

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE
SUBREGION THIRTY-THREE

THE HOPE INSTITUTE FOR CHILDREN
AND FAMILIES

Employer

and

Case 25-RC-085832

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, COUNCIL 31, AFL-CIO

Petitioner

DECISION AND
ORDER DISMISSING PETITION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on August 2, 2012, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.¹

I. ISSUE

The American Federation of State, County and Municipal Employees, Council 31, AFL-CIO, (hereinafter referred to as Petitioner) seeks an election within a unit comprised of the four full-time safety and security associates employed by The Hope Institute for Children and

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby 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 labor organization involved claims to represent certain employees of the Employer.
- d. 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.

Families (hereinafter referred to as the Employer) at its Springfield, Illinois facilities. The Employer contends the petitioned-for unit does not raise a question concerning representation which affects commerce because the safety and security associates are employed as guards within the meaning of Section 9(b)(3) of the Act and the Union represents non-guard employees.²

II. DECISION

For the reasons discussed in detail below, it is concluded that the safety and security associates employed at the Employer's Springfield, Illinois facilities are guards within the meaning of Section 9(b)(3) of the Act. Accordingly, since the Petitioner represents non-guard employees it is not qualified under Section 9(b)(3) to represent the employees sought by the petition and the petition is hereby dismissed.

III. STATEMENT OF FACTS

The Employer is a not-for-profit corporation contracted by the State of Illinois to provide residential housing and educational services to approximately 130 youths between the ages of 5 and 21 years old who have various developmental disabilities. The Employer operates a centralized campus with residential and educational facilities in Springfield, Illinois. The Employer also operates 13 community based group homes in the Springfield, Illinois area from which many of the children receive instruction at the on-campus educational center.

To provide for the youth's residential, medical, and educational needs the Employer employees about 650 employees. About 550 of these employees work at the on-campus facilities. Approximately 403 of these on campus employees are already represented by the Petitioner and are covered by a collective bargaining agreement effective by its terms from July 1, 2010 through June 30, 2013.³ It is undisputed that these represented employees are not guards

² It is undisputed that Petitioner represents employees, including other employees of the Employer, who are not guards within the meaning of Section 9(b)(3) of the Act.

³ Article I, Recognition provision of that collective bargaining unit describes this unit as:

All full-time and regular part-time employees performing the same or similar duties as habilitation specialists, education specialist trainees, cooks, dietary aides, lead teacher's aides, licensed practical nurses, maintenance assistants, maintenance crew employees, maintenance janitorial employees, maintenance special project lead employees, education specialists, physical education teacher aides, teacher aides, utility aides, health information clerks, job coaches, resource assistants, data processing specialists, dental assistant, hygienist, and shift leaders employed by the Employer at all Illinois facilities outside of the city of Chicago, but excluding office clerical employees, professional employees, risk

within the meaning of Section 9(b)(3) of the Act. Under the collective bargaining agreement, risk management employees are explicitly excluded. The four safety and security associates⁴ (herein after referred to as SSAs) at issue in this matter are employed in the Employer's Safety and Security Department (hereinafter referred to as the SSD) which was previously called the Risk Management Department. The Employer does not employ or contract for any other individuals to provide security services.

The SSD currently employs the four SSAs, the Director of Safety and Security, and the Assistant Director of Safety and Security.⁵ These six individuals work shifts that provide for at least one SSD employee to be present twenty-four hours per day, seven days per week. On the rare occasion that no SSD employee is available to cover third shift, no one other employee covers for the SSD employee.

The Director of Safety and Security has 35 years experience as a sheriff, but the SSAs are not required to have a background in law enforcement. SSAs are required to have a high school diploma and are required to pass background and criminal history checks. All of the Employer's employees are required to undergo significant background and criminal history checks and are required to take a three week training course regarding the Employer's policies, how to work with individuals with disabilities, and how to safely restrain the youths when necessary.⁶ After completing the three-week employee training, the SSA employees are given about one week of on the job training by the SSD.

