaining representative of employees in the unit. The Respondent refused to bargain, and the Board found that the refusal violated Sec. 8(a)(5) and (1).

³ *BPS Guard Services v. NLRB*, 942 F.2d 519 (*Burns II*).

⁴ The Board denied the Union's request to file a response out of time. Member Devaney would have granted the Union's request.