

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

INTER-CON SECURITY SYSTEMS, INC.¹
Employer

and

Case 29-RC-338819

LOCAL 1013 UNITED SECURITY OFFICERS
OF AMERICA
Petitioner

and

SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 32BJ
Party in Interest

and

INTERNATIONAL UNION, SECURITY, POLICE &
FIRE PROFESSIONALS OF AMERICA (SPFPA)
Intervenor A

and

LAW ENFORCEMENT OFFICERS SECURITY &
POLICE BENEVOLENT ASSOCIATION
Intervenor B

DECISION AND ORDER

Inter-Con Security Systems, Inc., herein called the Employer or Inter-Con, has been engaged in providing security services to commercial and governmental agencies. On March 27, 2024, Local 1013 United Security Officers of America, herein called the Petitioner, filed a petition in the instant case under Section 9(c) of the National Labor Relations Act, herein called the Act, seeking to represent security personnel employed by the Employer and assigned to JFK International Airport. Service Employees International Union, Local 32BJ, herein called Local 32BJ, is the incumbent union currently representing the security personnel in the petitioned-for unit.² International Union, Security, Police & Fire Professionals of America, herein called SPFPA

¹ The name of the Employer is amended to reflect its full and correct name as set forth in a stipulation of the parties. There are no objections to this amendment. See Board Exhibit 5; Transcript page 25.

² Local 32BJ sought to intervene on the basis of an existing collective bargaining agreement with the Employer. Intervenor SPFPA and Petitioner opposed granting Local 32BJ's motion to intervene and appear on the ballot inasmuch as Local 32BJ admits that it is a guard-nonguard union. The hearing officer allowed Local 32BJ to participate in the

or Intervenor A, and Law Enforcement Officers Security & Police Benevolent Association, herein called LEOSPBA or Intervenor B, intervened on the basis of a showing of interest.³ The petitioned-for unit contains about 250 to 355 employees.⁴

The Employer and Local 32BJ assert that an election is not appropriate because they are parties to a collective bargaining agreement effective May 1, 2021 through April 30, 2024, which covers a unit of guards encompassing the petitioned-for employees and thus bars an election in this case. The Petitioner and Law Enforcement Officers contend that the collective bargaining agreement is not a bar to an election inasmuch as it covers a mixed unit of guards and nonguards.⁵

A hearing in this matter was held before a hearing officer of the National Labor Relations Board. SPFPA orally argued in support of its position prior to the close of hearing. The Employer, Local 32BJ, the Petitioner and LEOSPBA filed briefs in support of their respective positions. As explained below, based on the record and relevant Board law, I find that the collective bargaining agreement bars an election in this case. Accordingly, I dismiss the petition

Section 9(b)(3) of the Act

The intent of Section 9(b)(3) of the Act was to give guards as employees the full protection of the Act.⁶ Section 9(b) states:

(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining ... *Provided*, that the Board shall not ... (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to

hearing as a Party in Interest, leaving open for later determination Local 32BJ's request to intervene. In *University of Chicago*, the Board held that a mixed guard-nonguard union could not participate in a Board-conducted election as either a petitioner or intervenor. *University of Chicago*, 272 NLRB 873 (1984). Compare *Securitas Security Services USA, Inc.*, 372 NLRB No. 2 (2022) (the Board's decision in *University of Chicago* does not bar processing of a petition to decertify an incumbent mixed guard-nonguard union). However, considering my decision to dismiss the petition, I find it unnecessary to rule on the issue.

³ Both SPFPA and Law Enforcement Officers were granted participating intervenor status. See NLRB Casehandling Manual, Part Two, Representation Proceedings, Section 11023.4. As stated in Section 11194.5 of NLRB Casehandling Manual, "A union must present a cross-petitioner's evidence of interest, i.e., designation by at least 30 percent of the employees in the unit (Sec. 11023.2), in order to take a position or offer evidence with respect to the appropriateness of any substantially different bargaining unit from that sought by the petitioner. However, any intervenor may take a position on the appropriateness of the unit sought by the petitioner. Although all parties permitted intervention may thereafter participate fully, a *participating* intervenor, i.e., one which has submitted less than a 10-percent showing, may not "block" stipulations entered into by the other parties. Sec. 11023.4"

⁴ The petition estimates the number of employees in the unit as 250. The Employer's Statement of Position provided a list including about 355 bargaining unit employees who work at John F. Kennedy International Airport. (Board Exhibit 3).

