

**UNITED STATES OF AMERICA  
THE NATIONAL LABOR RELATIONS BOARD  
REGION 5**

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AMERIGUARD SECURITY SERVICES, INC.

EMPLOYER

And

UNITED SECURITY & POLICE OFFICERS OF  
AMERICA (USPOA)

PETITIONER

And

CASE No. 5-RC-085844

UNITED UNION OF SECURITY GUARDS

INTERNEVOR

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**REQUEST FOR REVIEW**

The united Security & Police Officers of America (USPOA) is filing this Request for Review pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and

Regulations, Series 8, as amended, with the Executive Secretary of the National Labor Relations Board. The National Union United Security & Police Officers of America (USPOA) is asking the Executive Secretary to review the DECISION, ORDER, AND DIRECTION OF ELECTION submitted by the Hearing Officer in Case 05-RC-085844, which the Petitioner USPOA filed timely for a Representation Election. The Hearing Officer however, barred the election and claimed the petition was filed outside of the window period.

## **ISSUES**

The issues in this Request for Review are:

1. Whether the petition filed by USPOA to represent the uniformed guards performing work at the FDA facilities was barred by a collective bargaining agreement between the Employer AmeriGuard and the Intervenor UUSG in Case 05-RC-085844.
2. Whether there were changes in the job description of the employees at FDA substantial enough to change their job classification which would turn them into a newly created unit and bar the election in Case 05-RC-085844

Upon careful review of the Hearing Officer's decision, I found substantial facts that the Executive Secretary should consider and reverse the Hearing Officer's decision in Case 05-RC-085844.

### **1. STATEMENT OF FACTS**

The Employer is AmeriGuard, a California based company engaged in providing security guard services to the United States Government at various facilities in the State of Maryland. This Request for Review concerns the guard services the Employer provides at U.S. Food and Drug

Administration (“FDA”) facilities in Rockville, Maryland and surrounding areas. The duration of the union contract is October 1, 2009 through September 30, 2012. On or around October 1, 2011, the Government issued modifications of the contract and split the guard force in two – one part stayed with DHS / HHS and the other became FDA only. Along with the split the Employer AmeriGuard issued new uniforms to the FDA employees while they remained on the job at the same locations.

Based on the fact that the government contract had changed and the employees assigned to FDA were now working under a different government contract number, the Petitioner around February 2012 filed for a Representation Election with the National Labor Relations Board Region 5. The Employer opposed to a stipulation agreement and claimed the same collective bargaining agreement with the Intervenor was valid since it covered a greater portion of the bargaining unit under HHS at the Parklawn facilities. The Board Agent requested from the Petitioner a list of all the new facilities under FDA and their respective addresses. The Petitioner also presumes the same request was made of the Employer including all information useful to the scheduling or barring of the election. Sometime later the Board Agent requested additional interest cards from the Intervenor in order to meet the 30% requirement after the Employer provided a more accurate list of the bargaining unit. The Petitioner submitted additional cards and fulfilled the 30% requirement. The following day, the Board Agent called the Petitioner and advised that Petition be withdrawn or the Board would dismiss it because the collective bargaining agreement was a bar to any election at that time. After further discussion the Petitioner was convinced that the best option was to withdraw the petition and refile it in July. This was a customarily routine of the Board to foresee the outcome of unfair labor practice charges, election petitions and the like and to minimize the unnecessary burden on the NLRB personnel by making these

suggestions. To a large degree, NLRB cases are often subject to similar directives from the Board Agents, and that makes them accountable in case of any misleading suggestions.

### **QUALIFICATIONS:**

The Hearing Officer's contention that the duties and qualification requirements of the FDA officers are so different from what they were under HHS is somewhat erroneous. The additional requirements were nothing more than the DHS/GSA standard credentials which many employees had already acquired by means of holding second jobs at other GSA facilities. The GSA credentials encompass the OC Pepper Spray and the X-ray eight-hour class. While others were given a waiver to complete the GSA training within the next six months, a large percentage of the employees at the FDA facilities were still working without these credentials. The Hearing Officer further stated that the supervision changed once these sites came under FDA and supported this premise with Walter Walden's testimony. Walden's testimony was full of inconsistencies and confusion. He became harder to understand when he attempted to explain the difference between the Public Support Center (PSC) a department of HHS that enforced the post orders as opposed to Physical Security under GSA which enforces the same post orders in the very same manner. The supervisors do not work for the government but AmeriGuard the Employer, and they are still the same supervisors right now. Under HHS employees signed into the 139's, a government issued log book for all hours worked by simply writing their names and the shifts they worked. Now under GSA employees have to add the specific date as well as the start and end of the shift - nothing more. The weapon qualification requirements remain the same as well as everything else. Everyone shoots the same qualification course whether they work

