



**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

FJC SECURITY SERVICES, INC.
Employer¹

and

SPECIAL AND SUPERIOR OFFICERS
BENEVOLENT ASSOCIATION
Petitioner

Case No. 29-RC-11999

and

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 32B-J

Party in Interest²

LOCAL 971/550 NATIONAL SECURITY
OFFICERS BENEVOLENT ASSOCIATION

Intervenor³

DECISION AND DIRECTION OF ELECTION

FJC Security Services, Inc. (“the Employer” or “FJC”) provides security services to various entities including the Port Authority of New York and New Jersey (“Port

¹ The Employer’s name appears as amended at the hearing. Although the petition initially identified both “Covenant Security” (the unit’s predecessor employer) and “FJC Security” (the successor employer) as employers, the Petitioner later amended its petition to omit Covenant. There is no dispute that FJC Security Services, Inc. is the sole and current employer of the employees in question.

² Service Employees International Union, Local 32BJ moved to intervene in the instant case, based on its status as the recognized collective bargaining representative of the petitioned-for employees. The Hearing Officer granted the motion to intervene on that basis. However, for reasons discussed in detail *infra*, Local 32BJ is not qualified under Section 9(b)(3) of the Act for certification to represent security guards. I hereby reverse the Hearing Officer’s ruling to grant intervenor status. Local 32BJ will be referred to herein as simply a “party in interest.”

³ Local 971/550’s status as an intervenor in this case is based on its showing of interest.



Authority”) at John F. Kennedy International Airport (“JFK”) and LaGuardia Airport (“LaGuardia”) in Queens, New York. On February 1, 2011, the Special and Superior Officers Benevolent Association (“the Petitioner”) filed a petition under Section 9(c) of the National Labor Relations Act (“the Act”), seeking to represent a unit of approximately 414 security officers employed under FJC’s Port Authority contract at JFK and LaGuardia airports.

As described in more detail below, the predecessor employer, Covenant Aviation Security, had voluntarily recognized Service Employees International Union, Local 32BJ (“Local 32BJ”) in 2007 as the collective bargaining representative of security officers working under Covenant’s 2007 - 2011 contract with Port Authority at JFK and LaGuardia airports. In the meantime, Local 32BJ established a collective bargaining relationship with FJC for its security guards employed at other Port Authority sites, such as Newark Liberty International Airport (“Newark Airport”). In connection with FJC’s take-over of the Port Authority JFK/LaGuardia contract from Covenant in February 2011, FJC agreed to recognize Local 32BJ as representative of the existing JFK/LaGuardia unit, and to “merge” the JFK/LaGuardia unit into Local 32BJ’s larger unit of FJC security officers at all Port Authority sites.

Both Local 32BJ and Local 971/550 National Security Officers Benevolent Association sought to intervene in the instant case. Local 32BJ concedes that it is a “mixed” union, accepting to membership both guards and non-guards. Under Section 9(b)(3) of the Act, the National Labor Relations Board (“Board”) cannot certify any union to represent a unit of guards if, inter alia, the union also accepts non-guards to membership.

The parties raised several issues herein, including whether the petitioned-for security officers work as “guards” as defined in Section 9(b)(3); whether Local 32BJ may appear on the ballot in any election directed herein; whether FJC’s voluntary recognition of Local 32BJ employees created a “successor bar”; whether the petitioned-for two-site unit is appropriate, as opposed to a larger unit encompassing all the Port Authority sites; and whether Local 971 is a labor organization as defined in Section 2(5) of the Act.

A hearing on these issues was held before Nicholas Heisick, a Hearing Officer of the Board. In support of its position, the Petitioner subpoenaed FJC senior vice president David Link, Jr. to testify. Local 32BJ called its associate general counsel, Elizabeth Baker, to testify. The Hearing Officer called Local 971/550’s president, Alberto Lopez, to testify.

Pursuant to Section 3(b) of the Act, the Board has delegated authority in this proceeding to the undersigned Regional Director.