⁵ SPFPA took no position on whether the contract bars the petition.

⁶ *Burns Security Services*, 278 NLRB 565, 568 (1986).

protect the safety of persons on the employer's premises; but no labor organization shall be certified as the 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.

Background

Collective Bargaining Agreement between the Employer and Local 32BJ

The Employer is a private security firm providing security services, including physical security, executive protection, and high valued asset protection in several vertical markets including critical infrastructure, financial institutions, corporate buildings, transportation hubs and government facilities.

It is undisputed that the petitioned-for employees are part of an established multi-location bargaining unit of about 1,396 employees, covered under the “New York City Collective Bargaining Agreement” between the Employer and Local 32BJ, effective May 1, 2021 through April 30, 2024, herein called the collective bargaining agreement.⁷

The Employer and Local 32BJ assert that all employees covered under the collective bargaining agreement are guards within the meaning of Section 9(b)(3) of the Act. While it is undisputed that most employees covered under the collective bargaining agreement are guards, in their post-hearing briefs, the Petitioner and LEOSPBA contend that bargaining unit employees working at the World Trade Center in the classifications of Credentialer, Wayfinder, Fire and Life Safety Director 1 and 2, Fire Safety Director Admin Supervisor, Fire Inspection Team, Fire Inspection Team Supervisor and Fire Inspection Team Manager are not guards.⁸

Thus, it is undisputed that, with the exception of about 66 employees, the multi-location bargaining unit covered by the collective bargaining agreement is comprised of employees who

⁷ The Employer’s Statement of Position contains a full list of employees covered under the collective bargaining agreement which includes employees working at, among other places, John F. Kennedy International Airport, the World Trade Center, Newark Liberty International Airport and LaGuardia Airport.

⁸ The record indicates that prior to the hearing, the Petitioner asserted that the contract was not a bar inasmuch as the contractual unit covered a mixed unit of guards and non-guards; it was alleged that the contractual unit of guards included three separate positions involving credentialing of some sort that were potentially nonguard positions. (One of the three positions was the credentialer position at the World Trade Center; the guard status of the other two positions is no longer disputed). During the hearing, the Petitioner took the position on the record that the contractual unit was a mixed guard-nonguard unit but did not formally take a position on the specific classifications contended to be nonguards; however, the Petitioner did assert that the Fire and Life Safety Director title indicates that the position is a nonguard position. The Employer apparently also concedes in its brief that additional positions, i.e., the Wayfinder and Fire Inspection Team employees, were disputed at the hearing. Thus, it appears that the Petitioner sufficiently placed in dispute the bar status of the collective bargaining agreement based on the potential nonguard status of employees in the positions of Credentialer, Wayfinder, Fire and Life Safety Director 1 and 2, Fire Inspection Team Supervisor, Fire Inspection Team Manager, and Fire Inspection Team employees in response to the Employer’s Statement of Position. The record does not specifically address the Fire Safety Director Admin Supervisor.

are guards within the meaning of Section 9(b)(3) of the Act. The 66 employees whose guard status is in dispute are employed by the Employer at the World Trade Center campus under its service contract(s) with CBRE, the property management company for the World Trade Center.⁹ Of these 66 employees working under the CBRE service contract(s) at the World Trade Center campus, there are about 31 Credentialers, 4 Wayfinders, 24 Fire and Life Safety Directors, 1 Fire Safety Director Admin Supervisor, 3 Fire Inspection Team (FIT), 2 Fire Inspection Team Supervisors, and 1 Fire Inspection Team Manager.¹⁰

Article VI of the collective bargaining agreement states that in the event of a strike (by another labor organization or Local 32BJ) involving the customer's property or operations, the employees will remain on the job for protection of life, limb, and property and will not be required to assume duties outside the scope of the agreement.

Disputed Classifications and Guard/Non-guard Status

It is noted initially that the Employer's Regional Account Manager, Joshua Ruiz, testified that all individuals in the disputed classifications engage in duties that at some level call for the enforcement of rules to help protect the World Trade Center property from harm/damage or to protect persons at the World Trade Center campus. Record evidence related to specific classifications are set forth below.

CBRE Credentialers - World Trade Center

Vehicle entry into the World Trade Center campus involves a special screening process for vehicles and their occupants.¹¹ A vehicle and its occupant must essentially be registered and scheduled on a portal before the visit.¹² Credentialers are the first line of defense in screening vehicles seeking access to the World Trade Center campus as described below.

