

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

STANFORD UNIVERSITY,
Respondent

and

SERVICE EMPLOYEES INTERNATIONAL
UNION, HIGHER EDUCATION WORKERS
LOCAL 2007

Case No. 32-RC-184333

Petitioner

**STANFORD UNIVERSITY'S OPPOSITION
TO THE UNION'S REQUEST FOR REVIEW**

Pursuant to Section 102.67(f) of the Rules and Regulations of the National Labor Relations Board (“NLRB” or the “Board”), Stanford University (“Stanford” or the “University”) submits its Opposition to the Request for Review (the “Request”) filed by the Service Employees International Union, Higher Education Workers Union Local 2007 (“SEIU” or the “Union”) on November 2, 2016.¹ Section 102.67(d) provides that a request for review will only be granted where “compelling reasons” exist. No such compelling reason exists here. Indeed, no reason exists at all to disturb the Regional Director’s obviously correct decision to dismiss the Union’s petition to represent guards in the same bargaining unit as non-guard employees. Moreover, the Union’s Request should be denied because it fails even to comply with the Board’s requirements regarding the citation of evidence supporting the Request.

Section 9(b)(3) of the National Labor Relations Act (“NLRA” or the “Act”) defines a guard as “any individual employed . . . 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.”

¹ The Union submitted a Certificate of Service showing service of its Request on the University and its counsel on November 4, 2016.

29 U.S.C § 159(b)(3). In his Decision and Order, the Region 32 Regional Director rightly found that the University’s “Public Safety Officers” are guards under Act, and on this basis, dismissed the Union’s petition for an *Armour Globe* election in which statutory guards would decide whether to join a stipulated non-guard unit. The record abounds with examples of PSOs enforcing the University’s rules for the protection of person and property, as the Regional Director concluded following a lengthy hearing and as described further in the University’s written closing statement, which was accepted into evidence as Employer Exhibit 30 and is attached and incorporated by reference here as Appendix A.

The Union’s Request argues that the Decision and Order “misstates the facts” because the PSOs, according to SEIU, primarily perform “parking enforcement.” Tellingly, while referring to a few exhibits in the record, the Request contains zero actual citations to the 612-page transcript or 35 exhibits, notwithstanding NLRB Rule and Regulation § 102.67(e) (“Contents of Request”). This section states that,

With respect to the ground listed in paragraph (d)(2) [referring to requests based on “clearly erroneous” findings on a “substantial factual issue”] of this section, and other grounds where appropriate, the request must contain a summary of all evidence or rulings bearing on the issues together with page citations from the transcript and a summary of argument.

The Union’s failure even to attempt to comply with Section 102.67(e) warrants denial of its Request.

Beyond this procedural error, the Union’s Request is wrong on the substance. Even a cursory review of the record demonstrates that the PSOs consistently do far more than parking enforcement. Indeed, the PSOs regularly enforce the University’s rules for the protection of person and property. (*See, e.g.* Er. Exh. 10 [report by PSO providing overnight guard patrol of the provost’s residence]; Er. Exh. 11 [reports by PSO securing perimeter and performing other guard functions during bomb threat at Stanford’s Graduate School of Business]; Er. Exhs. 16 – 18 [PSOs guarding University President’s office during nearby rally in which SEIU’s Executive Director solicited support for Union causes]; Er. Exh. 20 [picture of PSO guarding President’s

office during rally]; Er. Exh. 21 [PSOs providing security guard escort to individual banned from campus except to do business at U.S. Post Office located on campus]; Er. Exh. 26 [PSOs enforcing University’s rules regarding hiking trail access, drone flying, fishing, dogs, swimming, public urination, and homeless encampments].)

Given that the PSOs do far more than parking and traffic enforcement, the sole case cited by the Request, *Syracuse University*, is inapposite. 325 NLRB 162, 167 (1997) (holding that putative guards did not qualify as statutory guards where the only evidence of guard status consisted of “issuing tickets and tow warnings for parking violations”). The University has never contended that PSOs do not enforce the University’s parking rules. PSO Dean DeVlugt, for instance, testified that he has enforced such rules against employees in the SEIU bargaining unit which, if the Decision and Order were overruled, he would vote whether to join. (Tr. 179:23 – 180:5 [enforcing parking rules against “staff book warehouse assistants” represented by SEIU].)² Contrary to the Union’s position, however, parking enforcement and guard status are by no means mutually exclusive. *See Rhode Island Hosp.*, 313 NLRB 343, 346 (1993) (holding that “traffic control guards” are statutory guards where, like the PSOs here, the employees patrolled the employer’s premises responding to requests for assistance while also performing parking enforcement).

