UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO BRANCH OFFICE
DIVISION OF JUDGES

AGS SERVICES, INC.

and Case 32-CA-20970-1

CALIFORNIA SECURITY OFFICERS UNION

*D. Criss Parker*, Oakland, California,
for the General Counsel.

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Fresno, California, for Respondent.

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DECISION

Statement of the Case

JAY R. POLLACK, Administrative Law Judge: I heard this case in trial at Oakland, California, on May 12-17, 2004. On October 10, 2003, California Security Officers Union, (the Union) filed the charge alleging that AGS Services (Respondent) committed certain violations of Section 8(a)(5) and (1) of the National Labor Relations Act, as amended (29 U.S.C. Section 151 et seq., herein called the Act). On February 26, 2004, the Regional Director for Region 32 of the National Labor Relations Board issued a complaint and notice of hearing against Respondent, alleging that Respondent violated Section 8(a)(5) and (1) of the Act. Respondent filed a timely answer to the complaint, denying all wrongdoing.

The parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs.[1] Upon the entire record, from my observation of the demeanor of the witnesses,[2] and having considered the post-hearing briefs of the parties, I make the following:

[1] Respondent and the General Counsel filed helpful post-trial briefs. The Union did not file a brief.

[2]The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Manufacturing Company*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings herein, their testimony has been discredited, either as having been in conflict with credited documentary or testimonial evidence or because it was in and of itself incredible and unworthy of belief.

## Findings of Fact and Conclusions

### I. Jurisdiction

Respondent is a sole proprietorship, owned by Martha Garcia and operated by her son Lawrence Garcia, with a principal place of business in Fresno, California, where it has been engaged in the business of providing guards and security officers to agencies of the United States Government. Respondent annually derives gross revenues in excess of $500,000 from the United States Government. Respondent contends that the Board does not have jurisdiction over this matter and that the matter falls within the jurisdiction of the Department of Homeland Security. Respondent has offered no evidence to support that position. The Board rejected a similar argument in *Nevada Security Innovations*, 337 NLRB 1108 (2002). Accordingly, I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2)(6) and (7) of the Act.

The Union represents security officers employed by private contractors under contract to the United States Government at certain government facilities in California. Accordingly, I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. The Alleged Unfair Labor Practices

#### A. Background and Issues

The Union was certified as the exclusive collective-bargaining representative of the employees of Holiday International Security, Inc., in October 2002. The certification covered the security officers employed by Holiday International at United States Government buildings in Northern California. Holiday International later became Holiday International Security/U.S. Protect and is presently known as U.S. Protect. The Union and U.S. Protect entered into a collective-bargaining agreement effective from September 2003 to August 31, 2006. This agreement covered all of U.S. Protect's approximately 160 security officers employed at United States Government facilities. At that time, U.S. Protect had contracts to provide security at approximately 60 government buildings including a facility in Salinas, California, known as the Social Security Administration Data Center or Telecenter (the Telecenter). Prior to October 1, 2003, Respondent provided security officers at 21 United States Government buildings in California from Bakersfield to Salinas, including a building in Salinas, California, known as the Social Security Regional Center (the Regional Center). The Regional Center is next door to the Telecenter. Commencing October 1, 2003, the U.S. Government transferred security at the Telecenter to Respondent, and deleted the Telecenter from the U.S. Protect contract. Respondent's contract with the Government requires it to provide four security officers at the Telecenter each day, Monday through Friday. Respondent hired three former guards from U.S. Protect who had previously worked at this site and transferred one of its guards from another facility. In addition, Respondent's guard employed at the Regional Center also worked at the Telecenter.

In this case, the General Counsel alleges that Respondent is a successor employer to U.S. Protect with respect to the security guards employed at the Telecenter. Further, the complaint alleges that Respondent failed and refused to bargain with the Union by not recognizing the Union as exclusive bargaining representative and by changing the terms and conditions of employment of the security guards employed at the Telecenter.