Credentialers generally start their day at a muster at the Operations Control Center hub in the World Trade Center where they are given their orders for the day and advance notification of any "VIP movement." The credentialers are then each dispatched to an assigned booth in the field for their tour. The booths are located around the perimeter of the World Trade Center campus and contain equipment linked to the vehicle screening center. This equipment provides the credentialer advance notice of vehicles and the occupants of the vehicles that are scheduled to be arriving and the time that they are scheduled to arrive.

When a vehicle arrives at the booth, the credentialer greets/speaks to the individual in the vehicle.¹³ The credentialer follows standard operating procedures in enforcing the initial special

⁹ It appears that the full name of CBRE is CBRE Government Services LLC. See Employer Exhibit 10.

¹⁰ No party has taken the position that the contractual unit is inappropriate because these employees are members of management or supervisors within the meaning of the Act and there is record testimony that they do not possess supervisory authority as set forth in Section 2(11) of the Act.

¹¹ Regional Account Manager Joshua Ruiz testified that this special screening is not typical for average buildings and is related to history of a pre-9/11 bombing at the World Trade Center.

¹² The testimony of Regional Account Manager Joshua Ruiz indicates that visits must be scheduled; the visitor's driver's license and vehicle information must be entered into the portal in order to schedule a visit.

¹³ The credentialer works alone in the booth; no other security officer is present with the credentialer.

screening requirements for entrance with a vehicle; they ensure that the person seeking entrance with a vehicle has a business need and has been pre-vetted. In this regard, credentialers use a driver's license reader to scan and verify the credentials of visitors in vehicles seeking access. The system ensures the validity of the license and whether there are any warrants on the driver's license. The credentialer also verifies the vehicle information. Once the credentialer lowers the barrier to allow entry, the vehicle will be inside/under the World Trade Center campus before secondary screening is performed at the vehicle screening center hub.

If a vehicle /driver is not scheduled or there is any other anomaly, the credentialer follows standard operating procedures provided by CBRE property management and the property owner to reconcile the conflict and/or refuse the vehicle.¹⁴ If the credentialer determines that an individual inadvertently wound up in the line for vehicles seeking entry, the credentialer can allow the individual to make a U-turn and leave without breaching security. If an individual claims to have a business need but clearly does not have a business need, the credentialer notifies the vehicle screening center, and the New York City Police Department and/or the Port Authority Police Department will respond for further review.

Credentialers wear a uniform of cargo pants and a fleece jacket with company insignia. There is no specific credentialing supervisor; credentialers are directly supervised by overall management of the Employer's security program at the World Trade Center campus. The Employer does not require credentialers to have a security guard license.

CBRE Wayfinders - World Trade Center

Wayfinders are strategically assigned to specific areas of the Oculus at the World Trade Center where they provide customer service and guidance, such as providing directions to the general public to local restaurants.¹⁵

Wayfinders also have "observe and report" responsibilities. In this regard, wayfinders' orders are to notify the Operations Control Center/ hub about "anything out of the ordinary," such as large crowds gathering, so that additional security resources may be dispatched. (Tr 56). If wayfinders observe a crime in progress, they notify the Port Authority Police Department within the WTC directly and secondarily notify the Operations Control Center/ hub; thereafter they may need to cooperate in any subsequent investigation. Regional account manager Ruiz testified that in the event of an emergency or other condition, after receiving notification about the condition, wayfinders participate in the evacuation plan by directing traffic away from the area of concern / to a safe area, thereby enforcing safety rules.

¹⁴ This may include coordinating with a designated tenant or stakeholder representatives to reconcile minor scheduling errors or mishaps, and/or coordinating with drivers to reconcile any minor and unexpected issues like an unexpected passenger or a replacement vehicle. (Transcript page 46, Employer Exhibit 10).