In order to maintain its contract with the State of Illinois to provide the services to the youths, the Employer must maintain various licenses and certifications. One such requirement is that no firearms or other forms of weapons are allowed on the property. For similar licensing reasons and to make the setting more "home like", none of the employees wear uniforms. All of

management employees, guards, managerial employees, confidential employees and supervisors as defined in the National Labor Relations Act.

⁴ At least one of the SSA employees is also referred to as a transportation officer, but the record does not distinguish the transportation officer's duties from that of the other SSA employees.

⁵ Although not explicitly stated, it appears to be the position of both parties that the Director of Safety and Security and the Assistant Director of Safety and Security are supervisors within the meaning of Section 2(11) of the Act. The record evidence reflects that the Director of Safety and Security has the authority to hire and has hired the SSA staff and therefore is a statutory supervisor. The record is silent to the Assistant Director of Safety and Security's Section 2(11) authority. The Petitioner did not petition to represent that position and neither party raised the issue of his status as a supervisor or a guard. Because the petition is being dismissed the status of the Assistant Director of Safety and Security need not be addressed at this time.

⁶ Normally the employees who work directly with the youths are called upon to restrain youths when necessary. The SSD employees get involved only in unusual circumstances as backup support. Additionally, SSD employees are the point of contact for requesting outside emergency assistance and may investigate and document an incident.

the employees wear identification badges which contain the Employer's logo, a picture of the employee, the employee's name, and the employee's job title. The SSA employees' badges read "safety and security associate" under their names.

The SSAs work on the campus grounds in and around the residential and educational facilities. The SSAs are assigned to the SSD and perform a significant amount of their work in the SSD office area. They monitor computer screens on which surveillance camera footage can be viewed. Surveillance cameras are focused on each of the four time clock areas, entrances and exits, and 15 other selected areas inside and outside of the campus facilities. SSAs are on occasion asked to verify an employee's arrival time by reviewing the time clock surveillance video records. SSAs report any activity of concern they see on the monitors to the Residential Services Manager on duty.

The SSD has radios for the SSAs to use when they are on duty so that they can be reached at any time. Only certain management officials, maintenance employees, and SSD employees carry the radios. The radios are used to contact an SSD employee when incidents occur such as the elopement (runaway) of a youth, an outburst of a youth that caused damage or injury, a terminated or disciplined employee needing an escort from the property or other safety/security issues. When incidents occur SSD employees are expected to assist in getting the situation under control, call for outside assistance if necessary, and investigate the situation, including taking pictures of any damage or injury. The evidence shows that the Director and Assistant Director of the SSD are more likely to respond to these types of situations, but an SSA would respond if neither of them was available.

The SSD also coordinates any reports of child abuse or neglect. Although all the employees have a legal responsibility to report child abuse or neglect, the Employer requests that the employees report their findings/suspicions to the SSD which coordinates an investigation and files a report with proper authorities. The SSAs' role in this reporting function is unclear in the record.

All of the employees that work at the on-campus facilities are issued electronic key cards to access buildings and locked areas within buildings. These key cards are programmed to allow each employee access to only those areas of the facilities necessary for the employee to perform his work. Parents and other visitors to the campus are given key cards that provide them with limited access. A visitor obtains a key card from the receptionist or in her absence from the Safety and Security Office. The SSD programs the access cards as instructed by management for each employee, but the record is unclear if any SSA employees ever program the key cards. The SSA employee who testified stated he had not programmed any cards, but he had activated or deactivated employees' key cards pursuant to management's instruction. In addition to deactivating key cards of discharged employees and activating key cards for new employees, the SSD deactivates and later reactivates key cards when employees take leaves of absence. In order to perform their job duties, the SSAs' key cards allow them access to more areas within the facilities than most other non-managerial employees.

Employees and visitors are not searched upon entering the facilities. A few youths who attend the educational center from the community are searched because of their special

circumstances. These searches are completed by the educational specialists that work directly with them.