For the reasons discussed below, I conclude that the security officers in the petitioned-for unit are indeed guards.. Therefore, under Section 9(b)(3) of the Act, the incumbent “mixed” union, Local 32BJ, cannot obtain certification via a Board-run election. I further find that the petitioned-for unit limited to the Port Authority sites at JFK and LaGuardia airports is appropriate. Finally, I conclude that there is no “successor bar” under current Board law or any other bar to holding an election at this time, and that Local 971/550 is a labor organization. I will therefore direct an election in the petitioned-for unit, with both SSOBA and Local 971/550 on the ballot.

FACTS

The facts are essentially undisputed.

Employer's operations at JFK and LaGuardia, including security officers' duties

FJC contracted with Port Authority to provide security services at JFK and LaGuardia airports, for a four-year period from February 1, 2011, to January 31, 2015. FJC employs approximately 283 security officers under the Port Authority contract at JFK, and approximately 131 security officers at LaGuardia.⁴ Thus, the petitioned-for unit has approximately 414 security officers at the two airports.

FJC vice president David Link, Jr. testified that the security officers in question go through a “vetting” process before they are hired, to make sure they meet certain requirements under the Port Authority contract and state law. They must be licensed as guards by the State of New York. They undergo medical and drug tests and, upon hiring, they receive special training for airport security.

Link testified that the officers control access to the “aeronautical operating area” (“AOA”), the restricted area including runways where airplanes come and go. Link stated that the AOA or “air side” of the airport must be kept “sterile,” i.e., free from unauthorized access. The officers must inspect people and vehicles entering the AOA. If anyone seeks to gain unauthorized access to the AOA, the officers must report it. The officers also patrol various other “land side” areas of the airport, including the indoor passenger areas, the parking lots, and other areas, as needed. They must report any suspicious activity. A subgroup of officers called “central station security guards” (“CSSGs”) monitor certain surveillance and alarm systems. During the hearing, the

⁴ FJC also employs other security officers at JFK Airport, under contract with other entities such as specific airlines, terminal operators and construction companies. However, the instant case involves only the FJC employees working under the 2011-2015 Port Authority contract.

parties stipulated that the security officers protect Port Authority's property and enforce Port Authority rules.

Link testified that the security officers are unarmed. Their equipment includes radios, as well as flashlights and mirrors used for conducting inspections.

Consistent with Link's testimony, the FJC-Port Authority contract (part of which is Petitioner's Exhibit 2)⁵ describes the security officers' duties as performing "guard services at all parking lots, aeronautical guard access areas, construction sites, fire watch and other posts" and other areas as directed. The contract specifically includes, *inter alia*, the following duties: ensuring compliance with Port Authority and federal regulations regarding access to the AOA; conducting vehicle inspections; inspecting contractor work areas for security compliance; responding to and investigating door alarms; observing and reporting suspicious activity, fires and other hazardous conditions to the Port Authority police; monitoring security alarm systems, recording devices and radar systems; and processing and verifying identification cards.

Bargaining history

The parties stipulated to the relevant bargaining history, and agreed to introduce various collective bargaining agreements as joint exhibits.

The record indicates that, back in 1996, SSOBA was certified to represent a unit of security officers employed by FJC under contract with Port Authority at JFK Airport (but not LaGuardia). Joint Exhibit 1 is the FJC – SSOBA collective bargaining agreement for the period 1996 – 2001. When Haynes Security was awarded a Port

⁵ References to exhibits will hereinafter be abbreviated as follows: "Pet. Ex. #," "Jt. Ex. #", "Bd. Ex. #" refer, respectively, to Petitioner, Joint and Board exhibit numbers.

Authority contract at JFK in 2001, SSOBA continued to represent the officers there. Joint Exhibit 2 is the 2001-2003 Haynes-SSOBA collective bargaining agreement. Then, for the period of 2003 to 2006, the LaGuardia site was also included in the Port Authority contract, with Haynes continuing as the Employer. Thus, the 2003 – 2006 collective bargaining agreement between Haynes and SSOBA (Jt. Ex. 3) covered both JFK and LaGuardia.

