

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

**GOLDEN SVCS, LLC
Employer**

and

**INTERNATIONAL GUARDS UNION OF
AMERICA, LOCAL NO. 3
Petitioner**

and

**INTERNATIONAL UNION, SECURITY, POLICE,
AND FIRE PROFESSIONALS OF AMERICA
(SPFPA) AND ITS AMALGAMATED LOCAL NO.
109
Intervenor**

Case 10–UC–269025

DECISION AND ORDER

I. INTRODUCTION

On November 16, 2020, Petitioner International Guards Union of America, Local No. 3 filed a unit clarification petition pursuant to Section 9(c) of the National Labor Relations Act, seeking to add security officers of Employer Golden SVCS, LLC—whom Intervenor International Union, Security, Police, and Fire Professionals of America (SPFPA) and its Amalgamated Local No. 109 currently represents—to Petitioner’s existing bargaining unit of security police officers working for the Employer in Oakridge Park, Tennessee. The Employer and the Intervenor contend that the petition should be dismissed.

A hearing officer of the National Labor Relations Board conducted the hearing in this matter on December 4 and 7, 2020, via videoconference. The parties timely submitted post-hearing briefs. Pursuant to the provisions of Section 3(b) of the Act, I have the authority to decide this matter.

Having considered the entire record, I have concluded that a unit clarification proceeding is not the appropriate vehicle for the Petitioner to achieve what it seeks. Accordingly, I will dismiss the petition. To give context for my discussion of this matter, I begin with facts related to the Employer’s operations, the Petitioner’s and the Intervenor’s bargaining units, and the events that precipitated the petition. I then discuss the relevant Board law and its application to the facts in this case.¹

¹ As to preliminary matters, the parties stipulated that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and the Petitioner and Intervenor are labor organizations within the meaning Section 2(5) of the Act.

II. FACTS

A. The Employer's Operations

The Employer is a Tennessee limited liability company that provides professional security services to its clients. Since December 31, 2018, the Employer has provided security services to the U.S. Department of Energy at various facilities in Oak Ridge, Tennessee.² The Employer succeeded another security contractor, National Strategic Protective Services, in providing security at these same locations. The Employer has two classifications of guards – unarmed security officers, called SOs, and armed security police officers, called SPOs.

The primary duty of SOs is to control access to classified areas.³ Access control involves verifying that a visitor to an area is authorized to be there and, once verified, permitting that individual ingress and egress from the site. SOs wait onsite until the visitor leaves and then close the gate behind them. SOs must be trained on access control to classified areas. SOs may also observe and report incidents and will use the Employer's central alarm system to dispatch armed officers as needed. SOs work only dayshifts on weekdays.

SPOs' typical duties involve patrols of various facilities throughout Oak Ridge. Depending on the assignment, SPOs may patrol on foot or by driving a marked vehicle. In addition to their patrols, SPOs are first responders to security incidents, such as active shooters or belligerent visitors. SPOs also guard entrances to facilities that require armed security, such as federal buildings. SPOs also may provide controlled access to non-classified areas, a duty for which SPOs need not remain onsite while the visitor is at the location. The SPO may return after the visitor has left in order to close the location. SPOs have day and night shifts and may work any day of the week.

Presently, the Employer operates two separate security forces – the Oak Ridge Protective Force of SPOs and the Environmental Management Protective Force Detachment of SOs. I distinguish these forces further below.

B. The Petitioner

The Petitioner has represented a certified unit of guards in Oak Ridge since 1986. The Petitioner's current collective-bargaining agreement with the Employer went into effect September 13, 2019, and remains in effect until September 13, 2024. The collective-bargaining agreement governs the unit's terms and conditions of employment, including wages and

² The record includes a color-coded map showing the various locations where the Employer provides security services throughout Oak Ridge. The record contains names for only some locations.