The Employer maintains a fleet of vehicles, GPS devices, cell phones, credit cards, and I-Pass electronic toll road payment cards that employees use to take the youths on field trips, to doctor appointments, etc. The SSAs schedule the use of this equipment, check it out to employees and check it back in upon their return. In some situations, employees are issued cash to use on field trips. The SSD receives the cash advances from the financial department to be issued to specific employees. The SSAs verify the correct amount is present and issues the cash advance to the employee. Upon the employee's return the SSAs verify that the receipts and returned amount is equal to the initial amount issued. If the amount is short, the SSA inquires about the deficit. If the deficit cannot be resolved, the SSA submits a report to management. The SSA testified that 90% of the times that a deficit occurs, the employees make-up the difference from their own money to avoid having an incident report submitted to management by the SSA.

First and second shift SSAs are assigned to check the Employer's vehicles three times per shift and third shift SSAs are assigned to do one vehicle check per shift. They are required to check the vehicles for damage, cleanliness and fuel, and record their findings on a vehicle inspection report. If a vehicle was returned with unreported damage, in an unclean state, or without at least a half tank of fuel, the SSA investigates to determine which employee used the vehicle and completes an internal incident report. The SSA has the authority to request that an employee clean a dirty vehicle and make an incident report or complete a safety/security report about the situation. The various reports that the SSAs complete are submitted to the Director or Assistant Director of the SSD and forwarded to other management officials after additional information is added when necessary. In some situations, the SSA may be requested to take pictures of the vehicle.

SSAs regularly perform grounds patrols inside and outside of the facilities to check for any unusual circumstances and that doors are locked as is required by the Employer. SSAs maintain a daily work log in which they record the work they perform and any unusual circumstances that do not need immediate attention. The record is unclear about the frequency with which SSAs are required to address issues while performing rounds. The SSA that testified at hearing stated that he had been directed to allow neighbors to walk on the campus grounds in order to maintain good relations with the community. Yet, the SSA testified that he had exercised his discretion in directing a neighbor to not walk his dog on the grounds as a precaution for the safety of the youths.

While the youths are asleep, direct care employees are assigned to be present and awake at monitoring stations. The shift leads assign employees to these monitoring stations. The SSAs conduct three checks per night on the monitoring stations. They vary the times of these checks to better ensure that the direct care employee monitors are performing their duties. The SSAs complete a form indicating that the monitor was present and awake at the monitoring station, on break, etc. In addition to marking it on their monitor station check form, SSAs write internal incident reports. On at least one occasion such a report by an SSA resulted in the suspension of a direct care employee monitor for sleeping on a job. The report was submitted to management who made the determination to issue the discipline.

There is no current SSA job description. About a year ago, the Director of Safety and Security listed all the tasks performed by the SSD to educate new management officials about the duties of the SSD. These tasks include submitting daily safety and security reports to management including the Safety/Security Monitoring Stations Report, Internal Incident Reports, Employee Injury Reports, Youth Injury Reports, Daily Rounds Report. The SSD coordinates, inspects and maintains vehicles and maintains updated driver's licensing standards. The SSD documents and investigates incidents involving staff and/or youths by taking photographs, and by searching the surveillance, electronic key card and time card systems for related information. In investigating incidents, reports completed by SSAs, such as vehicle checks, patrolling rounds records, and nightly monitoring stations check reports are used to compile information and evidence related to employee and/or youth conduct or other incidents. Generally, it is the Director or the Assistant Director of the SSD who report such incidents to higher management, but much of the information that they report is gleaned from data that the SSAs compile.

There is no evidence of any past strike or other form of labor unrest at the Employer's facilities. During the last contract negotiations, the Employer prepared for a strike that never materialized. In preparation for a possible strike the Employer developed a strike plan, which called for the SSD including the SSAs to monitor strike activity and ensure ingress and egress to the facilities was not impeded. The strike plan also contemplated contracting for additional security personnel. Because a strike never materialized, however, the plan was never implemented and the SSA employees were never informed or trained in any additional duties required during strike activity.

IV. DISCUSSION

Section 9(b)(3) of the Act prohibits the Board from finding a unit appropriate for the purpose of collective bargaining if it includes, together with other employees, guards that enforce rules against employees and others designed to protect the employer's property or for the protection and safety of those on the employer's premises. Section 9(b)(3) also prohibits the Board from certifying a union as the collective bargaining representative of employees in a bargaining unit of guards if the union admits non-guards to its membership. The Petitioner represents and admits non-guards into its membership. Thus, the only issue is whether the Employer's safety and security associates are guards under Section 9(b)(3) of the Act.