In 2007, both the employer and the union changed. Specifically, when Covenant Aviation Security won the Port Authority contract for JFK and LaGuardia in 2007, it voluntarily recognized Local 32BJ as the collective bargaining representative of the security officers. The Covenant – Local 32BJ collective bargaining agreement (Jt. Ex. 4) was effective from September 1, 2007, to January 31, 2011.

In the meantime, Local 32BJ developed a collective bargaining relationship with FJC at other sites. Those parties signed a Memorandum of Agreement in 2009 (Jt. Ex. 7, which the parties also called the “Master Agreement”) in which FJC recognized Local 32BJ as representative of a broad range of security officers in the greater New York and New Jersey area. Local 32BJ associate general counsel Elizabeth Baker testified that the parties also apply separate contractual “riders” to employees at specific sites. Indeed, after FJC was awarded a contract to provide security services at various Port Authority locations including Newark Airport in 2008, FJC and Local 32BJ negotiated a “Port

Authority Rider” (Jt. Ex. 6).⁶ This rider was scheduled to expire on March 1, 2011, a few weeks after the hearing in the instant case.

Link testified that Port Authority awarded the 2011-2015 contract at JFK and LaGuardia to FJC on December 28, 2010, about one month before predecessor Covenant’s contract was scheduled to expire (on Jan. 31, 2011). Link further testified that FJC followed its usual practice of hiring its predecessor’s employees (i.e., the Covenant employees) after the usual vetting process. All of the security officers hired by FJC for the JFK and LaGuardia sites were former Covenant employees there, and FJC recognized Local 32BJ as the employees’ representative. On January 20, 2011, FJC and Local 32BJ signed a letter (Jt. Ex. 5) which: (1) acknowledged the recognition; (2) merged the former Covenant unit at JFK and LaGuardia into the larger FJC-Local 32BJ unit covering all of the Port Authority locations; and (3) stated that the parties would apply the existing Port Authority Rider and Master MOA (Jt. Exs. 6 and 7) to employees at JFK and LaGuardia, with certain specified modifications. Baker testified that, around the same time as the January 20 recognition letter, the parties started negotiations for a new Port Authority Rider, which would cover all of FJC’s locations under Port Authority

⁶ The Port Authority Rider covers a unit of approximately 680 to 700 FJC employees working at Newark Airport, as well as PATH train locations, The Teleport in Staten Island, bridges in Staten Island, the George Washington Bridge, various office properties leased by Port Authority in New York and New Jersey, the World Trade Center site, Port Ivory in Staten Island, the Bathgate Industrial Park in the Bronx, and the Brooklyn Cruise Terminal. The contract effective dates are “August 8, 2007” to March 1, 2011. Link stated that he did not know why the contract started in August 2007, months before its Port Authority contract took effect in March 2008.

contract, including the newly-added employees at JFK and LaGuardia.⁷ Baker further testified that, as of the date of the hearing, two negotiating sessions had taken place, and a third was scheduled for the week after the hearing.

The parties stipulated that there is no contract bar to an election in this proceeding. It should be noted that, at the time SSOBA filed its petition on February 1, 2011, the FJC – Local 32BJ 2007- 2011 Port Authority Rider being applied to the petitioned-for employees at JFK and LaGuardia (as modified in the recognition letter, Jt. Ex. 5) was in its fourth year.

Labor organizations

The parties stipulated that the Petitioner, SSOBA is a labor organization as defined in Section 2(5) of the Act; that it admits only guards to membership; and that it is not affiliated with any “non-guard” unions.

The parties also stipulated that the incumbent union, Local 32BJ, is a labor organization as defined in the Act; and that it admits to membership both guards and non-guards.

However, the parties did not stipulate that the Intervenor, Local 971/550, is a labor organization. The Hearing Officer called Local 971/550’s president, Alberto Lopez, to testify. Lopez stated that he has been the president since early 2009.