While the Request misconstrues the record by omitting the numerous guard functions other than parking and traffic enforcement that PSOs regularly perform, other statements in the Request directly contradict record evidence on whether PSOs meet the statutory definition of guard. For example:

- The Request states that “there is no Public Safety Officer assigned to after-hours patrols in the Foothills or other restricted access areas.” Request at 2. Whether a putative guard enforces the employer’s rules during or after regular business hours has no bearing on

² The University’s closing statement mistakenly referred to the SEIU-represented employees against whom PSO DeVlugt enforced the University’s rules as the book preservers.

their guard status under the Act. In any event, uncontradicted evidence demonstrates that PSOs do perform guard duties outside of regular business hours. For example, PSO DeVlugt was assigned to guard the provost's residence from 7:30pm to 6:30am for several weeks in September 2016 in response to a threat. (Er. Exh. 10.)

- The Request states that PSOs do not “respond to crimes in progress.” Request at 3. Again, the record belies the Union's argument. (*E.g.*, Er Exh. 23 at 2 [PSO “flagged down for a bike theft in progress” and called a deputy]; Er. Exh. 26 [PSOs responding to crimes of trespass and public urination, among others.]; Er. Exh. 11 [PSOs responding to bomb threat].)
- The Request states that the “Decision and Order misstates . . . the tools that are carried” and that PSOs “do not carry weapons.” Uncontradicted evidence established that PSOs carry weapons in the form of pepper spray and, as the Request acknowledges, are even exposed to pepper spray during their extensive training. Request at 3. Apparently, the Union argues that pepper spray is not a weapon, because “there is no evidence in the record that any Public Safety Officer has ever used pepper spray outside of training.” (*Id.*; *see also* Tr. 609:1-3 [“Despite the Employer's statements to the contrary in its closing brief, pepper spray is not a weapon. It's a protective device, yes, but it's not an offensive weapon.”].) Certainly, the Board's definition as to whether an instrument (such as a gun) qualifies as a “weapon” cannot be whether a putative guard has been placed in a position where he or she was required to fire it.

The Request makes much of the fact that the PSOs' wages come from the University's Department of Parking and Transportation budget. Request at 4 (“Perhaps most importantly, the Division of Parking and Transportation pays for the jobs of these employees regardless of what department they are classified under.”) This red herring has no bearing on whether the PSOs are

guards under the Act.³ The source of funding for the PSOs' wages does nothing to contravene the abundant evidence that the PSOs are members of the Department of Public Safety, report up to DPS Chief Laura Wilson, and regularly enforce the University's rules for the protection of person and property.

In sum, for the foregoing reasons reasons and those in the University's closing statement attached hereto, Stanford respectfully requests that the Board deny the Union's Request for Review of the Regional Director's Decision and Order.

November 9, 2016

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³ Indeed, the Deputy Sheriffs' Association represents the Community Service Officers, who like the PSOs are also members of the Department of Public Safety, in an appropriate guard unit. (Exh. Er. 3 at 1.) Funding for the CSOs' wages also comes from the Department of Parking and Transportation budget. (Tr. 77:6-15.)

STATEMENT OF SERVICE

This is to certify that a true and correct copy of this document is being served this 9th day of November, 2016 upon the following persons, by electronic mail addressed as follows:

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APPENDIX A

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

STANFORD UNIVERSITY,
Respondent

and

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 2007

Case No. 32-RC-184333

Petitioner

STANFORD UNIVERSITY'S CLOSING STATEMENT

I. **INTRODUCTION**

Stanford University ("Stanford" or the "University") supports the right of its employees to decide whether to be represented by a labor organization in an appropriate bargaining unit and according to the law. In this matter, however, SEIU Local 2007 ("SEIU," "Local 2007," or the "Union") seeks an *Armour-Globe* election in order to join Stanford's Public Safety Officers ("PSOs") to a large and diverse bargaining unit that includes employees against whom the PSOs routinely enforce the University's safety and security rules. As a result, Local 2007's petition is neither lawful nor appropriate and should be dismissed under Section 9(b)(3) of the National Labor Relations Act ("NLRA"). Even assuming *arguendo* that the PSOs are not statutory guards, the petition remains inappropriate on the basis that the petitioned-for employees share an overwhelming community of interest with another classification, the Community Service Officers ("CSOs") who belong to a guard unit represented by a different labor organization.

II. **STATEMENT OF FACTS**

A. The University and Its Department of Public Safety

EXHIBIT NO. E-30 RECEIVED REJECTED
32-RC-184333 Leland Stanford
CASE NO. _____ CASE NAME: So. University
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Stanford University is a world leading educational and research institution located in Stanford, California. Spanning 8,180 contiguous acres, Stanford currently enrolls around 16,000 undergraduate and graduate students. It welcomes more than 150,000 visitors each year. The University has approximately 16,500 benefit-eligible employees.

