

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 25

SECURITAS SECURITY SERVICES USA, INC.

Employer

And

Case 25-RC-259478

CHAUFFEURS, TEAMSTERS, AND HELPERS  
LOCAL UNION NO. 215

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (Act), a hearing on this petition was conducted before a hearing officer of the National Labor Relations Board (Board) to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.<sup>1</sup>

Securitas Security Services USA, Inc. (Employer) provides protective and security services and personnel, including for Toyota Motor Manufacturing of Indiana in Princeton, Indiana (TMMI), the only site at issue here. Chauffeurs, Teamsters, and Helpers Local Union No. 215 (Union) seeks to represent a unit of all full-time and regular part-time Emergency Response Officers (EROs) and Fire Inspectors employed by the Employer and dispatched to work at TMMI; but excluding all lieutenants, captains, and chiefs, office clerical employees, and professional employees and guards and supervisors as defined in the Act.

I. ISSUES AND PARTIES' POSITIONS

The Employer argues the petitioned-for unit of EROs and Fire Inspectors, which consists of approximately 22 employees, are guards within the meaning of Section 9(b)(3) of the Act and,

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<sup>1</sup> Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The Petitioner is a labor organization within the meaning of the Act.
- d. The Petitioner seeks to represent certain employees of the Employer in the unit described in the petition it filed herein, but the Employer declines to recognize the Petitioner as the collective-bargaining representative of those employees.
- e. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

therefore, cannot be represented by the Petitioner, as it currently represents nonguard employees. The Employer also contends that Fire Inspectors are supervisors within the meaning of Section 2(11) of the Act. The Petitioner maintains EROs and Fire Inspectors are neither guards nor supervisors as defined in the Act.

## II. DECISION

As explained below, based on the record and relevant Board law, I find the Employer's EROs are guards within the meaning of Section 9(b)(3) of the Act. As the Petitioner admits into membership nonguard employees, the petitioned-for unit is inappropriate for the purposes of collective bargaining. Regarding the Fire Inspector, no evidence was introduced at the hearing regarding the duties of the Fire Inspector, and the parties did not stipulate as to the status of the Fire Inspector in the event it was determined that the EROs were guards under the Act. Thus, no finding can be made regarding the guard and/or supervisory status of the Fire Inspector. However, since only one individual holds the position of Fire Inspector, it is appropriate to dismiss the petition as to that position as well since the Board has long held that it is contrary to Board policy to certify a representative for bargaining purposes in a unit consisting of only one employee. *KCAL-TV*, 331 NLRB 323, 325 (2000) (citing *Mount St. Joseph's Home for Girls*, 229 NLRB 251, 252 (1977); *Sonoma-Marin Publishing Co.*, 172 NLRB 625, 626 (1968)).

## III. THE EMPLOYER'S OPERATION

An outside contractor has provided protective and security services to TMMI since at least 1998. Around 2001, TMMI began requiring that contractor to also provide firefighters with emergency medical training, which are now called EROs.

The Employer provides protective and security services to TMMI throughout its property, including its approximately 6-million-square-foot main building at 4000 Tulip Tree Drive and approximately ten outbuildings, some of which are controlled by contractors such as Vuteq and Vuteq Diversity. On a given day, TMMI hosts approximately 10,000 people. Access to the property is controlled by five vehicle gates. The fire station and safety trailer are located northeast and southeast of the main building, respectively, while Central Dispatch, also known as Central Security, is on the main building's westside. Central Dispatch houses a radio control officer (dispatcher) and a window central officer (customer service). An ERO office is currently being built on the eastside of the main building to house an additional medical cart in an effort to reduce emergency response times.

David Skau is the project manager, also known as a site manager, in charge of the Employer's entire operation at TMMI. The fire chief and security chief both report to Skau. Fire Chief Ross Emery oversees the assistant fire chief, ERO captains or shift supervisors, the fire inspector and approximately 20 EROs while Security Chief Jeff Mason oversees security lieutenants and captains, and approximately 40 gate and mobile patrol officers (security officers). Emery and Mason substitute for one another; however, ERO witnesses testified they rarely if ever directly reported to Mason.

The Employer and TMMI use a web-based activity and incident reporting program called Perspective. Security officers and EROs' regular activities (e.g., an uneventful patrol) are logged while a dispatcher will create an incident number for fire, hazardous material (hazmat), medical, and security issues. Once an incident is created in Perspective, generally the first ERO or security officer on the scene will complete the incident report.

A. EROs (Emergency Response Officers)

An ERO must possess the following minimum certifications: Firefighter I, Hazmat First Responder Awareness, and either Emergency Medical Technician or Emergency Medical Responder.

