

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

LOOMIS ARMORED US, INC.

and

Case 32-CA-25316

TEAMSTERS LOCAL UNION NO. 439 INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHANGE TO
WIN COALITION; TEAMSTERS LOCAL UNION NO. 315,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHANGE TO WIN COALITION; And TEAMSTERS
LOCAL UNION 853, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS; CHANGE TO WIN

LOOMIS ARMORED US, INC.

and

Case 32-CA-25708

TEAMSTERS LOCAL 150, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHANGE TO
WIN COALITION

LOOMIS ARMORED US INC.

and

Case 32-CA-25709

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS, LOCAL NO. 542, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS

LOOMIS ARMORED US, INC.

and

Case 32-CA-25727

PACKAGE AND GENERAL UTILITY DRIVERS,
LOCAL 396,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Gabriela Teodorescu Alvaro, Esq. for the General Counsel.
Theodora Lee, Esq., and Michael G. Pedhirney, Esq.,
for the Respondent.
Andrew H. Baker, Esq., for the Charging Parties.

DECISION

Statement of the Case

JAY R. POLLACK, Administrative Law Judge: On August 16, 2010, Teamsters Local Union No. 439, Teamsters Local Union No. 315 and Teamsters Local Union No. 853 (Local Unions 439, 315 and 853) filed the charge in Case 32-CA-25316 against Loomis Armored US,

Inc. (Respondent or the Employer). On March 7, 2011, Local 439, Local 315, and Local 853 filed an amended charge against Respondent. On February 23, 2011, Teamsters Local 150 (Local 150) filed a charge against Respondent in Case 32-CA-25708. On January 20, 2011, Teamsters Local 542 (Local 542) filed a charge against Respondent. Local 542 filed an amended charge on March 8, 2011. On January 20, Teamsters Local 396 (Local 396) filed a charge against Respondent. Local 396 filed an amended charge on March 10, 2011. On March 18, 2011, the Regional Director for Region 32 of the National Labor Relations Board (the Board) issued a complaint against Respondent in Case 32-CA-25316. The complaint alleges that Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by withdrawing recognition from Local 430 as the collective bargaining representative of Respondent's employees at its Stockton California facility. . The Respondent filed a timely answer in which it denied that it had violated the Act. On April 14, 2011, the Regional Director issued an amendment to the Complaint. On April 7, 2011, the Regional Director for Region 20 issued a complaint against Respondent in Case 20-CA-35433 (now Case 32-CA-25708). On March 25, 2011, the Regional Director for Region 21 issued a complaint in Case 21-CA-39651 (now Case 32-CA-25709). On May 10, 2011, the Regional Director for Region 31 issued a complaint against Respondent in Case 31-CA-30093 (now Case 32-CA-25727). On June 3, 2011, the Regional Director for Region 32 issued an order consolidating the four cases for trial. On October 7, 2011, before the scheduled hearing in this case commenced, the parties jointly waived a hearing and agreed to have the case decided based on a stipulated record.

Based on the stipulated record submitted by the parties, and after considering the briefs, I make the following findings of fact and conclusions of law.

Findings of Fact

I. Jurisdiction

At all times material, Respondent a Delaware corporation with headquarters in Houston, Texas, has been providing nation wide cash handling services, including secure transfer by armored vehicle, cash processing, and outsourced vault service at various locations in California. During the twelve months prior to the issuance of the complaint, Respondent sold and shipped goods or provided services valued in excess of \$50,000 directly to customers located outside the State of California.

Accordingly, the parties stipulated and I find, Respondent is an employer engaged in commerce within the meaning of Sections 2(2), (6) and (7) of the Act.

The parties stipulated that Local 439, Local 315, Local 853, Local 150, Local 542, and Local 396 are labor organizations within the meaning of Section 2(5) of the Act.

II. Facts

Since at least 1990, Local 439 has been the exclusive collective-bargaining representative of a unit of Respondent's employees in Stockton, California. The most recent collective-bargaining agreement between the parties is effective by its terms from April 1, 2009 to March 31, 2010. The bargaining unit covered by the agreement is:

All full-time and regular part-time custodians, drivers and guards; excluding all other employees, office clerical employees, vault employees, mechanics, turret guards, and supervisory employees as defined in the Act.

5 The employees in the bargaining unit are all guards within the meaning of Section 9 (b)(3)of the Act.

10 From July 1, 2008, to September 30, 2010, Local 315 was recognized as the exclusive bargaining representative of Respondent’s employees at Richmond, California, in the following unit:

All full-time and regular part-time custodians, drivers, and guards; excluding all other employees, office clerical employees, watchmen, and supervisory employees as defined in the Act.

15 The employees in the bargaining unit are all guards within the meaning of Section 9(b)(3) of the Act.

20 From February 1, 2008, to September 30, 2010, Local 853 was the exclusive collective-bargaining representative at Milpitas, California, for the following unit:

All full-time and regular part-time custodians, drivers, and guards; excluding all other employees, office clerical employees as defined in the Act.

25 The employees in the bargaining unit are all guards within the meaning of the Act.

Local 439, Local 315 and Local 853 all admit into membership guards and non-guards.

30 On July 27, 2010, Respondent withdrew recognition of Local 439 as the exclusive collective-bargaining representative of the employees in the Stockton unit. Respondent withdrew recognition based on Board precedent that permits withdrawal of recognition of a labor organization that represents both guards and non-guards upon the expiration of the relevant collective-bargaining agreement.

35 On July 26, 2010, Respondent withdrew recognition, effective September 30, 2010, of Local 315, as the exclusive bargaining representative of the employees in the Richmond unit. Respondent withdrew recognition based on Board precedent that permits withdrawal of recognition of a labor organization that represents both guards and non-guards upon the expiration of the relevant collective-bargaining agreement.