The Department of Public Safety (“DPS”) provides security, safety, law enforcement, crime prevention, and emergency response services for Stanford’s main campus. No other department within the University carries this responsibility. Laura Wilson, the chief of DPS for the past 14 years, oversees a staff of 70 full-time supervisory and non-supervisory full-time employees, in addition to approximately 100 Special Event Personnel (“SEPs”) who supplement the regular staff for the numerous events held on the University’s campus. DPS employees include both sworn and unsworn officers. Sworn officers are equivalent to regular police officers employed by a state or municipality and are authorized to carry a firearm. Unsworn officers are more equivalent to security guards and do not carry a firearm, though, as discussed below, do carry other weapons. The 17 PSOs whom the Union seeks to represent are unsworn personnel.

In addition to the PSOs, SEPs, and administrative staff, non-supervisory DPS employees include deputies and CSOs. The Deputy Sheriffs’ Association (the “DSA”) union represents the CSOs and the deputies in a unit consisting exclusively of Section 9(b)(3) guards. (Exh. E-3.) The DSA does not represent any employees at the University other than these two DPS classifications. Deputies are sworn officers, while CSOs are unsworn. The CSOs’ duties overlap substantially with the PSOs’. Both classifications consist of unsworn DPS personnel, regularly patrol the campus, wear substantially the same uniform, carry the same tools, use the same vehicles, complete the same reports after each shift, and issue citations to employees and non-employees who violate the law and/or University regulations. (See, e.g. Exhs. E-4, E-8, E-

14.) The employees in the bargaining unit represented by Local 2007 share none of these attributes.

B. SEIU Local 2007

The parties stipulated that Local 2007 is a labor organization that admits to membership non-guards, including approximately 1,186 University employees in over 300 job classifications. (Ex. J-1 at 95-100.) The classifications in the Local 2007 bargaining unit are wide-ranging. They extend from custodians and groundskeepers to costume technicians and book preservers. (*Id.* at 1, 95-100.). Although the Union represents employees throughout the University, Local 2007 represents no DPS employees. The DSA is the only labor organization that represents DPS personnel.

C. The Public Safety Officers

Chief Laura Wilson and PSO Dean Devlugt testified that the Public Safety Officer Position Description accurately depicts the PSOs' duties and responsibilities.¹ As evidenced by their Position Description, PSOs regularly enforce the University's rules and regulations against employees and non-employees alike. PSOs "support the overall public safety mission of the Stanford Department of Public Safety by performing a variety of functions," including "patrolling designated areas of the University by foot, bicycle, motor vehicle or other DOT approved method of transportation for suspicious and/or illegal behavior, safety hazards, unlocked doors, opportunities to assist the public, etc." (Exh. E-5.) Consistent with their Position Description, PSOs act and are treated as guards, as defined by the Act.

1. PSOs Wear a Security Guard Uniform

The PSO uniform consists of a blue button-down shirt with two chest-pockets and an embroidered badge labeled "Public Safety Officer." (Exh. E-14.) PSOs wear dark blue slacks and black shoes. If PSOs wear an undershirt, it must be black or white. PSOs also wear a utility

belt that holds certain tools, discussed *infra*. PSO DeVlugt testified that individuals on campus regularly approach him to seek security guard assistance when he is in uniform. PSOs and CSOs wear substantially the same uniform. (*Id.*)

2. PSOs Use Security Guard Equipment

The PSOs' tools include a two-way radio, pepper spray, a flashlight, a whistle, and, in the event tear gas is deployed, a gas mask. The PSOs' radio is a police radio; it connects directly to Palo Alto Police Department ("PAPD") dispatch. PSOs carry this radio at all times, using it to listen to reports, to communicate with other DPS employees, to report suspicious activity the PSOs observe, and to request assistance from PAPD. PSOs communicate on the radios using police codes. Only DPS personnel carry such a radio and have access to the PAPD dispatch. PSOs do not communicate with Local 2007-represented employees using these radios. PSO DeVlugt testified that he carries the gas mask with him at all times due to PSOs' role in responding to emergencies.

PSOs patrol the campus by walking as well as using several vehicles. The vehicles include bicycles, an electric scooter called a "digglor" that travels over 20 mph, and DPS trucks. The trucks PSOs use resemble police vehicles. (Exh. E-12.) They have a yellow light bar (to distinguish PSOs from the blue lights associated with police), a spotlight, and a seven-point, sheriff-like star. The words "PUBLIC SAFETY" are emblazoned above the rear tires. (*Id.*)

3. PSOs Undergo a Rigorous Background Examination and Training Program

PSOs may encounter confidential information and are privy to the University's confidential security plans. Given this, PSOs are subject to a rigorous background investigation prior to hire. Chief Wilson testified that the background check PSOs must pass as a condition of hire is more than or as extensive as any other background check performed on other non-DPS

personnel. Upon hire, PSOs, as well as the deputies and CSOs in the DSA-represented guard unit, sign a Use of Criminal Justice Information form agreeing not to misuse “confidential criminal records, Department of Motor Vehicle Records, or other criminal justice information which is controlled by either statute of Sheriff’s Office policy.” (Exh. E-9.) Agreements between DPS and Santa Clara County and the Palo Alto Police Department mandate that DPS employees sign such an agreement.

