

Guardian Armored Assets, L.L.C., Inc. and Guardian Armored Security and International Union, Security, Police and Fire Professionals of America (SPFPA). Case 7–CA–47762

February 17, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union’s certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on August 10, 2004, the General Counsel issued the complaint on September 16, 2004, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union’s request to bargain following the Union’s certification in Case 7–RC–22665. (Official notice is taken of the “record” in the representation proceeding as defined in the Board’s Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On December 6, 2004, the General Counsel filed a Motion for Summary Judgment. On December 14, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of the Board’s unit determination in the representation proceeding. Specifically, the Respondent renews its contention, raised and rejected in the underlying representation proceeding, that the certified units of employees at its Highland Park, Michigan, (Unit A) and Mount Morris, Michigan, (Unit B) facilities are inappropriate, and the only appropriate unit consists of a multifacility unit encompassing the two facilities above, and a third facility located in Comstock Park, Michigan.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate*

Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with offices and facilities at 15045 Hamilton, Highland Park, Michigan, and G6129 Dort Highway, Mount Morris, Michigan, has been engaged in the processing, transporting, and safeguarding of cash and other valuable items, via armored transport.

During calendar year 2003, a representative period, the Respondent, in conducting its business operations described above, had gross revenue in excess of \$500,000 and purchased goods valued in excess of \$50,000 which were shipped to its Michigan facilities directly from points located outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the elections held on June 10, 2004, the Union was certified on July 23, 2004, as the exclusive collective-bargaining representative of the employees in the following appropriate units:

Unit A

All full-time and regular part-time guards as defined in Section 9(b)(3) of the Act, including drivers/messengers, messenger/ATM balancers, bank run messengers, ATM first line, crew leader/messengers, security officers, dispatchers, vault associates, and tellers, employed by the Respondent at or out of its facility located at 15045 Hamilton Avenue, Highland Park, Michigan; but excluding mechanics, office clerical employees, professional employees, and supervisors, as defined in the Act, and all other employees.

¹ Chairman Battista did not participate in the underlying representation proceeding. He agrees, however, that the Respondent has not raised any new matters or special circumstances warranting a hearing in this proceeding or reconsideration of the decision in the representation proceeding, and that summary judgment is therefore appropriate.

Member Schaumber dissented from the denial of the Respondent’s request for review in the underlying representation case. While he continues to be of the view that review was warranted, he agrees that the Respondent has not presented any new matters that are properly litigable in this unfair labor practice case. In light of this, and for institutional reasons, he agrees with the decision to grant the General Counsel’s motion for summary judgment.

Unit B

All full-time and regular part-time guards as defined in Section 9(b)(3) of the Act, including drivers/messengers, messenger/ATM balancers, bank run messengers, ATM first line, crew leader/messengers, vault associates and vault leaders, employed by the Respondent at or out of its facility located at G6129 Dort Highway, Mount Morris, Michigan; but excluding mechanics, office clerical employees, professional employees, and supervisors, as defined in the Act, and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

About July 26, 2004, the Union, by letter, requested the Respondent to bargain and, about August 3, 2004, the Respondent, by letter, refused to do so. We find that the Respondent's conduct constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after August 3, 2004, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate units, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(b) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certifications as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Guardian Armored Assets, L.L.C., Inc. and Guardian Armored Security, Highland Park and Mount Morris, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Refusing to bargain with International Union, Security, Police and Fire Professionals of America (SPFPA), as the exclusive bargaining representative of the employees in the bargaining units.

- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate units on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

Unit A

All full-time and regular part-time guards as defined in Section 9(b)(3) of the Act, including drivers/messengers, messenger/ATM balancers, bank run messengers, ATM first line, crew leader/messengers, security officers, dispatchers, vault associates, and tellers, employed by the Respondent at or out of its facility located at 15045 Hamilton Avenue, Highland Park, Michigan; but excluding mechanics, office clerical employees, professional employees, and supervisors, as defined in the Act, and all other employees.

Unit B

All full-time and regular part-time guards as defined in Section 9(b)(3) of the Act, including drivers/messengers, messenger/ATM balancers, bank run messengers, ATM first line, crew leader/messengers, vault associates and vault leaders, employed by the Respondent at or out of its facility located at G6129 Dort Highway, Mount Morris, Michigan; but excluding mechanics, office clerical employees, professional employees, and supervisors, as defined in the Act, and all other employees.

- (b) Within 14 days after service by the Region, post at its facilities in Highland Park and Mount Morris, Michigan, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at its Highland Park and Mount Morris, Michigan, facilities at any time since August 3, 2004.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with International Union, Security, Police and Fire Professionals of America

(SPFPA), as the exclusive representative of the employees in the bargaining units.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining units:

Unit A

All full-time and regular part-time guards as defined in Section 9(b)(3) of the Act, including drivers/messengers, messenger/ATM balancers, bank run messengers, ATM first line, crew leader/messengers, security officers, dispatchers, vault associates, and tellers, employed by us at or out of our facility located at 15045 Hamilton Avenue, Highland Park, Michigan; but excluding mechanics, office clerical employees, professional employees, and supervisors, as defined in the Act, and all other employees.

Unit B

All full-time and regular part-time guards as defined in Section 9(b)(3) of the Act, including drivers/messengers, messenger/ATM balancers, bank run messengers, ATM first line, crew leader/messengers, vault associates and vault leaders, employed by us at or out of our facility located at G6129 Dort Highway, Mount Morris, Michigan; but excluding mechanics, office clerical employees, professional employees, and supervisors, as defined in the Act, and all other employees.

GUARDIAN ARMORED ASSETS, L.L.C., INC. AND
GUARDIAN ARMORED SECURITY