The Employer has three 24-hour ERO crews, consisting of four to five people, including one captain or shift supervisor.

There are two full-time nightshift EROs—one works 3:00 p.m. to 11:00 p.m., the other works 11:00 p.m. to 7:00 a.m. or 10:00 p.m. to 8:00 a.m. depending on the day. The nightshift EROs perform the same functions as Building EROs (see below) with the additional duties of checking, closing, and opening certain office areas at 6:00 p.m. and 6:00 a.m. If a nightshift ERO discovers an open laptop—a violation of TMMI rules—a note is left for the employee. Multiple violations lead the ERO to make a report to the employee's manager.

Two part-time flex EROs cover when the Employer is shorthanded (e.g., vacations or additional projects).

The 24-hour EROs work a modified Kelly shift schedule<sup>2</sup> that starts at 7:00 a.m., although the incoming EROs generally meet the shift-change vehicle at TMMI around 6:45 a.m., which then drives them to the fire station to relieve the outgoing crew. The incoming EROs check their equipment (e.g., self-contained breathing apparatuses) and generally head to their assignments by 7:30 a.m. The 24-hour EROs assignment ends around 3:00 p.m. when they return to the fire station for their weekly training, followed by dinner and physical conditioning, then personal downtime until lights out at 10:00 p.m. However, 24-hour EROs respond to emergency calls at any time during their shift.

An ERO is assigned to one of four positions—Building, Float, Outside Inspector (not to be confused with the Fire Inspector), or Fire Station—with their assignment rotating each shift.

1. Building and Float EROs

The Building ERO is assigned to patrol inside the main TMMI production facility while the float ERO also patrols inside the main building but may also cover for the Outside Inspector

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<sup>2</sup> The Kelly schedule is a 9-day schedule of 24 hours on, 24 hours off, 24 hours on, 24 hours off, 24 hours on, followed by four days off.

or Fire Station EROs if the scheduled person is unable to work (e.g., called off or went home sick). At the beginning of their assignment, the Building and Float EROs check their equipment, including stocking medical and fire carts, and then conduct their interior patrols.

The EROs check multiple control panels for visual and audial alarms, including fire alarm control panels (FACPs), process control panels, thinner line<sup>3</sup> control panels; inspect risers for proper pressure; check post indicator valves (PIVs) positioning and fire extinguishers. The EROs address any fire-related alarms and report other alarms to Central Dispatch, which then contacts the area in charge of the particular item. For example, maintenance may be alerted to a process control panel alarm or if there is a small leak in the thinner line while a larger leak may require immediate attention as a hazmat incident. Building EROs look for other fire hazards such as daisy chained power cords, blocked exit doors, and poorly illuminated emergency signage.

Building EROs possess keys for about 90% of the doors at TMMI and may be dispatched to unlock doors for contractors.

## 2. Outside Inspector

The Outside Inspector performs many of the same checks as the Building ERO except in the outbuildings and the exterior of the main building. They check control panels, PIVs, risers, and fire extinguishers. They check the bulk carbon dioxide tanks that supply fire suppression for the paint mix rooms and the fire pumps in the pump room. The Outside Inspector ensures vehicles are not blocking hydrants, PIVs, or the routes out of the fire station. They address fire-related alarms and report other alarms to Central Dispatch. They also check the perimeter fence for holes and report instances of graffiti.

All available employees of the Employer, including EROs, respond to security breaches (e.g., an unauthorized person or vehicle coming through a gate). The Outside Inspector also deals with hazmat and medical responses related to vehicles on site (e.g., car accidents).

Under current TMMI guidelines, if EROs (or security officers) see handbilling they should ascertain the identity of the handbillers. TMMI employees are allowed to handbill while others should be escorted off the premises.

## 3. Fire Station

The Fire Station ERO staffs the fire station and is responsible for checking and maintaining its equipment and the two fire engines, making sure they are full of water and fuel, the pump and sirens work, and medical supplies are fully stocked. They also ensure tools in the

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<sup>3</sup> The thinner lines are pipes transporting liquid such as brake fluid, antifreeze, paint thinner from the tank farm to and through the main building.

toolbox (e.g., hand tools, extrication tools) are operable. If something is not functioning properly, the ERO notifies his captain or the fire chief.

After completing the various checks, the Fire Station ERO will clean the vehicles and fire station, sweeping and mopping the floors, cleaning the kitchen and bunkroom. They also print out the weekly training materials.