PSO recruits also must complete a 6- to 12-week Field Training Program before becoming a PSO. Many PSOs have a law enforcement background and therefore may require only six weeks of training, while other recruits undergo the full 12-week program. DPS developed an extensive 24-module “PSO Field Training Manual” that is specific to PSO trainees and is based on the field training that law enforcement recruits undergo.² (Exh. E-15.) PSO trainees are evaluated daily based on their progress and must demonstrate proficiency in numerous, enumerated categories in order to graduate, including “Bearing and Command Presence,” “Problem Solving, Decision Making, and Investigative Abilities,” “Report Writing: Organization and Details,” “Interview and Observation Abilities,” “Performance in Stress Conditions,” “Radio: Appropriate Use of Codes,” “Ability to Observe and Detect Suspicious Activity,” and the “Penal Code,” among others. (*Id.* at Module 3.00.)

The PSO training also includes a 6-hour session on the use of department issued OC (oleoresin-capsicum, a.k.a., pepper) spray, which they may use when they “perceive an imminent threat to [their] safety or the safety of another individual.” (*Id.* at Module 20.00.) As part of the training on OC spray, trainees are actually exposed to – *i.e.*, sprayed with – the OC spray that they will eventually carry as PSOs. (*Id.*)

4. PSOs Consistently Enforce the University’s Rules

PSOs split their time between one of approximately 12 rotating assignments and, in all of these assignments, respond to emergent security threats around campus. Regardless of their daily assignments, PSOs consistently maintain a security presence by patrolling the campus for and reporting suspicious behavior and violations of University policy and/or the law. The rules that PSOs enforce apply to employees and non-employees.

(a) The Rotating Assignments

The PSO Shifts and Assignments matrix lists the PSOs' regular assignments. PSOs rotate assignments every six months so that all PSOs are competent to perform all PSO functions.

(i) Foothills Assignment

When on the foothills assignment, PSOs patrol the University's open space preserves, called the foothills, which are open during daylight hours to University employees, students, and members of the public for recreational and educational use. Employees and non-employees must abide by the University's rules that regulate foothill use. These rules prohibit camping, fishing, aerial drone flying, dogs, bikes, swimming and trespassing after hours by employees and non-employees. PSOs enforce these rules and investigate activity that PSOs, based on their training and experience, deem suspicious.

PSOs (and CSOs) complete and submit Daily Activity Reports ("DARs") as a log of their activities on each shift. In addition, PSOs (and CSOs) complete and submit a different form – After Activity Reports ("AARs") – regarding individual events that are out of the ordinary and therefore warrant a separate report. Recent DARs submitted by PSOs Dale Sheeler and Christine Castillo, who currently are assigned to the foothills, contain numerous examples of PSOs enforcing Stanford's rules for the protection of person and property, including on the following occasions:

- March 28, 2016: Officer Castillo patrolled the Dish Trail, “checked if area [around Alpine Gate] is safe,” and performed a “spot check on fence damages & checked for any suspicious activity.”
- April 5, 2016: Officer Sheeler “responded to possible DV [domestic violence]” near the Alpine Gate entrance to the foothills preserves. He reported the activity to a sheriff’s deputy, who “made contact[] with couple involved.” He documented “Situation Code 4,” indicating that the incident was resolved.
- April 12, 2016: Officer Sheeler checked a potential homeless camp and patrolled the trails “for stragglers” before the area closed for the evening.
- April 12, 2016: Officer Castillo conducted a foot patrol in order to check a homeless encampment. She “posted a warning sign” on a tent that she encountered.
- April 19, 2016: Officer Sheeler patrolled residential areas near the foothills, checked and closed gates, and patrolled the trails again for stragglers at the end of his shift.
- April 22, 2016: Officer Sheeler confronted a drone flyer on the trails. He notified dispatch, learned that the individual had been warned of drone flying previously, and escorted the individual to the exit.
- April 23, 2016: Officer Sheeler “confronted and ejected two fishermen.” He also “directed one person @ Stanford Gate not [to] enter with dog” and “directed two parties on Dish trails to exit with their dogs.”