Lopez testified that Local 971/550 represents security guards for the purposes of bargaining with their employers regarding wages and other terms of employment. Lopez

⁷ Adding the number of FJC employees under the Port Authority contract at JFK and LaGuardia (414) to the existing unit of FJC employees under the 2007 -2011 Port Authority Rider at Newark Airport and other locations (approx. 680 -700), the bargaining unit represented by Local 32BJ would total about 1094 to 1114. Local 32BJ contends that this large, consolidated unit is the only unit appropriate for bargaining.

further testified that Local 971/550 admits only guards to membership. He stated that he sometimes gets advice from someone named Tito (last name unknown) who works for another union, but he did not know which union Tito works for. Lopez said he would find out the name of Tito's union, but he left the hearing without doing so.

Lopez initially refused to name any employers with whom Local 971/550 bargains but, when pressed, he named The Brooklyn Hospital Center ("Brooklyn Hospital"). Lopez was asked to submit a copy of Local 971/550's collective bargaining agreement with Brooklyn Hospital, but he left the hearing without doing so. He refused to name any other employers.

Lopez stated that employees participate in Local 971/550 by attending meetings and filing grievances. As a specific example, Lopez stated that he had met with Brooklyn Hospital shop steward Jose Perez at a McDonald's near the hospital about one month before the hearing. Lopez did not give any specific examples of employees filing grievances and, in fact, said that he was unsure whether any grievances had been filed.

The Hearing Officer introduced an administrative law judge's decision (Bd. Ex. 3) in Case No. 29-CB-14283, in which Local 971/550 was found to have violated its duty to represent two Brooklyn Hospital employees who had been terminated, in violation of Section 8(b)(1)(A) of the Act.

Under cross-examination by SSOBA, Lopez's testimony was evasive and/or contradictory. For example, although Lopez said he is the only officer and paid staff member of Local 971/550, he has never been to its office and did not even know its address. Lopez further stated that he has never received any mail for the Union, and he was not aware of any grievances ever being filed. He also claimed to have no idea how

dues payments are processed. He stated that he signs the office rent checks, but has no idea who the landlord is. He initially stated that he signs his own paychecks, and that he is the only signatory to Local 971/550's bank account. But then, at another point, he stated that "someone" sends him a check to sign, and that he has no idea where the checkbook is kept or where his paycheck comes from.

Finally, Lopez testified that Local 971/550 admits only guards to membership, and is neither directly nor indirectly affiliated with non-guard unions. Although Lopez vaguely stated that he gets advice from someone named "Tito" at another union, there is no specific evidence that Local 971/550 is affiliated with non-guard unions.

Other evidence

As noted above, the parties disputed whether the petitioned-for unit limited to FJC's Port Authority operations at JFK and LaGuardia airports is appropriate for bargaining, as opposed to the larger FJC-Port Authority unit currently represented by Local 32BJ. The record contains evidence generally showing that the various sites do not have common supervision and management, do not have common terms of employment, and do not have employee interchange among them. However, since I find that Local 32BJ cannot participate in the election directed herein, the evidence regarding Local 32BJ's alternative unit need not be described in detail.

DISCUSSION

Issues under Section 9(b)(3)

Section 9(b)(3) of the Act provides in part the following:

[T]he Board shall not ... decide that any unit is appropriate for such purposes [collective bargaining] 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; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

Shortly after Congress passed Section 9(b)(3) in 1947, the Board held in Brink's, Inc., 77 NLRB 1182 (1948), that armored-car guards are not "guards" within the meaning of the Act. Citing Congress' concern about the risk of divided loyalty if an employer's guards were members of the same union as other employees, the Brink's Board essentially limited Section 9(b)(3)'s definition to plant guards. Under that view, the definition of "guards" was limited to employees who protect their *own* employer's property, and the safety of people on their employer's property. However, five years later, in Armored Motor Service Co., 106 NLRB 1139 (1953), the Board overruled its earlier decision in Brink's, finding that armored-car guards are indeed guards with the meaning of the Act. In this view, the Board expanded the definition of "guards" to include employees who protect property of *other* employers, and provide for the safety of such other employers, not just their own. The Board has consistently applied this broader definition of guards for more than 50 years. *See, e.g.,* Brink's, Inc., 226 NLRB 1182 (1976).