#### A. Emergency Calls and Incidents

EROs are the only employees certified to respond to emergency calls such as medical emergencies, hazmat incidents (e.g., battery acid or hydraulic fluid spills), odor investigations (e.g., reports of smoke or natural gas), and fires. Two ERO witnesses estimated that 25% to 30% of their job is responding to emergency calls, and a 6-year ERO testified that medical emergencies are a majority of the emergency calls he receives. According to a summary of incidents in Perspective covering the past year, EROs had over 2,500 medical responses, over 200 fire responses, and 280 hazmat responses.

The EROs wear fire-specific gear, also called turnout gear, when responding to emergency calls. Turnout gear includes a fire helmet and coat, Nomex hood and gloves, and bunker pants.

#### B. Permitting

The record references three types of permits EROs administer: Confined Space, Grate Removal and Floor Opening, and Hot Work. TMMI establishes the rules and policies for each type of permit and EROs, along with security officers who have received the required training, are responsible for signing off on the permits and monitoring compliance with the associated work. If they notice a violation, they report it to their supervisor, TMMI safety, and the contractor's safety person if a contractor was involved. The safety people along with the reporting ERO or security officer then jointly determine the best way for the work to proceed.

While none of the witnesses directly testified to the frequency that EROs engage in permit-related activities, TMMI provided the Employer with Perspective reports showing the number of permit-related incidents involving EROs from April 24, 2019 through April 29, 2020.

##### 1. Confined Space Permits

EROs dispatched for a Confined Space permit reviews the crew's paperwork and the confined space. Next, they verify the crew has the necessary safety equipment (e.g., harnesses), including an air monitor reading in the allowable range, and a way to communicate with Central Dispatch (e.g., phone or two-way radio). An ERO testified that after signing off on the Confined Space permit, the ERO needed to check back and ensure workers adhere to the rules. If the rules are being broken, the ERO reports it to the Fire Inspector, their Fire Captain, and the Fire Chief.

According to Perspective, EROs were involved with 982 Confined Space permits over the past year.

## 2. Grate Removal and Floor Opening

Contractors and TMMI employees who need access to a grated floor (e.g., to clean it) must have an approved permit, as it creates an unsafe floor opening. Security officers and EROs sign off on the Grate Removal permit, and then log the location. The record is devoid of evidence regarding the monitoring or enforcement related to Grate Removal permits.

## 3. Hot Work Permits

“Hot Work” is anything in its normal operation of work that produces an arc, spark, or flame or anything being performed in a high-hazard area that has the potential to create an arc, spark, or flame; and, therefore, cause an explosion or fire and related damage. Examples of Hot Work are welding, cutting, grinding, brazing or soldering with an open flame, plasma cutters, tar kettles, heating with a torch or open flame, and powder-actuated tools (Hilti-gun). All EROs and some security officers are trained in Hot Work.

Before performing Hot Work in non-designated areas, a person must get a hot work permit. The crew makes a request to Central Dispatch, which sends an employee of the Employer trained in Hot Work to the requested location. That employee checks the area for flammable materials and other hazards, notes any precautionary measures that must be taken before starting the Hot Work (e.g., moving flammable materials or covering them with fire blankets), ensures the availability of the proper fire extinguisher, and verifies Fire Watch is present. All Hot Work must have Fire Watch, a designated person dedicated to monitoring the Hot Work, including 30 to 60 minutes after it is completed, and reporting any indications of a fire. An ERO may act as Fire Watch, although most Hot Work crews have their own, and ERO witnesses testified they performed Fire Watch only a handful of times in their career.

Building EROs and Outside Inspectors intermittently check on the Hot Work while it is being performed. If the Hot Work crew has not taken the prescribed precautionary actions or the ERO notices any other safety violation at the Hot Work site, the ERO stops the work and notifies the Fire Inspector, their Fire Captain, and the Fire Chief.

The Hot Work rules apply to everyone at TMMI (e.g., team members, contractors, vendors, suppliers), and violations can result in the removal of the contractor, a 30-day suspension from TMMI, and even a permanent ban. When a Hot Work violation occurs, an ERO stops the work, notifies their supervisor, TMMI Safety, and the contractor’s safety supervisor. The supervisors and TMMI get together to discuss if and how the Hot Work may proceed.

EROs logged nearly 2,500 incidents related to Hot Work in Perspective over the past year.

A. Security Officers<sup>4</sup>

The Employer has two frontline security positions: gate officers and mobile patrol officers. Gate officers staff the five access points to TMMI and control vehicle ingress and egress 24 hours a day, seven days a week. They check entrants for active badges and proper paperwork. If someone seeking access does not have a badge the gate officer will call for an escort, which could be a mobile patrol officer or ERO. Gate officers inspect vehicles to make sure they are not leaking fluids, bringing in contraband (e.g., live freight), or removing unapproved TMMI property. They also monitor the parking lots near the gatehouses and report TMMI rules violations and unsafe and suspicious activity to Central Dispatch.