¹⁵ I take administrative notice of the Port Authority of New York and New Jersey and World Trade Center website description of the Oculus, stating among other things, that the Oculus / World Trade Center Transportation Hub is "home to 12 subway lines, the World Trade Center PATH station and dozens of retailers, serving over 1 million people every week." The Port Authority of New York and New Jersey owns and operates the World Trade Center. See www.panynj.gov/port-authority/en/wtc.html

Employer regional account manager Ruiz testified that wayfinders are “part of the fabric of the security program” at the World Trade Center.¹⁶ Wayfinders receive standardized training on basic security operations procedures but are not required to be licensed security guards. Wayfinders wear a red blazer and gray khaki pants. There are four wayfinders in the bargaining unit. A wayfinder supervisor oversees the wayfinder program.¹⁷

Fire and Safety Personnel

The Employer’s witness Ruiz testified that in relation to the fire safety and security measures they perform, the Fire and Safety personnel are there to enforce rules that help protect the World Trade Center from physical harm/damage and to protect the safety of individuals employed at or visiting the World Trade Center. Record evidence related to specific classifications are set forth below. Fire Safety personnel wear a uniform; however, their uniforms are different than the guard uniform.

I note that, other than general testimony that the Fire Inspection Team supervisors/manager oversee the Fire Inspection Team and are a “buffer” between the Fire Inspection Team and overall management, the parties did not present evidence on the specific duties of the Fire Inspection Team Supervisors or the Fire Inspection Team Manager that are separate from the duties that are performed by all members of the Fire Inspection Team. The record does not specifically identify the duties of the FSD Admin Supervisor.

Fire and Life Safety Directors¹⁸

Fire and Life Safety Directors work from the Operations Control Center hub within the World Trade Center. Regional account manager Ruiz testified that the FLSDs are strategically placed in the OCC hub to ensure synergy with multiple stakeholders including the Employer’s security department. The OCC hub contains, among other things, an alarm panel that detects issues on the various alarm panels and fire safety systems located throughout the World Trade Center. One FLSD is on duty for each tour and the FLSD monitors the alarm panel/fire safety system for conditions throughout the World Trade Center. The FLSD works side by side with the security agents who are monitoring camera footage of the entire facility on closed circuit television units in the OCC hub.¹⁹

Regional Account Manager Ruiz testified that prime functions of the Fire and Life Safety Directors are to execute emergency evacuations and deal with emergency situations. When an emergency arises, the FLSD is in charge of executing the Emergency Action Plan.

¹⁶ Transcript page 55.

¹⁷ No further details are provided about the non-bargaining unit supervisor of the Wayfinder program.

¹⁸ Fire Life and Safety Directors are also referred to herein as FLSDs.

¹⁹ Regional Account Manager Ruiz testified that the FLSD does not monitor the closed-circuit television feeds in the OCC hub.

The FLSD is the sole point of contact during a fire condition or a full building evacuation; the FLSD makes announcements throughout the facility advising personnel where it is safe to exit. The FLSD works with the New York City Fire Department to ensure everyone is evacuated from area(s) of concern.²⁰

Similarly, when there is an event/condition in an area, the FLSD issues notifications prompting other bargaining unit employees to direct persons in the facility to a safe distance away from the area of concern.

Regarding the FLSDs' monitoring functions, when the FLSD gets a notification /reads data from the panel indicating a potential issue, the FLSD dispatches the Fire Inspection Team to identify the reason for the notification, i.e., whether there is a fire, equipment is malfunctioning, etc. The FLSD ensures that the safety systems meet fire code requirements.

Where the Fire Inspection Team's investigation indicates that there is a malfunctioning fire suppression device or alarm system, the FLSD is responsible for putting the system out of service. For example, if a sprinkler is malfunctioning, the FLSD puts the sprinkler system in the area offline in order to prevent flooding and to protect property. The FLSD is responsible for making proper notifications to the third-party vendor that services the equipment. The FLSD is also responsible for notifying the appropriate stakeholders/departments that the system is out of service in the area. The FLSD ensures the area is monitored while the system is down to avoid compromising fire safety.

Fire Life Safety Directors must satisfy special licensing requirements, certified through the Fire Department of New York, but they are not required by the Employer to be licensed security guards.

Managers of the Employer's overall security program at the World Trade Center campus directly oversee the Fire Life Safety Directors.²¹

Fire Inspection Team including Fire Inspection Team Supervisor and Fire Team Manager

Regional Account Manager Ruiz testified that the Fire Inspection Team is an extension of the FLSD and that the Fire Inspection Team and FLSD work together to identify reason(s) for alarms that have been triggered and resolve them expeditiously. In this regard, as indicated above, the Fire Inspection Team (FIT) is dispatched by the FLSD to visually inspect and identify the reason for notifications received on the alarm panel. They investigate the area to find out if the fire safety equipment is malfunctioning, if there is a fire, a ventilation issue, or someone has a candle that is emitting smoke, etc. When systems are put out of service, the Fire Inspection Team works collaboratively with the third-party vendor to ensure repairs are made and systems are

²⁰ The FLSD is responsible until the New York City Fire Department arrives and takes command.

