

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 2

NEW YORK UNIVERSITY  
Employer

and

Case No. 02-RC-118494

LOCAL 810, STEEL, METALS, ALLOYS, &  
HARDWARE FABRICATORS & WAREHOUSEMEN,  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS<sup>1</sup>  
Petitioner

**DECISION AND ORDER DISMISSING PETITION**

New York University (“NYU” or “Employer”) is a private institution of higher education in New York City. On December 6, 2013, Local 810, Steel, Metals, Alloys, & Hardware Fabricators & Warehousemen, International Brotherhood of Teamsters (“the Petitioner”) filed a petition seeking a self-determination election in a voting group of systems sergeants.<sup>2</sup>

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act (“the Act”), a hearing was held on December 17, 2013 and January 23, 2014 before a Hearing Officer of the National Labor Relations Board (“the Board”).

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Upon the entire record in this proceeding, including the briefs filed by the parties after the closing of the record, I find that:

1. The Hearing Officer’s rulings are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find, that NYU is a not-for-profit corporation with a campus in New York, New York. Annually, in the course and conduct of its operations, NYU derives gross revenue in excess of \$1 million, and purchases and receives at its New York City campus goods and supplies valued in excess of \$50,000, directly from suppliers located outside the State of New York. Accordingly, I find that NYU is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

---

<sup>1</sup> The name of the Petitioner appears as amended on the record during the hearing.

<sup>2</sup> At the hearing, the Hearing Officer clarified that the petition sought to include a group of unrepresented systems sergeants in an existing unit of building maintenance employees currently represented by the Petitioner.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

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

The Petitioner contends that the systems sergeants, also referred to as the “tech team,” are an identifiable and distinct group of unrepresented employees. Although the proposed unit is in the Public Safety department, the Petitioner argues that the systems sergeants share a community of interest with the skilled maintenance unit due to the functional integration between the two groups. In addition to frequent contact, the Petitioner notes commonality of wages, hours and other working conditions, and shared supervision. With respect to the alleged supervisory status of the systems sergeants, the Petitioner argues that the systems sergeants’ classification was created in 2007. Thus, any prior representation case findings of supervisory status that pre-date this new classification are irrelevant. Although the Petitioner concedes that the systems sergeants sometimes work as “desk sergeants,” it characterizes that work as merely routine and clerical in nature. Finally, the Petitioner argues that even if the systems sergeants perform supervisory duties, that assignment is not a regular and substantial portion of their work.

In contrast, the Employer argues that the Region, in Case No. 02-RC-21672, previously determined that the sergeants are supervisors within the meaning of Section 2(11) of the Act. Moreover, even if the systems sergeants have lost their supervisory duties, they are still guards within the meaning of Section 9(b)(3) of the Act, and their addition to the maintenance unit would result in an inappropriate mixed guard/non-guard unit. Beyond eligibility issues, the Employer claims that the petition should be dismissed because the proposed unit of three employees fractures the sergeant classification. Finally, the Employer claims that a self-determination election is only suitable in the context of competing labor organizations seeking different units that are equally appropriate.

I have considered the arguments presented by the parties. The record demonstrates that the systems sergeants, although assigned technical duties distinct from those of uniformed sergeants, remain within the guard classification in the Department of Public Safety. The Employer requires the systems sergeants to possess a valid security license and to perform uniformed sergeants’ duties, as directed. Thus, the proposed unit would create an unlawful mixed guard/non-guard unit represented by a disqualified union, in violation of Section 9(b)(3) of the Act. Accordingly, I am dismissing the petition. Having found that the systems sergeants are guards, I do not reach the supervisory status issue, or whether the proposed unit is otherwise appropriate.

## FACTS

### A. Overview

About thirty uniformed sergeants, and the three systems sergeants in the petitioned-for unit, are within the Department of Global Security and Crisis Management, which is commonly known as, the Department of Public Safety.

The uniformed sergeants oversee approximately 280 security officers, who are broken into squads. They ensure that a sufficient number of security officers are scheduled for each shift and that the security officers remain positioned at their assigned post. In the event of an absence, the uniformed sergeants have the authority to make a replacement post assignment. They also make relief post assignments, for example, when a security officer leaves his or her post for a lunch break. The uniformed sergeants have the authority to issue verbal warnings, and even immediately suspend a security officer, depending on the infraction.

In addition to overseeing security officers, the uniformed sergeants are responsible for investigating suspicious activity, preventing access by unauthorized persons, assisting visitors and staff, performing crowd control, analyzing security data and responding to emergencies.

The security officers primarily patrol the campus on foot and in vehicles. They are responsible for safeguarding the Employer's property and personnel. To assist in the performance of this work, the security officers carry a flashlight, radio, keys and a memo book.

### B. The Creation of the Systems Sergeant Position

First posted in 2007, the systems sergeant position appears to be a product of technological advancement. According to the job posting, systems sergeants were needed "to assist the Department of Public Safety's Assistant Director of Information Technology" and to perform the following tasks: administer servers and databases, install software, train software users, troubleshoot hardware and software problems, maintain the public safety webpage, assign building access privileges, and ensure that the security equipment is functioning properly. In addition to information technology duties, the job posting required the systems sergeants to perform uniformed sergeants' duties, as directed.