EROs cover for gate officers; however, all four current ERO witnesses testified that they did so only a couple times a year. Similarly, EROs can voluntarily pick up gate officer shifts, but the record contains only one example of an ERO working one week's worth of gate officer shifts.

Mobile patrol officers or roving security officers patrol all areas outside the main building, including outbuildings and outdoor spaces. They also patrol the main building at night when the 24-hour EROs. According to Mason, patrols consist of checking for any leaks, blocked fire hydrants, blocked PIVs, blocked doors and exits, any unlocked doors that are supposed to be locked, any signs of forced entry. Inside the outbuildings, patrols confirm TMMI equipment appears to be running correctly and check the risers and fire panels and equipment control panels for visual and audial alarms. If there are alarms or anything is amiss, the mobile patrol officer reports it to Central Dispatch who then contacts the appropriate people (e.g. the equipment or EROs).

Mobile patrol officers may be dispatched to respond to any type of hazard calls, escorts and gate removals, lockout-tagout issues, sign material passes and shipping papers. They can also be dispatched to sign permits for Hot Work, Confined Spaces, and Grate Removal if they have the necessary training.

B. Other Duties, Equipment, and Training

Security officers and EROs both have basic safety equipment such as a high-visibility vest, hard hats, safety glasses, and steel-toed shoes, along with a blue nylon paint suit and Kevlar sleeves. They wear the same grey polo shirt, which identifies them as employees of the Employer; however, EROs are allowed to wear a fire-specific navy-blue t-shirt during nonproduction times such as weekends and shutdown and often wear this t-shirt underneath their

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<sup>4</sup> While no current security officers testified at the hearing, several witnesses had previously worked as gate officers, and Security Chief Mason also worked as a security sergeant and captain for 14 years before he became chief.

Employer-branded polo during production. Neither the EROs nor Security Officers carry firearms.

The EROs receive security-related training about once per month. Topics listed in the record include breaches, suspicious and unwanted activity, workplace violence, gate operations, material pass and shipper training, active shooter training.

According to Perspective records for the past year, EROs attended to over 200 escorts, including twice removing individuals from TMMI. They also responded to six requests for security presence, nineteen reports of suspicious or unwelcome activity, nine reports of theft, and four reports of threats or violence.

#### IV. BOARD LAW

Section 9(b)(3) of the Act prohibits the Board from certifying a union as the collective-bargaining “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.” The Petitioner represents and admits nonguards into its membership. Thus, the only issue is whether the Employer’s EROs are guards under the Act.

The Board reiterated the factors it uses when determining whether an employee is considered a guard in *Boeing Co.*, 328 NLRB 128 (1999).

Guard responsibilities include those 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. [Internal citations omitted.]

Id. at 130. However, the definition of “guard” within the meaning of the Act is not limited to employees who protect only against the conduct of their fellow employees. Section 9(b)(3) provides that an employee must “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” (emphasis added). See also *American District Telegraph Co.*, 160 NLRB 1130, 1136 (1960); *Petroleum Chemicals, Inc.*, 121 NLRB 630 (1958).

Although the Board uses the phrase “traditional police and plant security functions,” it does not require guards to wear uniforms, carry weapons, or receive special training to be considered guards. Nor does indicia such as the use of a guard- or security-related job title alone confer guard status. *Ford Motor Co.*, 116 NLRB 1995, 1997 (1956). Rather, the Board finds employees to be guards if they have a significant, versus minor or incidental, role in monitoring and controlling access to the employer’s premises or property, even if they do not have authority to independently enforce the rules. *Rhode Island Hospital*, 313 NLRB 343, 347 (1993) (security officers, traffic control guards, and security dispatchers were statutory guards where they

protected the employer's property and the safety of persons on the property by regularly checking the premises and were administratively placed within the security department).

The Board has found employees are statutory guards where they, for instance, wear a distinctive uniform and identification badge, carry a two-way radio to stay in constant communication with one another, and regularly enforce rules against patrons and staff in order to protect the employer's facility. *Madison Square Garden*, 333 NLRB 643, 645 (2001). Under longstanding Board law, individuals employed for security purposes to protect the safety of persons on the employer's premises and to keep unauthorized persons off the property are guards within the meaning of Section 9(b)(3). *A.W. Schlesinger Geriatric Center, Inc.*, 267 NLRB 1363, 1364 (1983).