- April 26, 2016: Officer Castillo, along with a DPS sergeant and a DSA-represented CSO, conducted a foot patrol to investigate a potential homeless encampment.
- April 29, 2016: Officer Sheeler investigated a “suspicious vehicle.” Upon investigation, Officer Sheeler concluded that it belonged to “two Stanford wildlife researchers looking for snakes.” He also investigated a “third party report of hearing screaming from the parking area.” He documented: “51-50 screaming, ‘Call the Police!’ 4’10” AFA, black hair, brown eyes, red shirt, black yoga pants, blue shoes, with sister.”
- June 1, 2016: Officer Sheeler “contacted hiker urinating in public.” The hiker “refused to present ID and hid face from photo attempt.” The PSO “Escorted hiker out of area.”
- July 8, 2016: Officer Sheeler encountered and ejected six individuals who were swimming and a drone flyer. He also ejected 66 trespassers on the premises after hours.

(ii) Barricade Assignment

PSOs performing barricade duties not only set up barricades but also remain posted at the barricades in order to establish a perimeter and prevent individuals from crossing. For example, when President Obama visited the University on June 24, 2016, nine PSOs, along with deputies and CSOs in the existing guard unit, participated in the security effort. Specifically, PSOs set up barricades to create a “motorcade shoot” in order to ensure that the presidential motorcade had a safe and unobstructed path. As the motorcade passed, PSOs were posted at the barricades, facing onlookers, in order to prevent individuals from obstructing the motorcade.

(iii) Beat, Palm Oval, and Rover Assignments

Five of the assignments on the matrix are labeled Beat 1 through Beat 5. Each beat accounts for approximately 20% of the University's main campus, excluding the foothills. Palm Oval refers to a central campus area adjacent to the main quad and key university buildings such as the president's office, and Rover refers to a general patrol without a pre-designated geographic area. When on these assignments, PSOs patrol the campus either in a vehicle (e.g. Exh. E-12) or on foot issuing citations for parking and permit infractions, investigating suspicious activity, and maintaining a security presence on campus.

During the Beat 1 through 5 assignments, PSOs routinely issue citations against individuals who violate Stanford's rules, regardless of whether those individuals are Stanford employees, students, or visitors. Due to a memorandum of understanding between the University and Santa Clara County, citations issued by DPS personnel for violations of the University's parking regulations carry the force of law and affect recipients' Department of Motor Vehicles record in the same manner as a citation issued by an officer of a municipal police department. Pursuant to the memorandum, only Chief Wilson may authorize University employees to issue legally binding citations. Chief Wilson has empowered most DPS personnel, including PSOs, CSOs, SEPs, and deputies, to issue citations (Exh. E-8.) Chief Wilson has authorized no individuals represented by Local 2007 to issue citations. Over the two-year period ending September 1, 2016, DPS personnel issued 57,152 parking citations. (*Id.*) The individual who issued the most citations over this period is a CSO in the DSA-represented guard unit. (*Id.*)

Officer DeVlugt testified that PSOs enforce the University's parking rules against employees in the Local 2007 bargaining unit. In response to questioning by Hearing Officer Parnell as to whether Officer DeVlugt interacts with employees in the classifications specified in the recognition clause of the Local 2007 CBA, Officer DeVlugt recalled an instance in which he

issued citations to several SEIU-represented book preservers. Indeed, he said that other Stanford employees are often the worst offenders.

(iv) **Pedestrian Zone Assignment**

When on the pedestrian zone assignment, PSOs are posted at a stationary location in order to direct traffic, maintain a security presence on campus, watch for suspicious behavior, ensure that unauthorized persons do not enter University buildings, and enforce Stanford's rules regarding commercial photography. PSOs on this assignment also enforce bicycle safety rules. During their field training, PSOs learn that at Stanford, "bicycles can go anywhere people go While the 20,000 bicycles on campus are not currently precluded from any area, they present a significant safety hazard to pedestrians, as well as to themselves." (Exh. E-15.) PSOs mitigate this safety hazard. They prohibit bicycle riding in the arcades of the Main Quad quadrangle, encourage bicycle parking in bicycle racks only, and promote safe and sane bicycle riding in the Pedestrian Zone. PSOs also protect pedestrians from vehicles by maintaining traffic control and encouraging alternative transportation. Through these duties, PSOs reduce the potential for accidents on the Stanford campus. In addition, PSOs enforce the University's rules regarding abandoned bicycles. Per these regulations applicable to employees and non-employees alike, bicycles parked in the same location for two weeks are subject to removal. This reduces incentives for criminal activity on campus and thereby fosters a safer campus environment.