The job posting encouraged all security officers, specialists<sup>3</sup> and sergeants to apply. The record does not disclose whether the position was also posted externally, or whether external candidates were also considered. The Employer filled the systems sergeant position with three internal candidates from the Department of Public Safety. Oscar Ramos, who was a uniformed sergeant for close to ten years and prior to that a security officer, applied for and received the systems sergeant position in May 2007. Edward Bucholtz, another long-term uniformed sergeant, also applied and got the job, however, the record does not disclose the date that he started. In 2012, Luis Cordova,

---

<sup>3</sup> The record does not reflect the duties of the specialist classification.

who was also a uniformed sergeant, joined the tech team. No other uniformed sergeants, or any other Public Safety department employees, have performed tech team work. To date, there has been no turnover on the tech team.

As systems sergeants, Ramos, Bucholtz and Cordova were relieved of their responsibility to oversee a squad of security officers. Consistent with the job description, the record shows that systems sergeants install, maintain and repair the security cameras, alarm panels, and other electronic devices that are exclusively used by public safety personnel. More specifically, the systems sergeants install wiring and other components needed to monitor cameras and alarms; maintain additional security devices, such as, card readers, door contacts and door hardware; troubleshoot network hardware and software problems for public safety personnel; respond to service calls for security devices in need of repair; install and maintain the workstations used by public safety personnel, which includes tasks like, assigning an IP address to each workstation and implementing firewall protections. Accordingly, the record demonstrates that all of the tech team's work involves electronic devices that are used for surveillance, access restriction or other safety and/or security-related purposes.<sup>4</sup> Thus, the technical work of the systems sergeants is limited to security and public safety devices – not general computer maintenance or other university-wide IT work.

The record also demonstrates that the systems sergeants continued to participate in some of the daily routines in the Department of Public Safety. As an example, the Employer requires all sergeants, systems sergeants, and security officers to report for work half-an-hour early each day in order to participate in the assessment of security-related matters that arose the previous day, and in the development of a plan to address those matters. In addition, the systems sergeants attend public safety project meetings. Although systems sergeants no longer wear the sergeants' uniform, the Employer requires them to keep it for when they are assigned to perform uniformed sergeant duties. Again, the posted position specifically noted that systems sergeants would be needed to "perform uniform sergeant's duties as directed." Further, the Employer requires the systems sergeants to maintain a valid security license. Accordingly, the record demonstrates that the systems sergeant position is integral to the Department of Public Safety.

### C. Supervisory Structure

In the Department of Public Safety, the first line supervisors for the security guards are the uniformed sergeants. The sergeants report to the operations managers. The record indicates that the operations managers report to the manager for protective services, who then reports to the director of security. For upper management, the chain of command is not clear, however, Assistant Vice President of Public Safety Jerry Matthews, and Vice President of Public Safety Jules Martin, generally oversee all uniformed personnel. Martin reports to Executive Vice President of Operations Allison Leary.

---

<sup>4</sup> Although Ramos testified that the surveillance cameras in the animal lab are not monitored by public safety personnel, there is no evidence that these cameras are used for purposes unrelated to safety and security.

The system sergeants report directly to the Assistant Director of Card Services, Randy Slaughter, not an operations manager. However, Slaughter reports to Jules Martin. As stated above, Martin oversees all uniformed sergeants and security officers. Accordingly, while the lines of supervision vary, the systems sergeants continue to report within the Department of Public Safety.

D. The Systems Sergeants Sometimes Perform Uniformed Sergeant Work

There is no dispute that the tech team work is exclusive to Ramos, Bucholtz and Cordova, and that no uniformed sergeants have ever been assigned to work, either temporarily or permanently, as a systems sergeant. The record indicates however, that the systems sergeants are sometimes assigned to uniformed sergeant duties. As an example, the systems sergeants may be called into uniform when additional uniformed sergeants are needed, such as, for commencement ceremonies or in emergency situations. The record shows that such assignments, although rare, are a part of the systems sergeants' overall job duties. As stated above, the job posting for the systems sergeant position states that the systems sergeants are expected to perform uniformed sergeant's duties, as directed. As Jules Martin, the vice president of public safety, testified, no security officer or sergeant would be permitted to work without a valid security guard license, including Ramos, Bucholtz and Cordova.

The record also indicates that the systems sergeants may, and do, volunteer for overtime work as a uniformed sergeant. This overtime work involves assignment to the "desk sergeant" duties. Although the evidence is limited, the record shows that the desk sergeant is stationed at the Command Center. He fields all calls – internal and external – coming into the Center. In addition, the desk sergeant receives all visitors. As an example, a visitor looking for a lost item or reporting an emergency would speak to the desk sergeant. Further, the desk sergeant reviews the roll call and may assign replacement security officers. Similarly, when a security officer goes on break, the desk sergeant assigns a relieving officer. Finally, the desk sergeant monitors security apparatuses, like cameras and alarms. Notably, the Petitioner does not contend that the desk sergeant's duties are not guard duties.