Respondent denies the commission of any unfair labor practices. Further, Respondent contends that the security guards employed at the Telecenter do not constitute an appropriate

bargaining unit. Respondent contends that the appropriate unit should at least include all its security officers employed at facilities under contract to the government.

B. The Facts

As mentioned above, the Union was certified as the bargaining representative of the security guards employed by U.S. Protect at approximately 60 federal facilities, pursuant to contract with the General Services Administration (GSA) on October 10, 2002. The Union and U.S. Protect entered into a collective-bargaining agreement on September 3, 2003, covering approximately 160 employees at approximately 60 federal sites. The certification and subsequent bargaining agreement covered the four security guards at the Telecenter in Salinas, California. The geographic scope of the agreement reached from Petaluma in the north to Salinas in the south. More than half of the U.S. Protect job sites employed only one security officer.

In September of 2003, Respondent provided security services to General Services Administration (GSA) at 21 federal sites. Respondent's employees were not represented by any labor organization. Respondent's geographic territory ranged from Bakersfield in the south to Salinas in the north. Respondent's only Salinas location was the Regional Center, next door to the Telecenter. Respondent employed only one security officer at the Regional Center.

In August 2003, the Union attempted to organize all the security officers employed by Respondent. Forrest Huff, president of the Union, visited Respondent's job sites in an attempt to organize Respondent's employees. Shortly after August 25, Huff met with Christian Garrido, Respondent's director of operations[3]. Huff suggested to Garrido that Respondent could enter into an agreement with the Union, which could raise the wages of Respondent's employees and pass the additional labor costs to the government. Garrido reacted favorably to this suggestion. However, when Garrido reported this conversation to Harlan Hartman, operations supervisor,[4] Hartman advised Garrido that as a supervisor Garrido could not assist the Union in organizing Respondent's employees.

In early September, Huff became aware that Respondent's Chief Executive Lawrence Garcia was not favorably inclined towards union representation of the security guards. Thus on September 7, Huff sent a letter to Respondent's security guards, which contained a strike sanction vote. Several of Respondent's security guards sent copies of this letter to Respondent. On September 15, the Union sent a letter to the Department of Homeland Security (DHS) warning of a possible one-day work stoppage on September 22. Respondent also received a copy of this letter from the Union. Huff later called off the work stoppage.

On or about September 23, Respondent learned that it would be obtaining the security officer work at the Telecenter, in addition to its other 21 facilities, effective October 1, 2003. Immediately upon learning that it had acquired this additional site, Respondent attempted to hire qualified guards to perform these duties. Respondent contacted James Bradley, its guard at the Regional Center, and asked Bradley's help in hiring the guards then working at the Telecenter. Respondent also asked Bradley's help in locating Carol Taueetia, a security officer who had

[3] All parties agree that Garrido is a statutory supervisor.

[4] All parties agree that Hartman is a statutory supervisor. Huff testified that Hartman was present when he met with Garrido. Based on the credited testimony of Garrido and Hartman, I find that Hartman was not present for this meeting.

worked at the Telecenter for U.S. Protect but was then ineligible to work because she did not have a current weapons permit.

On September 25, Garcia, Hartman and Garrido visited the Telecenter in Salinas. Respondent's managers spoke with guard Elfe Cantero, the lead guard at the Telecenter. Cantero had worked at this building for over 20 years for several different government contractors. Cantero informed the managers that he earned $16.37 an hour and Garcia agreed to match that figure. Garcia asked Cantero for pay stubs so that Respondent could determine the wage rate it needed to match. Cantero said he would speak to fellow guard Junebee Ramos about applying for work with Respondent.[5] Garcia left job applications with Cantero.