40 On July 26, 2010, Respondent withdrew recognition, effective September 30, 2010, of Local 853 as the exclusive bargaining representative of the employees in the Milpitas Unit. Respondent withdrew recognition based on Board precedent that permits withdrawal of recognition of a labor organization that represents both guards and non-guards upon the
45 expiration of the relevant collective-bargaining agreement.

Since at least 1965, Local 150 the Union has been the exclusive collective-bargaining representative of a unit of Respondent’s employees in Sacramento, California. The most recent collective-bargaining agreement between the parties is effective by its terms from December 1, 2006 to November 30, 2010, 2010. The bargaining unit covered by the agreement is:

5 All full-time and regular part-time employees employed by Respondent out of its Sacramento facility as custodians, drivers and guards; excluding all other employees, office and clerical employees , watchmen, and supervisory employees as defined in the Act.

The employees in the bargaining unit are all guards within the meaning of Section 9 (b)(3) of the Act.

10 On September 27 2010, Respondent withdrew recognition, effective November 30, 2010, of Local 150 as the exclusive bargaining representative of the employees in the Sacramento Unit. Respondent withdrew recognition based on Board precedent that permits withdrawal of recognition of a labor organization that represents both guards and non-guards upon the expiration of the relevant collective-bargaining agreement.

15 Since at least 1963, Local 542 has been the exclusive collective-bargaining representative of a unit of Respondent’s employees in San Diego, California. The most recent collective-bargaining agreement between the parties is effective by its terms from March 1, 2010 to February 28, 2011. The bargaining unit covered by the agreement is:

20 All full-time and regular part-time employees employed by Respondent out of its San Diego branch as custodians, drivers and guards; excluding all other employees, vault employees, turret employees, office clerical employees , professional employees and supervisors as defined in the Act.

25 The employees in the bargaining unit are all guards within the meaning of Section 9 (b)(3) of the Act.

30 On December 20, 2010, Respondent withdrew recognition, effective February 28, 2011, of Local 542 as the exclusive bargaining representative of the employees in the San Diego Unit. Respondent withdrew recognition based on Board precedent that permits withdrawal of recognition of a labor organization that represents both guards and non-guards upon the expiration of the relevant collective-bargaining agreement.

35 Since at least 1981, Local 396 has been the exclusive collective-bargaining representative of a unit of Respondent’s employees in Los Angeles, California. The most recent collective-bargaining agreement between the parties is effective by its terms from February 1, 2010 to January 31, 2011. The bargaining unit covered by the agreement is:

40 All regular full-time and part-time custodians, drivers, guards and vault employees working out of the Respondent’s City of Los Angeles, California (Pico) branch.

The employees in the bargaining unit are all guards within the meaning of Section 9 (b)(3) of the Act.

45 On November 23, 2010, Respondent withdrew recognition, effective January 31, 2011, of Local 396 as the exclusive bargaining representative of the employees in the Los Angeles Unit. Respondent withdrew recognition based on Board precedent that permits withdrawal of recognition of a labor organization that represents both guards and non-guards upon the expiration of the relevant collective-bargaining agreement.

Local 150, Local 542 and Local 396 all admit into membership guards and non-guards.

Statement of the issue presented

5 The legal issue presented is whether an employer that has voluntarily recognized a labor organization that represents both guards and non-guards as the designated exclusive collective –bargaining representative of a unit of the employer’s guards, violates Section 8(a)(5) when it withdraws recognition upon expiration of the collective-bargaining agreement because that labor organization is a mixed-guard labor organization that is not certifiable by the Board under Section 9(b)(3) of the Act.
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III. Analysis

15 Section 9(b)(3) of the Act provides in relevant part that “no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership employees other than guards. Even though the Board may not certify a mixed-guard union as the bargaining representative of a unit comprised of guards, an employer may voluntarily recognize a mixed-guard union as a bargaining representative of guards and enter into a collective bargaining agreement applicable to those guards. See e.g.,
20 *Northwest Protective Service Inc.*, 342 NLRB 1201, 1202-03 (2004).

 In *Wells Fargo Corp.*, 270 NLRB 787 (1984), the Board held that an employer has the right to unilaterally end its voluntary recognition of the mixed-guard union upon the expiration of the collective bargaining agreement. The Board held:
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 There is no basis for the Board drawing a distinction between initial certification and, as here, the compulsory maintenance of a bargaining relationship through the use of a bargaining order. In either case, saddling the employer with an obligation to bargain presents it with the same set of difficulties and the same potential conflict of loyalties that Section 9(b)(3) was designed to avoid. At 789.
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 In *Temple Security Inc.*, 328 NLRB 663 (1999), the General Counsel argued that the Board should reverse its *Wells Fargo* decision. However, the Board held in reliance on *Wells Fargo*, that the employer acted lawfully when, on the termination of the collective-bargaining agreement, it withdrew recognition of a mixed-guard union.
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 In the instant case, the General Counsel and the Charging Parties, urge that I (and ultimately the Board) reverse the *Wells Fargo* rule. That argument must be made to the Board. I am bound by current Board law. Accordingly, I recommend dismissal of the complaints.
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Conclusions of Law

1. Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.
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2. The Unions are labor organizations within the meaning of Section 2(5) of the Act.

3. The Respondent has not engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act. .

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:¹

ORDER

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The complaints are dismissed in their entirety.

Dated, January 11, 2012.

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Jay R. Pollack
Administrative Law Judge

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¹ All motions inconsistent with this recommended order are hereby denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.