

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION**

In the Matter of

ASSET PROTECTION GROUP, LLC  
d/b/a APG SECURITY

Employer<sup>1</sup>

and

UNITED FEDERATION OF SPECIAL  
POLICE AND SECURITY OFFICERS,  
INC.

Petitioner

Case 01-RC-096568

**DECISION AND DIRECTION OF ELECTION**

Petitioner (the Union) seeks to represent a unit of guards and lead guards employed by the Employer (APG) who provide security at Holy Family Hospital (Holy Family) in Methuen, Massachusetts. APG, which recently assumed responsibility for the security function at Holy Family, asserts that the petition should be dismissed because a substantial and representative complement of employees has not as yet been employed at Holy Family. The parties also dispute the unit placement of Eric Wallace and James DeRoche, Jr., who were previously employed by Holy Family as lead security officers but whose current employment status is in dispute.

For the reasons set forth below, I find, contrary to the Employer, that a substantial and representative complement has been employed in the petitioned-for unit and that it would be appropriate to schedule an election at this time. With regard to the unit placement of Wallace and DeRoche, I find that they are not employees of APG at this time and shall exclude them from the unit.

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<sup>1</sup> The Employer's name appears as amended at the hearing.

I. **Existence of a substantial and representative complement**

A. **Facts**

On January 7, 2013,<sup>2</sup> APG assumed responsibility for the security function at Holy Family. Prior to that date, Holy Family had maintained its own security force, employing 15 "security guards" and two "security supervisors". A representative from APG's Human Resources Department was present at Holy Family on January 7 to accept applications for guard positions. Nine former Holy Family guards applied and were immediately offered positions as "security officers", the only classification currently employed by APG at Holy Family. The remaining six former Holy Family guards did not apply.

According to Jeff Nagle, Vice President of APG New England, the nine former Holy Family guards were offered conditional employment until they successfully pass a background investigation and complete APG's training process, which will probably take four to six months to complete. Those officers who do not successfully pass the background check or required training will be terminated. Nagle further testified that APG has hired two additional security officers to work at Holy Family and three more security officers are currently going through training before being assigned to Holy Family. Once those three additional security officers are on site, for a total complement of fourteen security officers, APG will further assess over the following months whether any additional security officers are required.

B. **Analysis**

The test for determining whether the Board will schedule an election in an expanding unit is whether there is a "substantial and representative" complement of employees at the time of the Board's decision. See *Celotex Corp.*, 180 NLRB 62 (1970); *Frolic Footwear, Inc.*, 180 NLRB 188 (1969). See also *Witteman Steel Mills, Inc.*, 253 NLRB 320, 321 (1980); *Libby Glass Division*, 211 NLRB 939, 940 (1974); *Bell Aerospace Co.*, 190 NLRB 509 (1971). The Board uses a case-by-case approach in determining whether an employee complement is substantial and representative, considering such factors as the size of the present work force at the time of the hearing, the size of the employee complement eligible to vote, the size of the expected ultimate employee complement, the time expected to elapse before a full work force is present, the time and size of projected interim hiring increases before reaching a full complement, the number of job classifications requiring different skills that are currently filled and that are expected to be filled when the ultimate complement is reached, and the nature of the industry. *Toto Industries (Atlanta)*, 323 NLRB 645 (1997). Thus, although not rigidly applied, the Board has found an existing complement of employees substantial and representative when at least 30

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<sup>2</sup> All dates are in 2013 unless specified otherwise.

percent of the eventual employee complement is employed in 50 percent of the anticipated job classifications. See *Shares, Inc.*, 343 NLRB 455 n. 2 (2004); *MJM Studios*, 336 NLRB 1255, 1256 (2001); *Yellowstone International Mailing, Inc.*, 332 NLRB 386 (2000).

I find that APG has hired a substantial and representative complement of employees and that an immediate election is warranted. The mere possibility that APG may decide in a few months to hire an unspecified number of additional security officers does not mean that its current workforce is not substantial and representative. Significantly, APG has presented no evidence that the size of the unit will increase due to any actual or proposed changes in the nature of its operations at Holy Family. Thus, APG's mere assertion that there may be an unspecified increase in unit size at some unspecified future time, and that some of its new hires may not pass background checks, testing or training requirements over the next few months, are far too speculative to warrant a finding that the current workforce is not substantial and representative. See *Hazard Express, Inc.*, 324 NLRB 989, 990 (1997); *Canterbury of Puerto Rico*, 225 NLRB 309 (1976). Because the record establishes that well over 30 percent of the eventual employee complement<sup>3</sup> is currently employed in 100 percent of the anticipated job classifications, an election is warranted at this time.<sup>4</sup>

## II. Unit placement of Eric Wallace and James DeRoche, Jr.

Wallace and DeRoche were employed by Holy Family for several years as "security supervisors". When APG assumed responsibility for security operations at Holy Family on January 7, Wallace and DeRoche were retained as Holy Family employees until January 31, during which time APG could determine whether it would offer them employment. Although Wallace testified that he was told on January 7 that he would be retained by APG, he subsequently declined a position as an "account manager" in an e-mail dated January 29, indicating instead that he would like to remain in the same position that he had before, along with DeRoche. Because no evidence was proffered showing that either

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<sup>3</sup> Because APG claims that it has not yet determined the eventual size of its employee complement at Holy Family, it is impossible to determine the exact percentage of the eventual complement that the current employees comprise. I note, however, that APG has already hired 14 security officers in a location that was previously served by 15 security guards, suggesting that it is at or close to its eventual complement.

<sup>4</sup> The case cited by the Employer in its post-hearing brief is clearly inapposite and provides no support for dismissing the instant petition. In *Cooper International, Inc.*, 205 NLRB 1057 (1973), the Board declined to direct an election where the employer relocated its plant 18-25 miles away and the employees had neither been offered nor accepted employment at the new facility.

Wallace or DeRoche are employed at this time by APG at Holy Family, I shall exclude them from the petitioned-for unit.<sup>5</sup>

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting 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 following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time guards and lead guards employed by the Employer at Holy Family Hospital in Methuen, Massachusetts, but excluding office clerical employees, professional employees, and supervisors as defined in 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 or not they wish to be represented for purposes of collective bargaining by UNITED FEDERATION OF SPECIAL POLICE AND SECURITY OFFICERS,

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5. Although APG challenged the initial showing of interest on the ground that it was obtained with the involvement of alleged supervisors' Wallace and DeRoche, the Union submitted a second showing of interest free of any involvement by the alleged supervisors. I am administratively satisfied that the subsequent showing of interest is sufficient to support the petition. With regard to APG's claim that the petition should be blocked by the charge it filed in Case No. 1-CB-097095 alleging the same improper supervisory involvement in the filing of the petition, I previously advised APG that I had decided not to block the processing of the petition.

INC. 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.

### **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 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 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.

### **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). The 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 whether there is an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **February 20, 2013**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will

be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>6</sup> by mail, or by facsimile transmission at 617-565-6725. To file the eligibility list electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.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 list will continue to be placed on the sending party.

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

### **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 3 working days prior to 12:01 a.m. of the day 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.

### **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, DC 20570-0001. This request must be received by the Board

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<sup>6</sup> To file the eligibility list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

in Washington by February 27, 2013. The request may be filed electronically through the Agency's website, [www.nlr.gov](http://www.nlr.gov), but may not be filed by facsimile.

**DATED:** February 13, 2013



Jonathan B. Kreisberg, Regional Director  
First Region

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