Respondent initially needed five security guards to meet its obligations for the Telecenter.[6] In addition to attempting to hire U.S. Protect's guards from the Telecenter, Respondent transferred Jonathan Schloss, a security officer from its Gilroy location, to the Telecenter. Due to the uncertainty of whether Cantero was going to apply for work with Respondent, Schloss was appointed the lead guard at the Telecenter. Further, Respondent attempted to find qualified guards through applications on file and by recruiting armed guards from other business, such as banks in the Salinas area.

As of September 30, Respondent did not know whether Cantero and Ramos would apply for work at the Telecenter. On the evening of September 30, Garrido and Hartman, waited at Respondent's headquarters in Fresno, California, for Cantero and Ramos. The two employees did not call and inform the supervisors that they would be late. At approximately ten o'clock that evening, Cantero and Ramos arrived at Respondent's offices with their job applications. They did not bring their pay stubs. Accordingly, Garrido offered them $15.00 per hour in wages (the same rate being paid Bradley at the Regional Center).[7] In addition the employees were offered health insurance or an hourly supplement in lieu of health insurance. Both employees choose the cash in lieu of health coverage. Garrido and Hartman went over Respondent's paperwork with the employees and issued them uniforms and weapons. The employees were told to report to work the next morning. Due to the employees earlier reluctance and the late hour at which the employees would arrive back at home, Garrido and Hartman planned to be at the Telecenter the next morning in uniform and ready to work if either or both of the employees did not report on time.

On October 1, Respondent took over the guard duties at the Telecenter. Cantero and Ramos reported on time and performed their duties just as they had when employed by U.S. Protect. Schloss also worked the second shift that day and Bradley worked at the Telecenter after completing his duties at the Regional Center.

On or about October 1, Garrido requested that Carol Taueetia participate in a weapons qualifying test and, if she passed the test, apply for guard work at the Telecenter. Taueetia had worked for U.S. Protect at the Telecenter but was then ineligible to work as an armed guard because she had not passed her last weapons test. Taueetia passed the qualifying test on

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[5] Another guard Johnny Ramirez apparently was not interested in working for Respondent and transferred to another location of U.S. Protect.

[6] It was later discovered that GSA had made a mistake and required only four security officers at the Telecenter.

[7] The employees were promised a $1.00 per hour wage increase at the end of a successful probationary period. Both Cantero and Ramos received their promised raises in January 2004.

October 5, and applied for work with Respondent on October 6. Respondent hired Taueetia on October 7 to work the second shift at the Telecenter.

On October 6 the Union filed a petition in Case 32-RC-5193 seeking to represent all of Respondent's security guards at GSA locations between Bakersfield and Salinas. On October 8, Huff sent a letter demanding that Respondent bargain with the Union as the exclusive bargaining representative of the employees at the "Salinas site." Respondent did not respond to this demand. The instant charge was filed on October 10, 2003. Thereafter, on November 28, 2003, the Union amended the petition in 32-RC-5193 to exclude "the Salinas site." As discussed above, Respondent has two sites in Salinas, the Telecenter and the Regional Center. It is the position of the General Counsel and the Union that the Union can seek a single-location unit at the Telecenter in the instant case and a multi-location unit in the pending representation case. The representation case is being held in abeyance pending the outcome of the instant unfair labor practice case.

After October 8, Respondent serviced the contract by providing two guards from 6:00 a.m. to 1:00 p.m. (Cantero and Ramos) and two guards from 1:00 p.m. to 8:00 p.m. (Schloss and Taueetia). Absent vacation or sick leave, Respondent only needed four employees to fulfill this contract. No guards are needed from 8:00 p.m. to 6:00 a.m. and no guards are needed on the weekends. As stated earlier, the Regional Center employs only a single guard for eight hours a day, five days a week.

