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Watkins Security Agency of D.C., Inc. *and* Federal Contract Guards of America (FCGOA), Petitioner. Case 05–RC–016491

October 28, 2010

ORDER

MEMBERS BECKER, PEARCE, AND HAYES

Service Employees International Union Local 32BJ's (Local 32BJ) request for special permission to appeal the Regional Director's order denying Local 32BJ's motion to intervene in these proceedings is granted. Having carefully considered the motion, we have decided to remand this case for a hearing to determine whether the petitioned-for unit employees enforce rules to protect property of a statutory employer or to protect the safety of persons on the premises of a statutory employer, and any other issues that the Regional Director may deem appropriate for determination. Our dissenting colleague raises an important policy concern he believes arises out of the construction of Section 9(b)(3) of the Act urged by Local 32BJ. However, the concern he identifies was not addressed in the papers filed in connection with the request for special permission to appeal and we prefer to address it based on an evidentiary record and after full briefing. Accordingly, this case is remanded to the Regional Director to conduct a hearing and to issue a decision.

Dated, Washington, D.C. October 28, 2010

Craig Becker, Member

Mark Gaston Pearce, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER HAYES, dissenting.

I would grant the request for special permission to appeal and deny the appeal on the merits. There is no need to remand this case for a hearing unless the facts to be determined are relevant to a meritorious legal theory. In my view, they are not.

The theory upon which the remand here is based essentially holds that Section 9(b) (3) of the Act should be construed to mean that guards who in fact perform guard duties at the premises of employers that are not covered by the Act are nonguards as a matter of law. That such a tortured reading would lead to an untenable result should come as little surprise, and is amply illustrated by the obvious result in the present case. Here, the Petitioner, a union which admits to membership *only guards,* sought to represent a unit of guards. However, if the Intervenor's semantic slight of hand passes muster with my colleagues, such guards have become nonguards. Then the Petitioner faces a substantial challenge to the purpose for which it was founded. It could continue to participate in this election proceeding, but a victory in that election would be most Pyrrhic. The Petitioner would then admit to membership nonguards, barring it from thereafter participating in elections to represent statutory guards and placing its representation of other statutory guard units at risk.

Thus, unions that exclusively represent guard units whose members protect the property of private sector entities would effectively be barred from representing guards who are, or may be, assigned to protect the property of a public or other nonstatutory employer. On the other hand, unions that clearly admit nonguards to membership could be certified to also represent guards based solely on the happenstance of whose premises they happened to be assigned to protect. I do not believe that Section 9(b)(3) was enacted either to effectively bar traditional

guard unions from representing those employed as guards on the premises of nonstatutory employers; or, to insure that such guards can be represented solely by unions which admit to membership only nonguards.

Dated, Washington, D.C. October 28, 2010

Brian E. Hayes, Member

NATIONAL LABOR RELATIONS BOARD