³ Classified areas are sites that contain material or property that has been deemed classified by the DOE. These areas are also referred to as restricted areas or limited areas in the record.

seniority. At the time of the hearing, the Petitioner's bargaining unit consisted of 21 SPOs and no SOs.

The SPOs the Petitioner represents make up the entirety of the Employer's Oak Ridge Protective Force. The Protective Force has always had patrol routes for the DOE's facilities throughout Oak Ridge. However, as further explained below, the Protective Force gained additional patrol routes as a result of operational changes in March 2020.

C. The Intervenor

The Intervenor has represented a separate certified unit of guards in Oak Ridge since 1949.⁴ The Intervenor's current collective-bargaining agreement with the Employer—which is separate from the Petitioner's collective-bargaining agreement—is effective through October 29, 2022. Although the Intervenor initially entered into that agreement with the Employer's predecessor, National Strategic Protective Services, the Employer and the Intervenor signed an agreement on November 7, 2019, by which the Employer assumed the Intervenor's collective-bargaining agreement with National Strategic Protective Services. At the time of the hearing, the Intervenor's bargaining unit consisted of seven SOs and no SPOs.

The Intervenor's SOs make up the entirety of the Employer's Environmental Management Protective Force Detachment. The Detachment performs all of its duties at the DOE's East Tennessee Technology Park, which consists of multiple facilities in a single area, and at the DOE's Environmental Management Waste Management Facility.⁵

D. The Employer's March 2020 Change in Operations

In mid-2019, the DOE informed the Employer that further completion of the DOE's work at the Technology Park would shrink the need for security services at that location. In particular, the DOE was preparing to turn over to the City of Oak Ridge a building within the Technology Park it previously used. As a result, the Employer made changes to its operations in March 2020 to comply with the DOE's diminished security needs.

Below, I summarize the Employer's operations prior to March 2020. I then detail how the Employer's operations for its forces has changed since then.

1. Operations Prior to March 2020

⁴ The 1949 certification for the Intervenor's unit bears the union's former name, the United Plant Guard Workers of America. Its current name, as described above, is International Union, Security, Police, and Fire Professionals of America (SPFPA).

⁵ Environmental Management Waste Management Facility is also referred to as "the dump" in the record.

Prior to March 2020, the Employer maintained the Intervenor's and the Petitioner's bargaining units as separate workforces. The Intervenor's unit members constituted the Environmental Detachment's predecessor, the East Tennessee Technology Park Protective Force, which consisted of 12 SOs and 10 SPOs. The Technology Park Protective Force was headquartered in a building at the Technology Park. The employees reported for duty at the headquarters, retrieved and stored equipment there, and had their own locker room and break room. The East Tennessee Technology Park Protective Force had its own supervisor, who had an office at the Technology Park headquarters. The Technology Park Protective Force performed its duties solely at the Technology Park, the Environmental Management Waste Management Facility, and one additional location in Oak Ridge.⁶

The Petitioner's unit members had the same name for their unit, the Oak Ridge Protective Force, as they do today. The unit consisted of 16 SPOs. The Oak Ridge Protective Force had a separate headquarters at the Federal Building Complex in Oak Ridge, about a 22-minute drive from the Technology Park. The Oak Ridge Protective Force's headquarters had its own facilities for its SPOs, including storage for equipment (which, for the SPOs, included storage of firearms), a locker room, and a break room. The Oak Ridge Protective Force's separate supervisors also had an office at the Federal Building Complex. The Oak Ridge Protective Force performed its duties at all the locations under the Employer's contract with the DOE except for those locations covered by the East Tennessee Technology Park Protective Force.

2. Operations Since March 2020

The decreased need for security at the Technology Park, as well as the transfer of the Technology Park building to the City of Oak Ridge, resulted in operational changes that affected the Intervenor's unit of SOs and SPOs. The Employer laid off all 10 SPOs and 5 of its SOs from the East Tennessee Technology Park Protective Force, leaving only 7 SOs in the Intervenor's unit.