In determining whether employees are guards the Board looks at factors "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). It is common, as in this case, for an employer to charge certain employees with duties that are arguably security-related for only a portion of their working hours. "Of central concern in such cases is not a numerical accounting of the percentage of time employees spend on such duties but

rather the specific nature of the duties themselves. *Rhode Island Hospital*, 313 NLRB 343, 346 (1993). Accordingly, the Board has determined that employees are guards if their guard responsibilities are not a minor or incidental part of their overall responsibilities. *Id at 347*.

Although the Board uses the phrase “traditional police and plant security functions,” it has not required employees to look like guards by wearing a uniform and possessing a weapon to be guards within the meaning of the Act. *A.W. Schlesinger Geriatric Center, Inc.*, 267 NLRB 1363, 1364 (1983). Nor does indicia of guard status such as the use of a guard/security related job title alone confer guard status. *Ford Motor Co.*, 116 NLRB 1995 (1956). Thus, the fact that the SSAs wear a name tag listing their job title is insufficient on its own to determine whether they possess guard status under the Act.

In this case, there is strong evidence that the SSD as a whole enforces rules against employees and others designed to protect the employer’s property or for the protection and safety of those on the employer’s premises. It controls and monitors surveillance cameras positioned around the facilities and at employee “time clock” locations. It monitors and programs the electronic door locking system which controls access to the Employer’s facilities. It performs patrols checking grounds, facilities, vehicles and the proper coverage of work stations. It oversees the proper handling of Employer funds. Most significantly, it uses the information gathered in the performance of its duties to investigate claims of misconduct by employees and other safety/security issues that arise.

Much of the SSAs time is spent doing the clerical work of scheduling the use and maintenance of vehicles and other equipment, and checking that equipment in and out to employees. While most of this work is clerical in nature, the SSAs regularly perform duties solely for safety and security purposes. During each shift, the SSAs perform grounds and facility patrols that are for the purpose of detecting safety/security violations. The SSAs inspect the Employer’s vehicles for damage and whether other employees followed Employer policies regarding cleaning and refueling the vehicles. Failures to follow policies are documented and submitted to management. The SSAs monitor surveillance cameras covering entrances and employee “time clocks”. SSAs are asked to verify employee arrival times by reviewing the surveillance cameras. On a nightly basis, the SSAs specifically patrol the residential facilities to ensure that student monitoring stations are properly covered and the employees working those stations are alert. On at least one occasion, the SSA’s report that an employee monitor was sleeping on the job resulted in that employee receiving a suspension. Also the SSA’s report shows that he took efforts to remedy the situation for the Employer by attempting to wake the employee.

When infractions of the Employer’s policies occur, the SSAs have some authority to question employees about the infractions. For example, SSAs question employees who have received cash advances for work related expenses about discrepancies in funds returned to the Employer. SSAs request that employees clean vehicles that they returned in an unclean state. Although the Director of the SSD testified that SSAs have the authority to handle safety and security matters on their own, the record contains only a few examples of the SSAs resolving matters by themselves (i.e. an SSA requesting a neighbor remove their dog from premises for safety reasons and SSAs resolving discrepancies with cash advances directly with employees).

In most cases, the SSAs appear to only record what they witness through various reports that are later handled by management.

The Board has found employees without the independent authority to resolve safety and security issues to be guards where their reporting function is in connection with “other significant security-related responsibilities.” *Boeing, supra at 131*. See also, *MGM Grand Hotel*, 274 NLRB 139 (1985); *A.W. Schlesinger Geriatric Center, Inc.*, 267 NLRB 1363, 1364 (1983); and *Wright Memorial Hospital*, 255 NLRB 1319 (1980). In *MGM Grand Hotel*, the Board found employees to be guards where they were charged with monitoring and reporting information from electronic fire security systems, exit door alarms, motion detectors and a watch tour system. In *A.W. Schlesinger*, the Board found employees were guards because they spent 50 to 75 percent of their time performing guard responsibilities such as locking and unlocking doors, monitoring the property during shift changes, making rounds of the property, and ensuring the parking lot was illuminated. In *Wright Memorial*, in the absence of other security guards, the ambulance drivers who made security rounds twice per shift were found to be guards.