(v) **Other Assignments**

PSOs assigned to the TMU Buses, Campus@Lasuen, and Palm@Roth rotations enforce the University's tour bus rules. The Signs assignment involves posting and removing special event signs, no parking, and tow away signs, while the Meters assignment includes collecting currency from parking meters. While on these assignments, PSOs, in addition to performing the designated task, remain vigilant for suspicious behavior and help to create a safe atmosphere by

maintain a security presence. As Chief Wilson testified, “parking is the task; security is the function.” Officer Devlugt confirmed that while on the signage assignment, for instance, he is constantly on the lookout for and reports suspicious activity on his radio and that individuals on campus approach him seeking assistance. Moreover, as with the other assignments, PSOs will deviate from these regular assignments in order to respond to calls for assistance received over the two-way radios. (See, e.g. Exh. E-11, DARs showing that PSOs departed from their regular assignments in order to respond to bomb threat.)

(b) Responding to Emergent Security Events

The assignments reflect PSOs’ designated task for a six-month rotation. PSOs, however, are regularly pulled off their regular assignment in order to address emergent security concerns as they arise. As demonstrated by the recent examples below, PSOs play a central security function at the University by enforcing the University’s rules against students, employees, and visitors alike.

(i) PSOs Guarded the President’s Office During a Demonstration In Which Local 2007 Participated

In late 2015, SEIU Local 2007 officials participated in a student-led sit-in occurring on the main quad. Although the purpose of the student-run event was to urge the University to divest from its fossil fuel investment holdings, the Union’s Executive Director, Francisco Preciado, along with employees and students, attended the protest on November 20, 2015, brought pizza for those in attendance, and urged those present to support the Union’s efforts to raise wages and support other Union initiatives.

PSOs played a vital role in providing security for the event. PSOs Castillo and Menge were stationed at the front and rear entrances to Building 10, which is located on the main quad and houses the President’s office. (Exhs. E-17 at 2-3; E-1.) PSOs were tasked with ensuring that

no participants in the rally – whether students or employees – entered Building 10 without authorization.

(ii) PSOs Provide Security During Strikes

DPS Lieutenant Chris Cohendet testified that he participated in the planning for a potential strike by Local 2007 during the last round of contract negotiations in Summer 2014. Lieutenant Cohendet testified that PSOs were slated to provide security in the event SEIU-represented employees went on strike.

(iii) PSOs Guard University Personnel and Students in Response to Known Threats.

PSO DeVlugt testified that, for approximately the last two weeks, he has guarded the Provost's residence each night in response to reports of a suspicious individual seen in the vicinity. (Ex. E-10.) Specifically, from approximately 7:30pm to 6:30am, Officer DeVlugt has patrolled the multi-acre grounds and inspected the perimeter using his DPS-issued Chevrolet pick-up truck. Officer DeVlugt also testified that he personally identified, based on his "experience and training," the adjacent Safeway parking lot as the likely area from which an individual would stage a breach of the grounds. As a result, Officer DeVlugt included the supermarket among the areas he patrolled. (*Id.* at 3.)

PSOs also act as the security detail for students and employees against whom threats have been made by following the threatened individual around campus, usually in plainclothes so as to not draw attention. This type of security detail is typically performed at the request of the University. The DARs of PSOs Jose Israel Magallon-Marquez, Marisol Hernandez, and Natira Johnson all reflect that they served as a security escort during April 2016.

PSOs also monitor individuals who have been banned from campus for engaging in threatening behavior. For example, when one such individual was banned from campus, the

individual was permitted to return only to access his post office box at the United States Post Office branch located on campus. In order to check the individual's mail, the individual was required to check in to DPS, and a PSO would then escort the individual to and from the post office. The DARs of PSOs Pedro Campos, Christine Castillo, Manuel Bettencourt, and Chris Menge reflect that they escorted this individual to and from the post office in April and May 2016.

(iv) PSOs Respond to Crisis Situations

In August 2015, PSOs played a part of the University's response to a bomb threat at the Graduate School of Business. (Ex. E-11.) PSO DeVlugt testified that he and other PSOs patrolled the surrounding streets looking for suspicious behavior and to enforce the perimeter that had been established to keep both employees and non-employees out of the evacuated area. The DARs of PSOs Castillo, Hernandez, Menge, Bettencourt, Carol Pierce, Campos, Richard Urso, Magallon, and Barnes all reflect that they served on the University's response team during the bomb threat. (*Id.*) The PSOs were pulled from their regular, six-month rotations in order to respond to the bomb threat. (*Id.*)

(v) PSOs Respond to Crimes In Progress

PSOs are trained not to seek out and confront suspected criminals when crimes are in progress, when possible. Instead, PSOs generally maintain visual contact and report crimes in progress to police dispatch. Given their uniform and security presence, members of the community regularly report suspected criminal activity to the PSOs. For example, on June 27, 2016, PSO Lorraine Soto entered on her DAR that she was "flagged down for a bike theft in progress" and then "called for a deputy." PSOs Barnes, Campos, and Magallon also responded to the reported crime.