General Counsel suggests that Schloss may be a supervisor. The evidence does not support that claim. First, Schloss stands a guard post every workday. The GSA contract specifically states that an individual may not stand a guard post and perform any supervision at the same time. The GSA-Respondent contract does provide for compensation for one supervisor for the 22 facilities under the contract. Garrido and Hartman provide those services on behalf of Respondent for GSA. Second, the General Counsel points out that Schloss was given a $1.00 an hour raise when he was made a lead guard. However, that extra dollar was given to Schloss to partially compensate him for the fact that his workweek was reduced from 40 hours to 35 hours. As a result of his transfer from Gilroy to Salinas, Schloss actually experienced a net loss in his weekly wages. Third, Schloss did fill out performance evaluations for other employees. However, Garrido and Hartman both independently reviewed those evaluations. The evaluations, with comments from Hartman and Garrido were then passed on to Garcia who made the final decisions. I note that Garrido did not agree with Schloss' recommendations regarding Taueetia. Finally, General Counsel relies on the fact that Respondent assigned Schloss to investigate an incident of alleged employee misconduct at the Regional Center. Schloss made a factual investigation and was paid his straight time-hourly wage for the time spent interviewing witnesses. He made a factual report and made no recommendations. In sum, the facts reveal that Schloss is a skillful employee who is well regarded by Respondent's management. However, there is no evidence that he is a supervisor within the meaning of the Act. See *Wackenhut Corp.*, 213 NLRB 293, 293-294 (1974).

### C. The Business of Respondent

As stated earlier pursuant to its contract with GSA, Respondent provides armed security guard services at 22 federal sites, including the Telecenter and the Regional Center in Salinas. The sites range from Bakersfield to Salinas. In order to protect these sites, Respondent employs approximately 52 employees. Of the 22 sites, approximately 18 sites require only one security guard.

The training and certifications are identical for the security guards employed at the government facilities. The equipment and uniforms are the same for the employees at each of the 22 sites. These requirements are the same as required by GSA of U.S. Protect. The equipment and uniforms are issued by Respondent's main office in Fresno, California. All payroll and personal records are also maintained at the offices in Fresno. Job hiring and interviewing is done at the Fresno offices. Garrido, Hartman and Garcia all work at the Fresno office.

Garcia is the controlling qualified manager for Respondent. He is also the president of AmeriGuard Security Services, which operates out of the same Fresno offices. AmeriGuard provides armed and unarmed security guards to commercial enterprises. Garrido and Hartman are supervisors for AmeriGuard as well as for Respondent. The two businesses use the same job applications and same employee handbook. Garcia makes all decisions regarding hiring and wages.

Hartman and Garrido report directly to Garcia. As stated earlier, the GSA contract provides for one area supervisor. Garrido and Hartman perform this function for Respondent but GSA pays for only one supervisor. The GSA contract does not authorize a supervisor at any of the individual facilities.

Prior to the acquisition of the Telecenter site, Respondent interchanged or moved employees from one site to another on an as-needed basis. As noted earlier, a majority of these sites employed only one employee, and, therefore, interchange was necessary in case of illness or vacation.[8] Since Respondent obtained the Telecenter site, employees were utilized from the Regional Center to fulfill the needs of the Telecenter. Bradley, Taueetia and Schloss worked at both Salinas locations. Ramos and Cantero were offered shifts at the Regional Center but declined the offers. Garrido did not require the employees to interchange. In January 2004, Bradley began working for AmeriGuard in Gilroy and another security guard was transferred into Bradley's position and worked at both Salinas locations. In February, a guard from Madera, California worked at the Telecenter. In April, when Cantero went on vacation, guards from Fresno staffed his post. During the instant hearing, when Cantero, Ramos and Schloss were in court, Respondent staffed the Telecenter with guards from Fresno. Prior to its acquisition of the Telecenter site, Respondent provided services to GSA at the Telecenter for special events. On those occasions, Respondent utilized security guards from various other locations.