Although the record is vague, Jerry Matthews, the assistant vice president for public safety, testified that Ramos and Bucholtz have either been called into uniform or volunteered for overtime as a uniformed sergeant about five times per year, and about ten to twenty times over the past five years. This testimony was not rebutted by the Petitioner.

## ANALYSIS

Under § 9(b)(3) of the Act:

[T]he Board shall not decide that any unit is appropriate for [the purposes of 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.

Because this section of the Act precludes both the mixing of guards and non-guards into a single unit and the certification of a labor organization that admits to membership employees other than guards, I am dismissing the instant petition.

The Board, in *Rhode Island Hospital*, 313 NLRB 343 (1993), reiterated that “[i]t is the nature of the duties of guards and not the percentage of time which they spend in such duties which is controlling.” (citing *Walterboro Mfg. Corp.*, 106 NLRB 1383, 1384 (1952)).

Here, the systems sergeants perform technical work most of the time; however, the record shows that the Employer anticipated, at the time the position was created, that the systems sergeants would continue to perform uniformed sergeant work whenever operating needs required additional security. Indeed, the undisputed record evidence demonstrates that the systems sergeants have performed uniformed sergeant work for campus-wide events and in emergencies. Further, the record evidence that the systems sergeants are required to maintain a valid security officer's license, and that they must report to work early for an overview of the pending security-related matters is un rebutted. Accordingly, while the systems sergeants' position requires technological skills, they are also charged with performing uniformed sergeants' duties, as needed. The record testimony shows that the systems sergeants can be called to duty at the Employer's discretion.

Further, their overall job duties are an essential link in the Employer's Public Safety Department. The systems sergeants are trained, licensed security guards, who assist in developing training and reference materials to maintain a safe and secure campus environment. Although the systems sergeants relinquished their duties with respect to overseeing a squad of security officers, the Employer did not relieve them of other sergeant duties, such as, assessment of security-related matters, participation in development of a plan to address those matters, and continued attendance at public safety project meetings. *MGM Grand Hotel*, 274 NLRB 139 (1985)(system operators who monitor a technologically advanced alarm system are as closely involved in protecting the employer's property and enforcing security as the employer's officers and uniformed guards)

Further, the record demonstrates that the systems sergeants have volunteered to work overtime to cover the desk sergeant position. The parties do not dispute that the desk sergeants perform guard responsibilities, such as, fielding incoming reports of emergencies and suspicious activities, monitoring security cameras and alarms, and generally overseeing the security officers.

The Petitioner emphasizes that the systems sergeants rarely perform uniformed sergeant work. However, under current Board law, it is immaterial that the Employer only occasionally calls the systems sergeants into uniform. The relevant inquiry when assessing guard status is not the portion of an employee's guard duties in comparison to the portion of his non-guard duties, but rather the nature of the duties that he performs. *Madison Square Garden*, 333 NLRB 643, 646 (2001)(the "supervisors" perform functions designed to enhance security which is sufficient to find that they are statutory guards).<sup>5</sup> Here, the systems sergeants are firmly integrated in the security department and continue to function with the purpose of protecting property and ensuring safety on the campus.

In conclusion, for all of the reasons stated above, I am dismissing this petition as § 9(b)(3) of the Act precludes directing an election in these circumstances.

### **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 NW, Washington, DC, 20570. This request must be received by the Board in Washington by April 17, 2014.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may not be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for e-filing can also be found on the National Labor Relations Board website at [www.nlr.gov](http://www.nlr.gov). On the home page of the website, select the E-Gov<sup>6</sup> tab and click on E-Filing. Then select

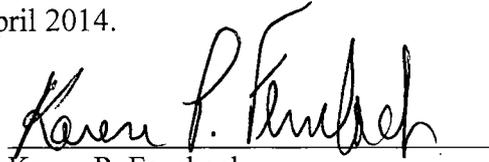
---

<sup>5</sup> I am mindful of former Member Liebman's dissent in *Madison Square Garden*, and note that, over time, the Board's interpretation of Section 9(b)(3) has expanded to include responsibilities not typically associated with traditional security functions, which are: enforcing rules directed at other employees, patrolling the plant, wearing guard type uniforms and carrying weapons.

<sup>6</sup> To file the request for review 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. When the E-File page opens, go to the heading Board/Office of the Executive Secretary and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the "Submit Form" button. Guidance for e-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's website.

the NLRB office for which you wish to e-file your documents. Detailed e-filing instructions explaining how to file the documents electronically will be displayed.

DATED at New York, New York this 3rd day of April 2014.

A handwritten signature in black ink, reading "Karen P. Fernbach", written over a horizontal line.

Karen P. Fernbach  
Regional Director  
National Labor Relations Board  
Region 2  
26 Federal Plaza, Room 3614  
New York, NY 10278