The Petitioner relies on *Boeing Co., supra* for its contentions that the SSAs are not guards pursuant to Section 9(b)(3) of the Act. In the *Boeing* case, firefighting employees were found to not be guards within the meaning of the Act. The Board determined that during the regular course of business, Boeing’s firefighter employees performed traditional firefighters’ duties such as fire prevention and fire suppression. The Board further found that while employees were on strike, the firefighters were instructed to make additional checks to prevent fires in mostly vacant facilities.⁷ Other security personnel were present at the time. If the firefighters noticed any security issues, while checking the facility for fire hazards they were expected to report those issues, but it was not the essential reason for them to be assigned to that area/task. The Board distinguished the facts of the *Boeing* case from *MGM Grand Hotel*, *A.W. Schlesinger*, and *Wright Memorial*, by noting that in each of these cases the employees were found to be guards because “an *essential* attribute of the disputed employees’ responsibility encompassed monitoring the employer’s property for security purposes and reporting any findings to others equipped to deal with them.”

Contrary to the Petitioner’s assertion, the case at hand is factually similar to the three cases that the Board distinguished in *Boeing*. There are no other security personnel guarding the Employer’s facilities. Unlike the firefighters in *Boeing*, the SSAs are not simply going about their other duties and expected to report irregularities because no one else is present to do so. The SSAs are explicitly charged with making rounds specifically to check for security issues such as unlocked doors, unauthorized people, absent or inattentive night station monitors, damage or lack of care of Employer vehicles, etc. The SSAs are charged with specifically recording the results of their inspections and submitting those reports to management. Thus, an essential attribute of the SSA’s responsibilities encompasses monitoring the Employer’s property for security purposes and reporting findings to others equipped to deal with them.

⁷ Employees’ duties to secure an employer’s facility during labor unrest can be a telling factor in determining their status as guards. Because the actual duties of SSAs during a strike or other form of labor unrest are purely speculative, that evidence provides little insight as to the guard status of the SSAs.

The Petitioner also relies upon *55 Liberty Owners Corp.*, 318 NLRB 308 (1995) in its contention that the SSAs are not guards. In *55 Liberty Owners*, the Board found doorman and elevator operators job responsibilities were hospitality oriented rather than security oriented. The Board found the doormen not to be guards even though they regulated access to the building, escorted unwanted visitors from the building, and observed and reported irregularities. Similar to the finding in *Boeing*, the Board based its decision on the finding that the guard-like functions performed by the doormen/elevator operators were incidental to their primary non-guard hospitality duties. *Id. at 310*. The Board also stressed that their lack of other guard responsibilities including enforcing rules against other employees warrant the finding that they are not guards. As discussed above, essential attributes of the SSAs' responsibilities are for security purposes and the SSAs reporting duties includes reporting on other employees' conduct unlike the hospitality oriented doormen in *55 Liberty Owners*.

In light of the above, it is concluded that the safety and security associates are employed as guards within the meaning of Section 9(b)(3) of the Act. 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.

V. ORDER

Accordingly, the petition to represent the safety and security associate employees employed by the Employer at its Springfield, Illinois location is hereby dismissed.

VI. RIGHT TO REQUEST REVIEW

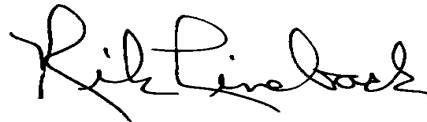
Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business September 11, 2012, at 5:00 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is 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 the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special

permission for a longer period within which to file.⁸ 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.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **File Case 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.

SIGNED IN Indianapolis, Indiana, this 28th day of August 2012.

A handwritten signature in black ink that reads "Rik Lineback". The signature is written in a cursive, flowing style.

Rik Lineback
Regional Director
National Labor Relations Board
Region 25, Subregion 33
Room 238, Minton-Capehart Building
575 North Pennsylvania Street
Indianapolis, IN 46204-1577

⁸ A request for extension of time, which may 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.