## III. Analysis and Conclusions

### A. Successorship

In *Bronx Health Plan*, 326 NLRB 810, 811 (1998), enf'd. mem. 203 F.3d 51 (D.C. Cir. 1999), the Board set forth the applicable law regarding the obligation of a successor employer to recognize and bargain with the representative of its predecessor's employees:

> In *NLRB v. Burns Security Services*, 406 U.S. 272 (1972), the Supreme Court set forth the criteria for determining whether a new employer is the successor to the prior employing entity. The approach is primarily factual and is based on the totality of the

[8] Respondent employs at least one relief guard who is utilized to cover posts in case of illness, vacation or emergency. Garrido and Hartman also fill in for security guards when necessary. The security posts cannot be left unoccupied.

circumstances presented by each case. The Court instructed that the focus should be upon whether there is "substantial continuity" between the enterprises, and whether a majority of the new employer's employees had been employed by the predecessor. The Court held that, in these circumstances, when one employer takes over the union-represented bargaining unit employees of another employer, it is bound to recognize the union as the collective-bargaining representative of the employees in the unit. The Supreme Court revisited the successorship issue in *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987), where it reiterated the requirement that a "substantial continuity" must exist between the enterprises before warranting a finding that the new employer is a successor. The Supreme Court in *Fall River*, supra at 43, summarized the factors relevant to determining when substantial continuity exists as follows:

> [W]hether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors; and whether the new entity has the same production process, produces the same products, and basically has the same body of customers.

The Court also stated that the Board will analyze these factors primarily from the perspective of the employees, that is, "whether 'those employees who have been retained will ... view their job situations as essentially unaltered.'" Id., quoting, *Golden State Bottling Co. v. NLRB*, 414 U.S. 168, 184 (1973). The Court reiterated that although each factor must be analyzed separately they must not be viewed in isolation and, ultimately, it is the totality of the circumstances that is determinative. See *Fall River*, supra.

The facts herein show that Respondent and the prior employer entity, U.S. Protect, are in the same business; performing contract guard services for the U.S. Government. The employees are performing the same services for the same government agencies under the same conditions, at the same location.[9] There has been no change in the service provided or the customers served. However, there was a change in supervision. A supervisor of U. S. Protect, stationed in San Jose, California, previously supervised the guards. Respondent's two supervisors stationed in Fresno, California currently supervise the guards. I find that the change in supervision does not defeat a finding of substantial continuity. See, *Sierra Realty Corp.*, 317 832, 835 (1995), enforcement denied on other grounds, 82 F.3d 494 (D.C. Cir. 1996); *Community Hospitals of Central California*, 335 F.3d 1079, 1084 (D.C. Cir. 2003).

It is well established that the bargaining obligations attendant to a finding of successorship are not defeated by the mere fact that only a portion of a former union-represented operation is subject to a sale or transfer to a new owner so long as the unit employees in the conveyed portion constitute a separate appropriate unit and comprise a majority of the unit under the new operation. *Bronx Health Plan*, 326 NLRB 810, at 812, citing *Saks & Co. v. NLRB*, 634 F.2d 681, 685 (2d Cir. 1980); *Zims Food-liner, Inc. v. NLRB*, 495 F.2d 1131, 1140-1142 (7th Cir. 1974), cert. denied 419 U.S. 838; *Stewart Granite Enterprises*, 255 NLRB 569, 573 (1981); *Boston-Needham Industrial Cleaning Co*., 216 NLRB 26, 28 (1975). Respondent argues that a bargaining unit limited to the guards at the Telecenter is inappropriate and that the appropriate bargaining unit is an employer-wide unit of security guard employees. In the instant case, the issue of the appropriate bargaining unit is determinative of the bargaining obligation.

[9] At the time that the Union demanded recognition and bargaining at the Telecenter, three of the five guards who had worked at that location, had been former employees of U.S. Protect.

B. The Unit Issue

Section 7 of the Act requires that in determining the appropriate unit, the Board strive to assure employees the fullest freedom in exercising the rights guaranteed by the act, such as to form, join or assist labor organizations or to refrain from doing so. Section 9(b) of the Act provides, inter alia, that: "The Board shall decide in each case whether . . . the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof."