5. PSOs Receive Priority in University Housing Benefits

Given the high cost of living near the University, Stanford offers certain employees subsidized housing on a priority system. Chief Wilson testified that high level University officers and faculty receive first priority. PSOs, among other DPS classifications, receive second priority, over other University employees, due to the public safety role they play at the University. In the event of an emergency, the University relies on PSOs as first responders and needs PSOs to be available promptly.

III. ARGUMENT

The Union's petition should be dismissed because it violates Section 9(b)(3). Local 2007 has stipulated that it admits to membership employees who are not guards. Therefore, the Regional Director can only process Local 2007's petition if he determines that the PSOs are not guards under the Act. The overwhelming evidence introduced at the hearing, however, clearly demonstrates that the PSOs easily qualify under the Board's standards as guards under the Act. Even if the Regional Director were somehow to conclude that the PSOs are not guards, Local 2007's petition should still be dismissed because the Union seeks to add PSOs to a bargaining unit with which they share no community of interest.³ Rather, PSOs share an overwhelming community of interest with the CSOs, who are represented by a different union.

A. PSOs Are Guards Under The NLRA.

Section 9(b)(3) of the NLRA defines a guard as "any individual employed . . . 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." 29 U.S.C. § 159(b)(3). This prohibition addressed Congress' concern with potential conflicts of interest during times of industrial unrest and strike. *Burns Sec. Servs.*, 278 NLRB 565, 569 (1986); *see also McDonnell Aircraft Corp.*, 109 NLRB 967, 969 (1954) (Section 9(b)(3) reflects Congress's intent to ensure that during a strike an employer would have "a core of plant protection employees who could enforce the employer's rules for protection of his property and persons thereon without being confronted with a division of loyalty between the employer and dissatisfied fellow union members."). In such cases, "the

obligations of the . . . guards to the [employer] would be incompatible with their obligations to the Union which, since it represents [non-guard] employees, authorizes and directs the strike.” *Burns.*, 278 NLRB at 569.

In determining whether employees are guards under the Act, the Board looks at whether such employees’ job duties are “typically associated with traditional police and plant security functions, such as the enforcement of rules directed at other employees; the possession of authority to compel compliance with those rules; training in security procedures; weapons training and possession; participation in security rounds or patrols; the monitor and control of access to the employer’s premises; and wearing guard-type uniforms or displaying other indicia of guard status.” *Boeing Co.*, 328 NLRB 128, 130 (1999). The percentage of time employees spend on such duties is not determinative. Rather, the focus of the inquiry “is whether the disputed employee engages in guard responsibilities that are not a minor or incidental part of their overall responsibilities.” *Id.*

Applying these standards, the Board has found guard status despite substantially fewer guard indicia than the PSOs demonstrate here. In *Madison Square Garden*, 333 NLRB 643 (2001), for example, the petitioner sought to represent a group of employees with the job title “supervisor.” The Board found guard status based on the supervisors’ patrolling of an assigned area, carrying an open microphone and two way radio, responding to calls for assistance, contacting the police if a security issue presented itself, and detaining and/or ejecting people from the employer’s premises. Unlike the PSOs here, however, the employees at issue in *Madison Square Garden* spent as little as 15% of their time performing such duties, wore no guard uniforms, received no special security guard training, and lacked authority to eject a patron who violated the employer’s rules. Nonetheless, the Board found that the employees were guards under Section 9(b)(3).

Unlike the employees at issue in *Madison Square Garden*, the PSOs meet all of the factors for finding guard status that the Board identified in *Boeing*. First, the PSOs enforce rules directed at employees and non-employees alike. PSO DeVlugt, a member of the petitioned-for

