

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20, SUBREGION 37**

SECURITAS SECURITY SERVICES USA, INC.

Employer

and

**Cases 20-RC-174365 &
20-RC-174487**

**PROFESSIONAL SECURITY PERSONNEL
INTERNATIONAL UNION OF HAWAII**

Petitioner

DECISION & DIRECTION OF ELECTIONS

By its amended petition in Case 20-RC-174365, and its petition in Case 20-RC-174487, Petitioner seeks to represent separate units of guards and security personnel employed by the Employer at two locations in Honolulu, Hawaii. The unit sought in each case excludes all managers, office personnel, confidential employees and supervisors under the Act. There are approximately eight security guards in the unit in Case 20-RC-174365, and approximately seven in the unit in Case 20-RC-174487. The parties have stipulated, and I find, that the unit in each case is an appropriate unit for collective-bargaining purposes.

Pursuant to the "Order by Regional Director Under NLRB Rule 102.66(c) Concerning Issues to be Litigated at Hearing" that I issued in these matters on April 29, 2016,¹ the only issues that the parties litigated in both of these cases were whether Petitioner is a labor organization within the meaning of Section 2(5) of the Act and whether it is disqualified under Section 9(b)(3) of the Act. As stated in these Orders, Petitioner bears the burden of proof on these issues. The Employer takes the position that the Petitioner is not a labor organization because it admits guards and nonguards to membership and Petitioner takes a contrary position. For the reasons set forth below, and based on my consideration of the records in both cases,² I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act, that it is not disqualified under Section 9(b)(3) of the Act, and I am ordering elections in both appropriate units.

¹ All dates herein are in 2016.

² The parties have stipulated that the record from both hearings may be jointly considered in rendering my decision.

The only witness in these hearings, Acting President/Managing Director of Petitioner Joleen Damaso, testified that Petitioner was formed on about March 28, that it is not affiliated with any other labor organizations, nor are there any plans for it to affiliate with any other labor organization in the foreseeable future.

According to Damaso, Petitioner was created to represent only guards and security personnel who hold guard cards as required by Hawaii law,³ and its membership is restricted to guards and security personnel. Damaso further testified that Petitioner was formed to represent guards in collective bargaining with their employers over wages, benefits and other working conditions.

Damaso testified that as of the date of the hearings in these matters, Petitioner had approximately 40 members who were all guards holding guard cards, but it does not yet have any collective-bargaining agreements with any employers.

According to Damaso, Petitioner currently has three officers, including herself as acting president/managing director; an operations director/lead organizer; and counsel for Petitioner. Damaso testified that none of these officers are guards. Rather, they work in other fields and formed Petitioner to represent guard employees. They comprise Petitioner's current board and they selected themselves as temporary/acting officers of Petitioner until guard members meet to vote for Petitioner's officers within the next couple of weeks. Damaso further testified that the officers established a constitution and bylaws for Petitioner.⁴ Damaso referred to herself and the other current board members/officers as "associate members" of Petitioner. However, according to Damaso, in the future, only guard members will be permitted to vote for Petitioner's officers, on collective-bargaining agreements, and on any changes to Petitioner's constitution and bylaws. Current officers will be permitted to attend membership meetings, but will not vote on such matters.

Damaso also testified that Petitioner has three nonguard part-time volunteer organizers, whom she referred to as "volunteer associate members." These individuals are not officers; do not serve on Petitioner's current board; and have no right to vote on the selection of Petitioner's officers or on any other matters pertaining to Petitioner.

ANALYSIS

Section 2(5) of the Act. In order to satisfy the requirements of Section 2(5) of the Act, an organization is a labor organization: (1) if employees participate; (2) if the organization exists, at least in part, for the purpose of 'dealing with' employers; and (3) if these dealings with employers concern 'conditions of work' or other statutory subjects, such as grievances, rates of pay and/or hours of employment. See *Electromation, Inc.*, 309 NLRB 990, 994 (1992). The first requirement above is met by record evidence showing that within the next couple of weeks, guard members of Petitioner will

³ HRS Section 463-10.5.