under HHS or FDA. Even if the Hearing Officer's analysis gives more weight to these meager modifications, they aren't material changes to the work assignments or direct modifications of the job classification for FDA employees. The federal government implements frequent changes to keep the contract guards more vigilant. The government can re-assign contracts; modify the standards of qualification from time to time without causing any effect on existing labor agreements. However, the petitioner's argument in February is now the Hearing Officer's position which was contrary to the Board Agent's suggestion back in February. This ambiguity is the result of the NLRB different directives throughout this entire process. Therefore, the Board is to be held accountable, and the union members be granted the request to have an election. Furthermore, the Hearing officer's report states that the Petitioner's sole argument is the fact that the incumbent union failed to ratify the agreement. That is also incorrect. The Petitioner's remarks pertained to fact that once a ratification vote is held the outcome must count for something. The Hearing Officer's point of view would hold more validity if the incumbent Union refused to ratify, and later contests the result of the votes; but in this case, the Union itself called for the ratification vote, and subjected the contract to the ratification process. The union leadership waived the right to by-pass the ratification and declared the agreement null and void at the end of the voting process.

Secondly, the petitioner emphasized the decision and suggestion of the Board Agent as the cause of this dilemma more so than the ratification factor. Sadly however, the Hearing Officer's report made no mention of the Board Agent's mistake.

## CONCLUSION

Labor organizations are subordinates of the National Labor Relations Board. The NLRB is an authoritative figure between labor organizations and Employers, and has the power to render decisions over labor disputes, election results and most importantly the duty of labor unions to protect rights of the employees. Further, this incident is not the first in which the USPOA membership questioned the Region 5 process. It seems as though USPOA is not afforded the same level of respect and consideration by the NLRB and the growth of the Union has been significantly affected. The Petitioner invites the Executive Secretary to review the cases that involved USPOA in the past two and one-half years for a more accurate perception. There have been several unlikely turns of events that affected severely the progress of our Union and the membership is questioning such phenomenon.

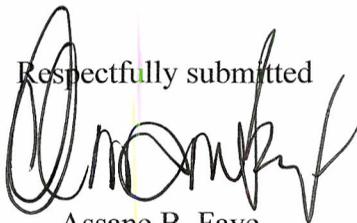
The Hearing Officers Decision leaves out entirely the responsibility of the Board Agent who ordered the withdrawal of the first petition; that decision is the reason why we are still here. Everyone is expected to follow the law because the law is supposed to be the voice of reason in any given conflict and that reason stems from fairness. The law was created for the provision of fair ruling where there is conflict. Therefore, the NLRB must be held responsible for postponing this election until July when it should have taken place in February 2012.

UUSG the Intervenor and the Employer AmeriGuard have had a longstanding and cozy relationship, which led to neglect and misrepresentation of the bargaining unit. The relationship between AmeriGuard and UUSG became so comfortable that the Union lost its ability to defend properly the employees' rights. Instead of remaining neutral, the Employer continued to change the size of the unit in favor of the Intervenor to prevent the Petitioner from filing this election.

Now they have taken advantage of a “split the baby” decision where the Petitioner wins one and the Intervenor/Employer wins one.

The petitioner once again asks that the Executive Secretary looks closely at what transpired and takes into consideration the rights of the union members to decide upon their choice of union.

Therefore the Petitioner respectfully requests that the election be scheduled without any further delay.

Respectfully submitted  
  
Assane B. Faye

Executive Director

USPOA 1501 Manchester Street

Toms River, NJ 08757

## **CERTIFICATE OF SERVICE**

It is hereby certified that the Post Hearing Brief submitted by USPOA on August 16, 2012 was also emailed and mailed via U.S Postal first class on August 16, 2012.

Lawrence J. Sherman, Esq.

LAW OFFICE OF LAWRENCE J. SHERMAN, LLC

5505 Connecticut Ave., N.W. # 261

Washington DC 20015-2601

Tel: 202-785-0384

Leo Reinjers

Business Manager

AmeriGuard Security Services, Inc

5470 W. Spruce Avenue, Suite 102

Fresno, California

Tel: 559-994-5588