

Wells Fargo Alarm Services, a Division of Baker Protective Services, Inc. and International Brotherhood of Electrical Workers, Local 332, Petitioner. Case 32-RC-2549

June 30, 1988

DECISION AND ORDER

**BY CHAIRMAN STEPHENS AND MEMBERS
JOHANSEN AND BABSON**

Pursuant to a Stipulated Election Agreement approved June 10, 1987, an election by secret ballot was held on July 10, 1987, under the direction and supervision of the Regional Director for Region 32, among the employees in the stipulated unit.¹ The tally of ballots shows 13 votes for, and 6 against, the Petitioner; there were 13 challenged ballots, a sufficient number to affect the results.

After investigation, the Regional Director on August 6, 1987, issued a report and recommendations on challenges and notice of hearing in which he ordered a hearing on the challenged ballots.

A hearing was held before Hearing Officer Sharon Chabon. On October 23, 1987, she issued and served on the parties her report recommending disposition of the challenged ballots. The hearing officer recommended that: (1) the challenges to the ballots of guard operators Mark Brestel, Humberto Mahecha, and Armando Montour be sustained on the grounds they are guards within the meaning of Section 9(b)(3) of the Act and thus excluded from the unit; (2) the challenges to the ballots of lead shift operators (also designated by the Employer as relief shift supervisors) Rita Gangloff, Donelle Lopez, Cindy Madrid, and Mimi Marquez be overruled on the grounds they are not supervisors within the meaning of Section 2(11) of the Act; and (3) the challenges to the ballots of service technicians John Dana, Jeffrey Gerard, George Partan, Donald Pfaff, Elbert Travis, and John Wilson be overruled on the grounds that they are not statutory guards. Consequently, the hearing officer recommended opening and counting the ballots of the latter 10 voters and issuing a revised tally of ballots.

On November 2, 1987, the Employer timely filed exceptions to the hearing officer's report and a supporting brief. The Employer contends that the hearing officer erred in overruling the challenges to the ballots of the lead shift operators and the

service technicians. The Employer argues that the lead shift operators/relief shift supervisors are statutory supervisors. In the alternative, it argues that, as employees, they function as operators who, along with the service technicians, are guards.² The Employer further contends that, because these challenged employees are guards, the unit is inappropriate because it contains guards and nonguards and, hence, the petition must be dismissed. The Petitioner filed an answering brief in which it supported the findings and recommendations of the hearing officer.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the hearing officer's report and the record in light of the exceptions and briefs and has decided to adopt her findings, conclusions, and recommendations only to the extent consistent with this Decision and Order.³

In ruling on challenges in cases where the parties have stipulated to the appropriateness of the unit, the Board will rely on the scope of the stipulation itself, with its various inclusions and exclusions, unless it is contrary to any express statutory provisions or established Board policies.⁴ In this case, the Employer and the Petitioner agree that employees designated as lead shift operators are included in a classification stipulated as within the unit, namely, "operators." The Petitioner further contends that the service technicians are within the unit classification of "service personnel." The Employer appears to disagree, but fails to explain why the service technicians should not be considered to be clearly and unambiguously within the service personnel classification. If the employees in either or both of the disputed classifications are guards, as contended by the Employer, then the unit is not appropriate under Section 9(b)(3). If the employees in the disputed classifications are not guards, as contended by the Petitioner, then the challenges should be overruled and the challenged ballots opened and counted. Consequently, the Board must decide the issues relating to the lead shift operators and the service technicians notwithstanding the finding that the guard operators are guards. This is so because the evidence indicates that the parties may not have intended to include guard operators in the stipulated unit. Thus, there is no unit classification entitled "guard operators," the Employer

¹ The stipulated unit is:

All full-time and regular part-time installation technicians, installation helpers, lead installers, systems technicians, fire inspectors, alarm technicians, operators and service personnel employed by the Employer at its facility located at 466 Vendome Street, San Jose, California, excluding all other employees, including office clerical employees, guards, and supervisors as defined in the Act

² Because, as set forth below, we agree with the latter position we find it unnecessary to decide the Sec 2(11) issue

³ No exception was filed to the hearing officer's finding that the guard operators are statutory guards and we therefore adopt it, pro forma

⁴ *White Cloud Products*, 214 NLRB 516, 517 (1974), *SCM Corp*, 270 NLRB 885 (1984)

did not include these employees on the *Excelsior* list, and the record does not disclose that the Petitioner asserted that they were within the unit. In any event, for the reasons set forth below, we find that the unit as stipulated includes guards along with other employees, and thus the Board is required by Section 9(b)(3) to vacate this election and dismiss the petition.⁵

The Employer provides property protection services to approximately 2500-2800 industrial and commercial customers by installing, maintaining, and monitoring electronic security devices to detect unauthorized entry, fire, and other contingencies. The Employer's San Jose facility consists of a central station and installation and service departments. The central station operates 24 hours per day, 7 days per week, with an overall complement of approximately 11 employees. Typically, one operator, two guard operators, and a lead shift operator,⁶ or an undisputed supervisor work each shift. Service technicians are supervised from central station employees, although they can receive work assignments from central station personnel. Approximately five service technicians work the weekday day shift and approximately four others cover all or at least part of the remaining weekday shifts and the weekend shifts.⁷