unit, testified that he has, in fact, enforced the University's parking rules against the book preservers who are represented by Local 2007. Indeed, he testified that other employees are often the "worst offenders" of the rules PSOs enforce. The University's rules regarding fishing, camping, aerial drones, fire prevention, and access to the fieldsites, for example, apply to both employees and non-employees. Similarly, when PSOs give an order not to cross a barricade or other perimeter PSOs have established, employees and non-employees are expected to abide by that directive. In addition, and unlike the statutory guards in *Madison Square Garden*, the PSOs here have the authority to and in fact do personally remove individuals who violate the University's rules, as reflected on the DARs of PSOs who ejected public urinators and repeat drone flyers from University property. Second, and also in contrast to *Madison Square Garden*, the PSOs undergo an extensive multi-week training in security guard procedures. The University developed a comprehensive PSO Field Training Manual specifically tailored to the PSO classification. Third, PSOs are trained to use and carry tools, including weapons, associated with security personnel. PSOs carry pepper spray as part of their daily gear and are trained on how to use it – and are even exposed to it – during their training. Other PSO tools include a gas mask, a whistle, and a two-way radio that connects directly with police dispatch, all of which indicate the PSOs' guard function. Fourth, PSOs constantly participate in security rounds or patrols. Indeed, all of the regular assignments involve patrolling the campus to enforce the University's rules, investigate potential misconduct, and maintain a security presence around campus. In addition, PSOs are often pulled off their regular assignments in order to engage in other patrolling activity, including to protect the Provost's house, to monitor individuals banned from campus, and to protect students and employees against individuals who have made threats. Fifth, PSOs monitor and control access to Stanford's premises. The PSOs control access to the fieldsites and prevent unauthorized entry to University buildings—including during demonstrations involving SEIU. Indeed, the PSOs' role in guarding the University President's office while the Union's Executive Director participated in a rally mere feet away goes to the heart of Section 9(b)(3). If, for instance, employees who were present at the rally interpreted (or misinterpreted) Mr. Preciado's

call for increased wages as a cry to take that concern directly to the President, the PSO, should the Regional Director allow the petition to proceed to an election after which the Union is certified, would have been “confronted with a division of loyalty between the employer and dissatisfied fellow union members.” *McDonnell Aircraft.*, 109 NLRB at 969. This is exactly the situation that Congress sought to prohibit when it enacted Section 9(b)(3). Sixth, PSOs wear guard-type uniforms as they conduct their patrols and carry out their other responsibilities. Given this, individuals around campus approach the PSOs when in need of security assistance. Seventh, the PSOs demonstrate other indicia of guard status. They act as first-responders during campus emergencies and therefore receive priority over other employees for subsidized housing to ensure that PSOs are nearby. During the August 2015 bomb threat, for example, PSOs maintained a perimeter to ensure that employees and non-employees stayed out of the evacuated area. Moreover, the similarities between the PSO and CSO classification, which belongs to an admitted guard unit, further indicates the PSOs’ guard status.

In sum, based on the mountain of direct evidence submitted during the hearing, the PSOs qualify as guards under the Act. Given that Local 2007 indisputably represents non-guard employees, the Regional Director should dismiss the petition.

- B. Even Assuming *Arguendo* that the PSOs Are Not Statutory Guards, the Petitioned-For Unit Remains Inappropriate Because PSOs Share An Overwhelming Community Of Interest With CSOs, Who Are Currently Members Of An All Guard Unit.

A petitioned-for unit is inappropriate if the proposed employees in the petitioned for unit share an overwhelming community of interest with excluded employees. *Specialty Healthcare & Rehab. Ctr. of Mobile*, 357 NLRB 934, 942 (2011). In determining whether a community of interest exists, the Board focuses on a variety of factors including, “[w]hether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent

contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.” *Id.*

Here, PSOs share an overwhelming community of interest with CSOs. Specifically, both PSOs and CSOs work in DPS and report ultimately to Chief Wilson, while no employees in the unit to which the Union seeks to add the PSOs work in that department.⁴ CSOs and PSOs also communicate (through police dispatch) using the same two-way radios and file the same activity reports, while no Local 2007-represented employees communicate using these radios or file the same reports. In addition, CSOs’ and PSOs’ duties overlap substantially. Both PSOs and CSOs:

- Are unsworn DPS personnel;
- Patrol designated areas of the University by foot, bicycle, motor vehicle or other method for suspicious and/or illegal behavior, safety hazards, unlocked doors, opportunities to assist the public, etc. and report hazardous conditions and suspicious circumstances; (Exhs. E-4 and E-5.)
- Provide directions to community members and visitors; look for suspicious and/or illegal behavior, and/or safety hazards; maintain a daily log of events and incidents, and document attendance counts (*id.*); and
- Provide traffic control, security or logistical support during emergencies and special events. Post no-parking signs, deploying cones, flares and barricades, towing barricade trailers, setting up generators and other emergency response equipment (*id.*).

Moreover, PSOs work under the same working conditions, often side by side. (See Exh. E-14, depicting PSO and CSO wearing the same uniform and using the same equipment while patrolling the main quad side-by-side.) The community of interest between the PSOs and the CSOs is overwhelming. As such, it would be inappropriate for the Regional Director to process Local 2007 petition.

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IV. CONCLUSION

For the reasons stated above and as further explained at the hearing, Stanford respectfully requests that the petition be dismissed because the evidence demonstrates that the PSOs are guards under the Act. Even if the Regional Director should find that insufficient evidence exists to conclude that the PSOs are guards, the petition should still be dismissed because it seeks to include the PSOs in an inappropriate unit.

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