In *Wackenhut Corp.*, 196 NLRB 278, 278-279 (1972), the Board found employees to be guards even where they "do not themselves have the power of police to ultimately determine and compel compliance by violators," as long as they possess and exercise responsibility to observe and report infractions. See also, *Wright Memorial Hospital*, 255 NLRB 1319, 1320 (1980) (ambulance department employees were guards where they made regular hospital rounds searching for fire, theft, vandalism, unauthorized personnel, and to make sure doors were locked, but could only report detected infractions to the department head); *Crossroads Community Correctional Center*, 308 NLRB 558, 561 (1992) (finding correctional counselor to be a guard because in monitoring entrance to the employer's work-release facility and searching visitors and residents for contraband, the counselor enforced against employees, residents, and other persons rules to protect the safety of persons on the employer's premises and keep unauthorized persons off the premises). Thus, employees are guards if they are "directly responsible for being alert to any incident, situation, or problem which needs responsive action and for reporting such incidents to the proper authorities" (emphasis in original). *Rhode Island Hospital*, above at 347 (citing *MGM Grand Hotel*, 274 NLRB 139 (1985)).

## V. APPLICATION OF BOARD LAW TO THIS CASE

While the primary functions of the EROs are protecting TMMI from fire hazards and responding to medical emergencies, their reporting of rules violations and enforcement of rules, particularly related to permitting which can result in the removal of persons from TMMI, are neither minor nor incidental.

The EROs regularly perform duties solely for safety and security purposes. There are no other security personnel patrolling the 6-million-square-foot main building. As described above, EROs are explicitly tasked with making rounds inside and outside the main building and to specifically check for and report security issues such as unlocked doors, fence holes, unauthorized people, graffiti, etc. These activities confer guard status on them based on their responsibility for being alert to any incident, situation, or problem and for reporting such incidents to the proper authorities. See, for example, *Rhode Island Hospital*, above at 346-347 (finding shuttle van drivers to be guards where, despite primary duty of transporting employees, they were "also charged with the responsibility of being on the lookout for and reporting security problems or rules violations"). In view of their duties, the EROs serve as essential links in the

Employer's effort to protect TMMI property, employees, and visitors, and the property of those persons.

The EROs are required to write a report over any incident to which they are the first or primary person on site, including security breaches, suspicious or unwanted activities, threats or workplace violence, and permit violations. Although the EROs do not possess authority to take independent action concerning acts of misconduct, and supervisory or safety personnel are largely responsible for further investigation and all disciplinary consequences once reported by the EROs, the Board has long held that guard status is not dependent on the ability to take independent action. Rather, "it is sufficient that they possess and exercise responsibility to observe and report infractions." *Supreme Sugar Co., Inc.*, 258 NLRB 243, 245 (1981) (other citations omitted). That these EROs possess and exercise responsibility to observe and report infractions is an essential step in the procedure for enforcement of TMMI's rules. See *A. W. Schlesinger*, above at 1364. The EROs' reporting duties with regard to misconduct and TMMI rules violations and enforcing the permitting criteria are undoubtedly for security purposes, and in performing such duties they enforce rules to protect the Employer's property and for the protection and safety of those on the Employer's premises within the meaning of Section 9(b)(3).

In light of the above, I conclude that the EROs are employed as guards within the meaning of Section 9(b)(3) of the Act. They constitute an essential part of the Employer's security procedures for protecting the TMMI facility, employees, and visitors. In carrying out the Employer's and TMMI's security procedures, they regularly perform security functions which require them to enforce rules against others in order to protect the TMMI facility as well its employees and visitors while at the facility. As Petitioner represents employees not considered to be statutory guards, it is not qualified under Section 9(b)(3) to represent the employees sought by the petition.

#### VI. ORDER

It is hereby ordered that the petition in this matter is dismissed.

#### VII. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by **June 17, 2020**.

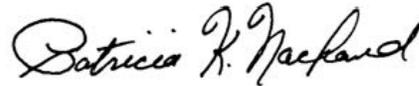
A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.<sup>5</sup> A party filing a request for

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<sup>5</sup> On October 21, 2019, the General Counsel (GC) issued Memorandum GC 20-01, informing the public that Section 102.5(c) of the Board's Rules and Regulations mandates the use of the E-

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.

Dated: June 3, 2020



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filing system for the submission of documents by parties in connection with the unfair labor practice or representation cases processed in Regional offices. The E-Filing requirement went into immediate effect on October 21, 2019, and the 90-day grace period that was put into place expired on January 21, 2020. Parties who do not have necessary access to the Agency's E-Filing system may provide a statement explaining the circumstances, or why requiring them to E-File would impose an undue burden.