⁴ The record does not include a copy of Petitioner's constitution and bylaws.

participate by voting for Petitioner's officers and, in the future, they will participate by voting on collective-bargaining agreements and any changes made to Petitioner's constitution and by-laws. The record evidence satisfies the second and third requirements of Section 2(5); to wit, showing that Petitioner was formed to bargain collectively with employers over wages, benefits and other working conditions of the guards it represents. Thus, Petitioner fulfills the statutory requirements of Section 2(5).

Section 9(b)(3) of the Act. Section 9(b)(3) of the Act prohibits the Board from establishing units comprised of guards and nonguards and from certifying a labor organization as the representative of a guard unit if the labor organization admits to membership, or is affiliated directly or indirectly, with an organization which admits nonguard employees. See *Wackenhut Corp.*, 196 NLRB 278 (1972); *Bonded Armored Carrier*, 195 NLRB 346 (1972); and *American Building Maintenance Co.*, 126 NLRB 185 (1960). Thus, Section 9(b)(3) bars both mixed-guard/nonguard units and guard representation by mixed-guard unions. The purpose of Section 9(b)(3) is to avoid conflicts of interest involved in having mixed guard/nonguard units or unions.

The standard for establishing the noncertifiability of a guard union is well settled: "the proviso to Section 9(b), when read in context, requires that the noncertifiability of a guard union must be shown by definitive evidence. Otherwise the rights of guards to be represented by a union and of guard unions to represent guards would be seriously undermined." See *Burns Security Services*, 278 NLRB 565, 568 (1986); *Children's Hospital of Michigan*, 317 NLRB No 86 (1995); *University of Tulsa*, 304 NLRB 773 (1991); *Elite Protective & Security Services*, 300 NLRB 832 (1990) (and cases cited therein).

In the instant case, I find that the record does not establish that Petitioner is disqualified under Section 9(b)(3) because it allows mixed guard/nonguard units or because it admits to membership employees other than guards. Petitioner is a newly formed labor organization which does not yet represent a single bargaining unit. Thus, the only issue before me is whether it admits to membership both guard and nonguard employees. Despite Damaso's use of the terms "associate members" and "voluntary associate members" when referring respectively to nonguard officers and organizers of Petitioner, the record evidence shows that Petitioner was formed to represent only guards who hold guard cards as required under Hawaii law; that only guards are admitted to its rank-and-file membership; that it currently has about 40 guard employees as members who hold guard cards; and only guards will be eligible to vote for Petitioner's officers, changes to Petitioner's constitution and by-laws, and on collective-bargaining agreements with their employers.

In cases such as these, which involve a newly formed union, the Board and the courts have held that officer/members working in nonguard jobs is insufficient to disqualify a union from representing guards under Section 9(b)(3). Thus, in *NLRB v. J.W. Mays, Inc.*, 675 F.2d 442 (2d Cir. 1982), enf. 253 NLRB 717 (1980), the Second Circuit agreed with the Board that the union therein was not disqualified under Section

9(b)(3) merely because one of the union's officer/members worked part time in a nonguard capacity. The court observed that "in a fledgling union with no funds, such employment was a necessary and temporary expedient wholly unrelated to the purpose of the law's prohibition." 675F.2d at 444. The court further noted that the Board provides for revocation of certification if a union certified to represent guards admits nonguards to membership. *Ibid.* See also *Sentry Investigation Corp.*, 198 NLRB 1074 (1972) (although Section 9(b)(3) may literally be read to disqualify a petitioner because it accepts any nonguards as members, the purpose of the statutory provision is to prevent a guard union from bargaining on behalf of nonguard members); *Pinkerton's National Detective Agency*, 124NLRB 1076 (1959) (that petitioner sought to represent a unit of employees that employer claimed were not guards does not mean that such employees will be admitted to membership so as to lead to petitioner's disqualification); *International Security Corp.*, 223 NLRB 1129 (1976); *Elite Protective & Security Services, supra.* Accordingly, Petitioner has met its burden of establishing that it is a labor organization within the meaning of Section 2(5) of the Act and that it is not disqualified under Section 9(b)(3) of the Act.