Also, because the force's headquarters had been located in the building to be transferred to the City of Oak Ridge, the Employer moved the remaining SOs to the Federal Building Complex.

For that move, the Employer expanded the Oak Ridge Protective Force's locker room, and the SOs now share it with the SPOs. The SOs also currently share the SPOs' break room. Although the Employer had begun construction of a separate break room for the SOs, which the Intervenor's collective-bargaining agreement requires, the Employer suspended construction due to the ongoing COVID-19 pandemic. The SOs now retrieve and store their equipment at the same location where the Oak Ridge Protective Force SPOs have their equipment and firearms.

⁶ At hearing, the Employer's general manager testified as to the facilities where the Technology Park Protective Force performed its duties. In describing a color-coded map mentioned above at fn. 2, the general manager noted that the map mistakenly showed an area as belonging to the patrol routes for the Petitioner's unit instead of the Intervenor's unit. The record does not further contain the name(s) for that area or for any of the facilities there. This omission from the record is neither outcome-determinative nor otherwise material to my decision.

Although the SOs now share some facilities with the Oak Ridge Protective Force SPOs, the Employer has continued to maintain a division between the two forces. The SOs still perform the same duties at the Technology Park and the Environmental Management Waste Management Facility as they previously did, and they also continue to have a single supervisor who is separate from the multiple Oak Ridge Protective Force supervisors. Although both forces have pre-shift meetings called “guard mounts,” the SOs and SPOs have their own separate meetings at different times.⁷ In the final change, the Employer renamed the separate SO force from East Tennessee Technology Park Protective Force to Environmental Management Protective Force Detachment.⁸

Concurrent with these changes for the remaining SOs, the Employer added five additional SPOs to the Oak Ridge Protective Force. The Employer’s general manager testified at hearing that the DOE had requested additional security work that necessitated more SPOs. Also, the Employer shifted the patrols from the East Tennessee Technology Park Protective Force’s SPOs to the Oak Ridge Protective Force.⁹ Aside from the additional SPOs and patrol work, the Oak Ridge Protective Force underwent no other changes.

In sum, at the time of the hearing, the units are more clearly demarcated than they were prior to the March 2020 changes. The unit the Petitioner represents consists of the 21 employees employed in the Oak Ridge Protective Force, all of whom are SPOs, while the seven employees in the Employer’s Environmental Management Protective Force Detachment the Intervenor represents are solely SOs.

III. DISCUSSION

On brief, the Petitioner argues that the Employer’s changed operations have resulted in a shared community of interest sufficient to find that the SOs are an accretion to the Petitioner’s

⁷ The record contains some testimony showing that the SOs’ supervisor sometimes conducts guard mounts for the SPOs. However, the record is unclear as to how frequently this occurs. The Petitioner’s local president, who is not an employee of the Employer, testified to attending the ORPF’s guard mounts approximately once every two to three weeks and seeing the SO’s supervisor conduct the guard mount on “several occasions.”

⁸ The Employer’s general manager testified that the Employer named the SOs’ unit the Environmental Management Protective Force Detachment because the DOE’s Office of Environmental Management is the specific division of the DOE that pays for the Detachment’s operational costs. Other parts of the Employer’s contract with the DOE are funded by the Office of Environmental Management and other entities, such as the DOE’s National Nuclear Security Administration and other “outside entities.”

⁹ The general manager testified that the remaining SPO work that had been done by the East Tennessee Technology Park Protective Force SPOs accounted for only one quarter of a full-time equivalent position.

bargaining unit. Conversely, the Employer and the Intervenor argue that the operational changes are not significant, thus and so unit clarification is not appropriate.

For the reasons detailed below, I find that a unit clarification petition is inappropriate under the circumstances of this case.

A. Board Law

In *Union Electric Co.*, 217 NLRB 666, 667 (1975), the Board described the proper use for unit clarification proceedings:

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category—excluded or included—that they occupied in the past.