The Board has consistently held that employees' "fullest freedom is maximized" by treating the employees in a single location as "normally constituting an appropriate unit for collective bargaining." *Haag Drug Co.*, 169 NLRB 877, 877-78 (1968). This is so because the employees in a single location form a homogenous, identifiable and distinct group and therefore "their problems and grievances are peculiarly their own." Id. If these employees are required to bargain in an employer-wide unit as opposed to the single-location unit, often times their interests will be sacrificed at the expense of the group's interests and in that way their right of self-organization guaranteed by the Act will be prejudiced. Id. at 877 (construing *Sav-On Drugs, Inc.*, 138 NLRB 1032, 1033 (1962)). Thus, in initial unit determinations, a community of interest of employees at a single location supports the presumptive appropriateness of a single-location unit. By this presumption, the Board gives careful deference to the interests and concerns of individual employees to choose or reject their representatives so that those decisions are best tailored to the peculiar conditions of their workplace. *Gibbs & Cox*, 280 NLRB 953 (1986). It is, therefore, the employer's burden to establish that the single-location unit is inappropriate. The presumption may be overcome upon a showing of "countervailing factors." Haag Drug Co., supra at 877-78.

However, where a labor organization petitions for an employer-wide bargaining unit, there is a presumption that the employer-wide unit is appropriate. In such cases, it is the employer's burden to establish that the petitioned-for employer-wide unit is inappropriate. *Greenhorne & O'Mara*, 326 NLRB 514 (1998); *Capital Coors Co.*, 309 NLRB 322 (1992); *Western Electric Co*., 98 NLRB 1018 (1952).

Further, militating against the single-location unit presumption is the fact that the employees at issue in this case are statutory guards. Section 9(b) of the Act prohibits the Board from finding any unit appropriate if it includes guards and non-guards. Thus, the guards at any of Respondent's sites cannot organize with any other employees at their sites. Further, the guards at single employee sites cannot organize because it is "contrary to the settled policy of the Board to certify a representative for bargaining purposes in a unit consisting of one employee." *Sonoma-Marin Publishing Co.*, 172 NLRB 625 (1968); *Mount St. Joseph's Home for Girls*, 229 NLRB 251 (1977); *San Francisco Art Institute*, 226 NLRB 1251 (1976). Thus, the presumption of single-location unit locations when applied to Respondent would result in 18 out of 52 employees being denied organizational rights. The application of the presumption of single-location units, if applied to Respondent's business, would have the opposite effect of the presumption's intent to maximize employee freedom of self-organization. In this case the normal presumption of a single-location unit is inapplicable due to the pending representation case in which the employer-wide unit is presumed appropriate and the existence of a majority of inappropriate single-employee units.

In finding the appropriate unit, the Board "is guided by the fundamental concept that only employees having a substantial mutuality of interest . . . can be appropriately grouped in a single unit." *Taylor Bros.*, 230 NLRB. 861, 869 (1977). The Board considers a number of

factors in determining whether a community of interest exists among the employees seeking to be represented. In determining whether a petitioned-for multi-location unit is appropriate, the Board evaluates the following factors: employees' skills and duties; terms and conditions of employment; employee interchange; functional integration; geographic proximity; centralized control of management and supervision; and bargaining history. *Laboratory Corp. of America Holdings*, 341 NLRB No. 140 (2004): *Bashas', Inc.*, 337 NLRB 710 (2002); *Alamo Rent A-Car*, 330 NLRB 897 (2000); *NLRB v. Carson Cable TV*, 795 F.2d 879, 884 (9th Cir. 1986).

The employees' skills and duties at all of Respondent's federal sites are similar. The evidence shows that all of Respondent's armed guards can perform at any of its GSA sites. The terms and conditions of employment are similar for all employees. There are different wages based upon geography. These differences are caused by certain minimums issued by GSA, which are based on area wage surveys. There is interchange of employees between Respondent's various sites. While no interchange is necessary in a normal workweek at the Telecenter, interchange is necessary for vacation, illness or emergency.