Furthermore, the other "employer" whose property and safety the guards are protecting may be a government agency, even though the agency itself would not fall under the Act's definition of "employer" in Section 2(2). *See, e.g.,* Firstline Transportation Security, Inc., 347 NLRB 447 (2006)(guards-only union seeking to represent employees of private company providing airport security services under contract

with the federal Transportation Security Administration); Atlas Guard Service, 237 NLRB 1067 (1978)(election for guards employed by private company to provide security at federal buildings, under contract with the General Services Administration).

Finally, the Board has interpreted Section 9(b)(3) to preclude mixed guard/non-guard unions from participating in Board-run elections. University of Chicago, 272 NLRB 873 (1984).

In Watkins Security Agency of D.C., Inc., 356 NLRB No. 12 (2010), Local 32BJ sought to challenge Board precedent by arguing that Section 9(b)(3) only applies to guards who protect property and safety for entities who fall within the definition of “employer” in Section 2(2), which would exclude government entities such as the Port Authority. In granting Local 32BJ’s special appeal and remanding the case for further hearing, the Watkins Board indicated its willingness to consider this construction of Section 9(b)(3). However, the petition in Watkins was later withdrawn, without the Board ruling on the issue.

As noted above, the incumbent union representing security officers in the petitioned-for unit at JFK and LaGuardia, Local 32BJ, is admittedly a mixed guard/non-guard union. Local 32BJ does not appear to dispute that the security officers in question perform typical “guard” duties, i.e., enforcing rules to protect property and ensure safety. Indeed, the parties stipulated that the officers protect Port Authority’s property and enforce Port Authority rules, and the record amply supports a finding that they perform typical guard duties. (See pages 4 -5, *supra*).

However, Local 32BJ asks the Region (as it asked the Board in Watkins, *supra*) to find that the petitioned-for security officers are not “guards” under Section 9(b)(3) because they do not protect property and safety at the premises of a “statutory employer.”⁸

Local 32BJ further argues, alternatively, that if the Region finds the petitioned-for employees to be “guards,” the Region should overturn the University of Chicago case cited above, and allow the incumbent to intervene and participate in the election.

Given that Regional Directors have no authority to overrule Board precedent, I must, of course, find the petitioned-for employees to be guards. I further find that, inasmuch as Local 32BJ admits non-guards to membership, it may not seek certification to represent those employees under Section 9(b)(3). Finally, given the holding in University of Chicago, I find that Local 32BJ may not intervene or participate in any election directed herein. Accordingly, as stated above in footnote 2, I reverse the Hearing Officer’s ruling to grant intervenor status to Local 32BJ.

The “successor bar” issue

As described above, FJC voluntarily recognized Local 32BJ as the collective bargaining representative of the petitioned-for security officers at JFK and LaGuardia when it took over the Port Authority contract from Covenant Aviation Security. Local 32BJ argues that the SSOBA’s petition must be dismissed, in order to allow Local 32BJ a reasonable period to negotiate a collective bargaining agreement with the successor employer, as under St. Elizabeth Manor, 329 NLRB 341 (1999).

⁸ There is no dispute that Port Authority is a “political subdivision” of state government, and thereby excluded from the definition of “employer” in Section 2(2).

In MV Transportation, 337 NLRB 770 (2002), the Board overruled the “successor bar” doctrine as set forth in St. Elizabeth Manor. However, in UGL-UNICCO Service Company, 355 NLRB No. 155 (Aug. 2010), the Board recently stated that it would consider overruling MV Transportation and reviving the successor bar doctrine.

Local 32BJ asks the Region to hold the instant case in abeyance, pending the resolution of the UGL-UNICCO Service Company. However, I decline to do so for several reasons. First, MV Transportation is still the law to be applied at the present time. Regional Directors are not authorized to hold cases indefinitely simply because the Board *might* change the law in the future. In any event, as a procedural matter, the Board may choose to withhold its decision in this case upon a request for review, pending the outcome of UGL-UNICCO. Furthermore, the employees’ right to a prompt election should not be unduly delayed based on speculation or hope that the law will change.