The Board may entertain a unit clarification petition seeking to accrete historically excluded individuals into an existing unit only when the individuals in question have undergone recent, substantial changes. See, e.g., *Kaiser Foundation Hospitals*, 337 NLRB 1061 (2002), citing *Bethlehem Steel Corp.*, 329 NLRB 243, 244 (1999).

However, in *Southern California Water Co.*, 241 NLRB 771 (1979), the Board considered the appropriateness of unit clarification for consolidating two existing certified units, each represented by a different union. In that case, the merger of two companies had resulted in the dissolution of one company, and the remaining company argued that the separate bargaining units shared a community of interest and should be clarified into a single unit. In dismissing the petition, the Board observed that unit clarification would be inappropriate because the Board would, in effect, “be administratively nullifying a certification that was conferred as the result of a representation proceeding,” *Id.* at 773.

B. Application of Board Law to This Case

Of the *Union Electric* Board’s examples of appropriate circumstances for unit clarification proceedings, the present case involves a change to an existing classification. In agreement with the Employer and the Intervenor, I find that the facts in this case do not establish any recent, substantial changes causing doubt as to the SOs’ proper unit placement.

To be sure, the Employer’s operations have undergone some change, resulting in the Intervenor’s SOs reporting to the same headquarters as the Petitioner’s SPOs and sharing the same facilities. However, the SOs’ duties and responsibilities have not changed: the SOs still perform the same access-control duties they had done as part of the East Tennessee Technology

Park Protective Force, and they continue to perform these duties under separate supervision.¹⁰ Indeed, the two units are now more clearly separated along job functions with the Intervenor now representing a unit solely of SOs rather than the mixed unit it represented prior to March 2020. In any event, I find there has been no recent and substantial change to the SOs' responsibilities and duties and that, under the circumstances, there is no basis for clarifying the Petitioner's unit.¹¹

Based on the lack of any recent and substantial change to the duties and responsibilities of the Employer's SOs, and also for the reasons articulated by the Board in *Southern California Water Co.*, I conclude that a unit clarification petition is not the appropriate vehicle for the Petitioner to seek to represent the SOs.

IV. CONCLUSION

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

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, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review

¹⁰ At hearing, the Petitioner presented two witnesses who testified that SPOs, on at least two occasions since March 2020, performed access-control duties typically performed by SOs. However, the record shows these occurrences involved emergencies or times when SOs were not scheduled to work. Additionally, the SPOs performing these tasks were escorted by a supervisor due to the SPOs' lack of proper training. These few emergency occurrences do not make for a substantial change warranting unit clarification.

¹¹ Because the Petitioner has not shown a recent, substantial change warranting unit clarification, I do not reach the Employer's arguments concerning the community of interest between the SOs and SPOS. See, e.g., *Frontier Communications Corp.*, 19-UC-200458, 2017 WL 5969306 (Nov. 30, 2017) (not reported in Board volumes), in which the Board denied review of the Regional Director's dismissal of the unit clarification petition, noting that it did not need to consider the Regional Director's "overwhelming community-of-interest" accretion test because there were no recent and substantial changes to warrant consideration of the petition.

Nonetheless, even were I to reach the community-of-interest factors, I would decline to find accretion appropriate. As the Employer notes on brief, the two critical factors in an accretion analysis are interchange and common day-to-day supervision. *Recology Hay Road*, 367 NLRB No. 32, slip op. at 2 (2019). Aside from the incidents explained above at fn. 11, the instances of interchange in this case are few. Additionally, the record shows that the SOs and the SPOs do not share common day-to-day supervision. Absent these two factors, a claim of lawful accretion is ordinarily defeated. *Id.*, slip op. at 3, citing *Frontier Telephone of Rochester*, 344 NLRB 1270, 1271 fn. 7 (2005).

must be served on each of the other parties as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

Procedures for Filing Request for Review: Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#).

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **March 26, 2021**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on March 26, 2021**.

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Direction and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within

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which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Dated: March 12, 2021



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