CONCLUSION

Based upon the entire record in this matter and in accordance with the discussion above, I conclude that Petitioner is a labor organization within the meaning of Section 2(5) of the Act and that it is not disqualified under Section 9(b)(3) of the Act. I further find as follows:

- 1) The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- 2) The parties stipulated, and I find, that the Employer is an employer as defined in Section 2(2) of the Act, and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
- 3) The parties stipulated, and I find, that a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
- 4) The parties stipulated, and I find, that the following employees of the Employer constitute separate units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Case 20-RC- 174365

All full-time and regular part-time guards and security officers employed by the Employer at 5163 Iroquois Avenue in Ewa Beach, Hawaii; excluding all managers, office personnel, confidential employees and supervisors⁵ under the Act.

Case 20-RC-174487

All full-time and regular part-time guards and security officers employed by the Employer at Crosspointe, located at 329 Mananai Place, Honolulu, Hawaii; excluding all managers, office personnel, confidential employees and supervisors⁶ under the Act.

The National Labor Relations Board will conduct a secret ballot election among the employees in the units found appropriate above. Employees in each unit will vote whether or not they wish to be represented for purposes of collective bargaining by **Professional Security Personnel International Union of Hawaii**.

A. Election Details

Case 20-RC-174365:

The election in Case 20-RC-174365 will be held on May 17, 2016, from 5:45 am to 6:15 am and from 1:45 pm to 2:15 pm in the beach house located at 5163 Iroquois Avenue, Ewa Beach, Hawaii, 96706.

Case 20-RC-174487:

The election in Case 20-RC-174487 will be held in the Crosspointe community recreation room located at 329 Mananai Place, Honolulu, Hawaii, 96818, on May 13, 2016, from 5:45 to 6:15 am and from 1:45 pm to 2:15 pm.

⁵ In Case 20-RC-174365, the parties have stipulated, and I find, that Shirlene Rodrigues is excluded from the unit as a statutory supervisor based on her authority to direct the work of employees using independent judgment and also based on her authority to discipline or effectively recommend the discipline of employees within the meaning of Section 2(11) of the Act.

⁶ In Case 20-RC-174487, the parties have stipulated, and I find, that Supervisor Martin Hunt and Assistant Supervisor Kevin Thompson are excluded from the unit as statutory supervisors based on their authority to responsibly direct the work of other employees using independent judgment and discretion and based on their authority to discipline or effectively recommend the discipline of employees within the meaning of Section 2(11) of the Act.

B. Voting Eligibility

Eligible to vote are those in the above respective units who were employed during the payroll period ending April 28, 2016, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an 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 that 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.

C. Voter Lists

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters in each unit.

To be timely filed and served, the lists must be *received* by the regional director and the parties by May 9, 2016. The lists must be accompanied by a certificate of service showing service of both lists on all parties. **The Region no longer serves the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the lists in the required form, the lists must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the lists must begin with each employee's last name and the lists must be alphabetized (overall or by department) by last name. Because the lists will be used during the elections, the font size of the lists must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the lists is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the lists shall be filed electronically with the Region and served electronically on the other parties named in this decision. The lists may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election(s) whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the lists within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter lists for purposes other than the representation proceedings, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the forthcoming Notices of Election in conspicuous places, including all places where notices to employees in the units found appropriate are customarily posted. The Notices must be posted so all pages of the Notices are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the units found appropriate, the Employer must also distribute the Notices of Election electronically to those employees. The Employer must post copies of the Notices at least 3 full working days prior to 12:01 a.m. of the day of the elections and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of Notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of Notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election(s) if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding(s) by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this Decision after the election(s) on the grounds that it did not file a request for review of this Decision prior to the election(s). The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not

E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay either of the elections in these matters unless specifically ordered by the Board.

Dated: May 5, 2016

JOSEPH F. FRANKL
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 20, BY



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