Notwithstanding General Counsel's argument to the contrary, Respondent's operation appears to be functionally integrated. The employees perform the same services for the same customer under the same conditions. Respondent performs all of these services pursuant to one contract with GSA, which sets many of the employees' working conditions. Garcia controls labor relations and does all the hiring and firing for the company. Garrido and Hartman supervise all employees at all locations. Although each site may be unique in terms of hours or assignments, Garcia, Hartman and Garrido make all decisions at Respondent's Fresno offices.

The bargaining history of the Telecenter further supports a finding of an employer-wide bargaining unit. The Telecenter was never a discrete bargaining unit. Beginning at least in July 2002, the Telecenter was part of an employer-wide organizing campaign of U.S. Protect's guards at Federal sites. After the certification, the Telecenter was part of a multi-location bargaining unit covering approximately 60 sites. Respondent's employees were part of the Union's employer-wide organizing campaign in August of 2003. The Union filed a representation petition seeking to represent all of Respondent's security guards. That petition, while blocked by the instant case, is still pending. In the representation case, the employer-wide unit is presumptively appropriate.

Although there is significant distance between the Telecenter and most of Respondent's other sites, the facts do not support the conclusion that the Telecenter is a separate appropriate unit. The Regional Center is next door to the Telecenter and there is no conceivable reason why these two sites would not be in the same bargaining unit. To hold otherwise would exclude the guard at the Regional Center from representational rights. The next closest facility is in Gilroy. The evidence shows employee interchange between the Salinas facilities and Gilroy.

Despite the geographic distance between the Telecenter and Respondent's headquarters, the Telecenter employees were required to attend training and weapons qualifications in Fresno with all the other security guards. There is regular radio and telephone contact between Garrido and Hartman and the Salinas facilities as well as all other sites. Garrido and Hartman also make site visits to all of Respondent's GSA sites. The geographical distances between Salinas and Respondent's other sites appears to help General Counsel's unit contention. However, where other important factors militate against a single-location unit, the Board does not give geography controlling significance. *Orkin Exterminating Co*., 258 NLRB 773 (1981).

Under all of the circumstances, the inapplicability of the single-location presumption, the multi-location bargaining history, the pending multi-location representation case, the centralized control of labor relations, common supervision, similarity of skills and conditions of employment, and the interchange between sites, I find that a single-location unit at the Salinas Telecenter is not an appropriate unit. It appears that the appropriate unit would at least include all of Respondent's security guards employed under its agreement with GSA.[10]

Having concluded that the unit limited to Respondent's employees at the Telecenter in Salinas was not an appropriate unit, I find that Respondent did not violate the Act by failing and refusing to bargain with the Union. It follows that Respondent did not violate the Act in setting the initial terms and conditions of employment of the security guards at the Telecenter without notice to or bargaining with the Union. Accordingly, I shall recommend dismissal of the complaint.[11]

## Conclusions of Law

1. Respondent, AGS Services, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union, California Security Officers Union, is a labor organization within the meaning of the Act.

3. Respondent has not violated Section 8(a)(5) and (1) of the Act as alleged in the complaint.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended: [12]

## ORDER

The complaint shall be dismissed in its entirety.

Dated, July 29, 2004, San Francisco, California.

Jay R. Pollack
Administrative Law Judge

[10] I need not reach the issue of whether the security guards employed by AmeriGuard should be included in a unit with Respondent's guards.

[11] The question concerning Union representation will be decided in the representation case. In that case the guards at the Telecenter and Regional Center may vote, along with other unit employees, on whether they wished to be represented for purposes of collective bargaining by the Union in an appropriate bargaining unit.

[12] All motions inconsistent with this recommended order are hereby denied. If no exceptions are filed as provided by Section l02.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section l02.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.