Finally, even if the Board decides to revive the successor bar doctrine, the doctrine may not apply to the facts of this case. As noted above, the purpose of successor bar is to allow a successor employer and incumbent union a reasonable period of time to negotiate a collective bargaining agreement. In the instant case, FJC and Local 32BJ already entered into a written agreement in January 2011 (Jt. Ex. 5) to apply their Master MOA and their Port Authority Rider, with some modifications. Thus, at the time SSOBA’s petition was filed on February 1, 2011, the purpose of successor bar had already been served.

Accordingly, I conclude that FJC’s voluntary recognition of Local 32BJ in January 2011, does not bar an election at this time pursuant SSOBA’s petition.

Scope of unit; accretion

Local 32BJ also argues that the petitioned-for employees working under FJC's Port Authority contract at JFK and LaGuardia airports have been "accreted" to the larger FJC unit at all its Port Authority sites, and that the only unit appropriate for bargaining is the larger unit. However, it is doubtful that the JFK/LaGuardia employees' extremely brief time in the larger unit could outweigh or obliterate its history (since 2003) as a separate, distinct bargaining unit, with its own supervisors, etc. On the contrary, it appears that SSOBA has petitioned for an election in an appropriate unit, which is all that is required. Morand Bros. Beverage Co., 91 NLRB 409 (1950); Overnite Transportation Co., 322 NLRB 723 (1996). The record evidence does not show the JFK/LaGuardia unit to be inappropriate. In any event, given that Local 32BJ may not participate in the election directed herein, it does not have standing to insist on an election in the larger unit. Notwithstanding the Section 9(b)(3) issues discussed herein, the accretion doctrine applies only when the petitioned-for unit cannot stand alone. See, e.g. Archer Daniels Midland Company, 333 NLRB 673 (2001); and Melbet Jewelry Co., 180 NLRB 107 (1980). The record here establishes that the unit sought constitutes a separate and appropriate unit and therefore, accretion is inapplicable.

Local 971/550's status

Section 2(5) of the Act defines a labor organization as:

...any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Local 971/550's president, Alberto Lopez., testified that the organization exists for the purpose of representing guards. Specifically, Lopez testified that Local 971/550 has collective bargaining agreements with employers, including the Brooklyn Hospital, governing employees' wages, hours and other working conditions. Lopez further testified that employees participate in the organization by attending meetings.

In short, Lopez's testimony establishes that Local 971/550 exists, at least in part, for the purpose of dealing with employers concerning wages and other terms and conditions of employment, and that employees participate in the organization.. Thus, the Petitioner meets the broad definition of labor organization in Section 2(5) of the Act. *See also Alto Plastics Mfg. Corp.*, 136 NLRB 850 (1962).

As noted above, Lopez's evasive testimony on cross-examination and the finding against Local 971/550 in Case No. 29-CB-14283⁹ may raise serious doubts about Lopez's credibility and Local 971/550's effectiveness as a union. However, these doubts have no bearing on whether the Intervenor is a labor organization as statutorily defined.

As the Board said in *Alto Plastics*, *supra*:

[I]t must be remembered that, initially, the Board merely provides the machinery whereby the desires of the employees may be ascertained, and the employees may select a "good" labor organization, a "bad" labor organization, or no labor organization, it being presupposed that employees will intelligently exercise their right to select their bargaining representative. In order to be a labor organization under Section 2(5) of the Act, two things are required: first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment. If an organization fulfills these two requirements, the fact that it is an ineffectual representative, ... that certain of its officers or representatives may have criminal records, that there are betrayals of the trust and confidence of the membership, or that its funds are stolen or misused, cannot affect the conclusion which the Act then compels us to

⁹ The Board, in an unpublished decision dated December 8, 2010, adopted the Administrative Law Judge's Decision.

reach, namely, that the organization is a labor organization within the meaning of the Act.

136 NLRB at 851-2.

Accordingly, I find that the Intervenor is a labor organization within the meaning of Section 2(5).

In sum, based on all of the forgoing, I will direct an election in the petitioned-for unit at JFK and LaGuardia airports, with both the Petitioner (SSOBA) and the Intervenor (Local 971/550) on the ballot. Local 32BJ will not be on the ballot.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this proceeding, the undersigned finds and concludes as follows:

1. As noted above in footnote 2, I have reversed the Hearing Officer's ruling granting "intervenor" status to Local 32BJ. However, all of the other rulings made by the Hearing Officer at the hearing are free from prejudicial error and hereby are affirmed.