The duties of the central station employees involve both providing services to the Employer's customers and protecting the Employer's own facility. With respect to the former responsibility, when a customer's security system is triggered, the central station employee monitoring the signal immediately notifies the customer and the police or fire department. For the approximately 8 percent of the Employer's customers who have additionally contracted for a guard response service, the central station employee will also immediately dispatch an employee to the customer's premises. Depending on the number of such "guard runs" required, the ordinary service calls scheduled on any given shift, and the availability of personnel, the employee dispatched will generally be a guard operator or, if necessary, a service technician.⁸

⁵ Sec 9(b)(3) of the Act prohibits the Board from decid[ing] 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

⁶ The record shows that the lead shift operators, to the extent they are not performing duties alleged by the Employer to be supervisory, perform the same duties as operators

⁷ A service technician is on duty only until 1.30 a m during the 11 p m -7 a m central station shifts

⁸ The testimony of Jorge Santamaria, the central station lead shift supervisor, shows that during a typically busy month for guard response calls, January 1987, approximately 18 of the 24 guard runs were made by guard operators and the remaining 6 by service technicians During a

A guard operator or service technician making a guard run will report his arrival to the central station and visually inspect the customer's premises for signs of entry. He will wait for the arrival of the police or firefighters and, in some instances, the customer. During that time he will ask any individual seeking to enter the facility for identification and he will refuse entry to unauthorized persons. The Employer has instructed all employees making guard runs not to use force to prevent such entry. The only difference in the duties of guard operators and service technicians during a guards run is that the latter also may make repairs to the security system.

The hearing officer found that the guard operators are guards within the meaning of Section 9(b)(3) of the Act. She relied on evidence showing that, though most of a guard operator's worktime is spent in the central station monitoring alarm equipment, an essential part of his job is to respond to certain alarms and do whatever is necessary to see that the customer's premises are continuously protected. The hearing officer cited *Electro-Protective Corp.*, 251 NLRB 1141 (1980), in which the Board, on nearly identical facts, found that the employees dispatched to a customer's premises to protect it until the police or the customer arrives and have the authority to deny entry to persons lacking proper identification are, like those employees protecting their employer's own property, statutory guards. As indicated above, no party excepted to this finding.

The hearing officer, while recognizing that the identical analysis used to determine the status of guard operators should be applied to the service technicians, who are included in the stipulated unit description (which on its face intends to exclude guards), found that they too infrequently perform "guard runs" to qualify as statutory guards. We disagree. Though the primary function of the service technicians is to repair and service the security devices located at customers' locations, the record makes clear that guard run responsibilities are an essential component of the service technicians' work duties. While this assignment is performed less frequently by service technicians than by guard operators, the record shows that over 20 percent of

typically slow month for this service, July 1987, 9 of the 11 guard runs were made by guard operators and the remaining 2 by service technicians It is likely that those guard runs assigned to service technicians occur primarily on night and weekend shifts, based on the testimony of two service technicians, both of whom work the weekday day shift. Donald Pfaff testified that he had never made a guard run during his 4 months of employment George Partn testified that although he had been assigned guard runs during the first 13 years of his employment when he worked the 4 30 p m to 1 a m shift, he had not made any guard runs during the preceding 3 or 4 years he has been working the weekday day shift

the guard runs are made by service technicians. More importantly, while on these runs, the service technicians perform the same duties as the guard operators. We find, therefore, that the service technicians, insofar as they are required to protect property a portion of their time, are also guards within the meaning of Section 9(b)(3) of the Act.⁹

As for the challenged lead shift operators, the hearing officer did not pass on their status as guards because she found the Employer made no such argument. The Employer acknowledges that, in challenging the ballots of the lead shift operators, it did so on the basis of their alleged supervisory status; but it contends, as it did on brief to the hearing officer, that the issue of their status as employees eligible to vote in the election, having once been properly raised, encompasses the issue of whether they are guards. We find merit in that contention, particularly when, as here, the issue strikes at the heart of the unit's statutory appropriateness. We further find that, because lead operators, when not performing alleged supervisory duties, perform as operators (a class of employees included in the stipulated unit), any determination we make concerning the guard status of lead operators in their occasional role as operators will apply as well to all other operators.

As correctly found by the hearing officer, all central station employees, that is, lead operators and operators, and guard operators when not out on a guard run, perform essentially the same tasks. In addition to monitoring the security systems of the customers, they have a continuing responsibil-

ity to protect the integrity of the central station itself, which is located within a freestanding building. A television camera is mounted outside the building to cover the entrance from the main parking lot to the building. A second camera is located in a security lobby or "man-trap" situated just inside the outer door. Monitoring screens for both cameras are placed at the control desks within the central station area itself. The operator, guard operator, or lead shift operator on duty is responsible for identifying any person seeking entrance to the central station and controlling access by means of a buzzer system attached to the inner door of the man-trap.

Each central station employee is thus charged by the Employer to enforce its rule forbidding unauthorized persons from entering the central station. Thus, to the extent that the duties of the operators and lead shift operators involve the protection of their own Employer's property, we find that these employees are guards under the Act. *Brink's Inc.*, 272 NLRB 868 (1985).

Having found that the operators, including the lead shift operators, and the service technicians are guards within the meaning of Section 9(b)(3) of the Act, we further find that the stipulated unit in this proceeding is not and cannot be appropriate for collective-bargaining purposes because, as constituted, it includes both these employees and non-guard employees. Accordingly, no question concerning representation exists and we shall vacate the election and dismiss the petition.

ORDER

The election is vacated and the petition is dismissed.

⁹ *MGM Grand Hotel*, 274 NLRB 139 (1985), *A.D.T. Co.*, 112 NLRB 80 (1955).