2. The record indicates that FJC Security Services, Inc., is a domestic corporation, with its principal office and place of business located at 275 Jericho Turnpike, Floral Park, New York, and with an office located at JFK Cargo Center 75, Room 228, John F. Kennedy International Airport, Jamaica, New York. The parties stipulated that the Employer is engaged in providing security services. During the past year, which period represents its annual operations generally, the Employer derived gross revenues in excess of \$500,000 from the performance of services for the Port Authority of New York and New Jersey, an entity which meets the Board's direct standard for the assertion of jurisdiction.

Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act. It will therefore effectuate purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated that the Special and Superior Officers Benevolent Association is a labor organization as defined in Section 2(5) of the Act; that it admits only guards to membership; and that it is not affiliated with non-guard unions. I have concluded that Local 971/550, National Security Officers Benevolent Association is also a labor organization as defined in Section 2(5), and that it admits only guards to membership. The record does not establish that Local 971/550 is affiliated with non-guard unions. Both labor organizations claim to represent certain employees of the Employer.

4. A question concerning commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The parties stipulated, and I find that the following employees constitute a unit appropriate for the purposes of collective bargaining:

All full-time and regular part-time unarmed uniform security guards employed by the Employer at the John F. Kennedy International Airport and LaGuardia Airport, in the borough of Queens, New York, pursuant to the Employer's contract with the Port Authority of New York and New Jersey, including the titles of airport security agent, lead airport security agent, central security station guards and identification officer specialists, but excluding all other employees, tour supervisors, office managers, assistant project managers, project managers, human resource managers and supervisors as defined in Section 2(11) of the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether they wish to be represented for purposes of collective bargaining by Special and Superior Officers Benevolent Association, or by Local 971/550, National Security Officers Benevolent Association, or by neither labor organization. The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States who are employed in the unit may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the

election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the lists must be received in the Regional Office, Two MetroTech Center, 5th Floor, Brooklyn, New York 11201, on or before **March 25, 2011**. No extension of time to file these lists will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file these lists. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The lists may be submitted to the Regional

Office by electronic filing through the Agency's website, www.nrlb.gov,¹⁰ by mail, or by facsimile transmission at (718) 330-7579. To file the eligibility list electronically, go to the Agency's website at www.nrlb.gov, select "File Case Documents," enter the NLRB Case Number, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the lists will continue to be on the sending party.

Since the lists will be made available to all parties to the election, please furnish a total of **two** copies of each, unless the lists are submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least three (3) working days prior to 12:01 of the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

¹⁰ To file the eligibility list electronically, go to www.nrlb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **April 1, 2011**. The request may be filed electronically through the Agency's website, www.nlr.gov,¹¹ but may **not** be filed by facsimile.

Dated: March 18, 2011.



Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201

¹¹ To file the request for review electronically, go to www.nlr.gov, select **File Case Documents**, click on the NLRB Case Number, and follow the detailed instructions.

APPENDIX A – AMENDMENTS TO THE RECORD

The transcript is hereby amended as follows:

Page 6, line 2: “Strom” rather than “Strong”.

Page 6, line 4 et seq.: All references to the “Intervener” should be spelled “Intervenor”.

Page 9, line 5: “Brinks and” rather than “ranks in”.

Page 11, line 11 et seq.: All references to “Unicco” should be spelled “UNICCO”.

Page 37, line 18: “bizarre” rather than “bazaar”.

Page 65, line 16 et seq.: All references to the “bedding” process should be spelled “vetting”.

Page 131, line 23 et seq.: All references to airport “hangers” should be spelled “hangars.”

Page 133, line 22: “By and large” rather than “By enlarge”.

Page 160, line 23: “loses” rather than “looses”.

Page 163, line 20 et seq.: All references to “General” Square in New Jersey should say “Journal” Square.

Page 164, lines 10 and 13: The references “Flora” and “Formal” Park, New York, should say “Floral” Park.