²¹ Ruiz testified that overall managers directly "oversee everything from fire and life safety to the FIT team to the credentialers." (Tr. 81-82)

operational in an expeditious manner. When systems are down and being repaired, the Fire Inspection Team works with the FLSD to monitor and ensure fire safety is not compromised.²²

The Fire Inspection Team members also perform patrolling duties and monitor fire panels that are located throughout the World Trade Center. On their patrols, they check for any fire safety issues; they verify that fire suppressant equipment is in working order and in its rightful place, and they make sure areas of concern relative to egress are not blocked.

As noted above, Regional Account Manager Ruiz testified that the Fire Inspection Team enforces rules that help protect the World Trade Center from physical harm/damage and they protect the safety of individuals employed at or visiting the World Trade Center. Ruiz testified that the Fire Inspection Team is involved in maintaining public safety as related to fire safety.

The Fire Inspection Team members are certified by the Fire Department but are not licensed security guards.

Analysis of Guard Status

As set forth by the Board in *Portland Museum of Art*, 370 NLRB No. 113 (April 16, 2021):

Section 9(b)(3) of the Act prohibits the Board from certifying for collective-bargaining purposes a unit of employees that includes both guards and nonguards. This section defines a guard as “any individual employed . . . to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises [.]” 29 U.S.C. § 159(b)(3). “[T]he Board has determined that employees are guards within the meaning of the Act if they are charged with guard responsibilities that are not a minor or incidental part of their overall responsibilities.” *Boeing Co.*, 328 NLRB 128, 130 (1999) (citing *Rhode Island Hospital*, 313 NLRB 343, 347 (1993)). The duty to enforce “against employees and other persons rules to protect property of the employer,” as stated in Section 9(b)(3), is plainly a guard responsibility. In addition, the Board has found that guard responsibilities include training in security procedures, participation in security rounds or patrols, and monitoring and controlling access to the employer's premises. *Boeing Co.*, above at 130. In determining guard status, “[i]t is the nature of the duties of guards and not the percentage of time which they spend in such duties which is controlling.” *Rhode Island Hospital*, above at 346 (citing *Walterboro Mfg. Corp.*, 106 NLRB 1383,

²² Regional Account Manager Ruiz testified that the primary function of the Fire Inspection Team is to make sure that fire and life safety systems are operational.

1384 (1953)).

Individuals may be found to be guards even if they possess and exercise only the responsibility to observe and report infractions. *Wright Memorial Hospital*, 255 NLRB 1319, 1320 (1981); *Burns Security Services.*, 300 NLRB 298, 302 (1990).

The Board has held that 9(b)(3) “is not limited to guards employed to protect property belonging to their own employer or to guards who protect against the conduct of fellow employees.” *American District Telegraph Co. (Cleveland Ohio)//of the Cleveland Co.*, 160 NLRB 1130, 1136 (1996). See also, *Brink’s, Inc.*, 226 NLRB 1182, 1183 (1976).

Status of Credentialers

Regarding credentialers, the record indicates that special screening procedures for vehicle entry into the World Trade Center campus were created in response to a pre-9/11 bombing at the World Trade Center campus. As the first line of defense in screening vehicles seeking access to the World Trade Center campus, credentialers are responsible for enforcing standard operating procedures regarding vehicle entry provided by the management company and property owner: credentialers screen identification media (i.e., driver’s license and vehicle information), confirm that vehicles seeking access are cleared through the system and have a legitimate business need at the World Trade Center campus. Credentialers report any instances of unauthorized persons /persons that do not have a legitimate business need and are attempting to gain entry with a vehicle, which results in the New York City Police Department and/or Port Authority Police responding for further review. When a credentialer lowers the barrier to allow entry, the vehicle will be inside/under the World Trade Center campus before secondary screening is performed at the vehicle screening center hub.

Thus, in my view, the credentialers perform functions that are an essential step in meeting security needs of monitoring and controlling vehicle access to the World Trade Center campus. I find that the credentialers are guards within the meaning of Section 9(b)(3) of the Act as they enforce rules to protect the World Trade Center campus and to protect the safety of persons on the World Trade Center campus. See, e.g., *Allen Services Co., Inc.*, 314 NLRB 1060 (1994) (where the Board found that security employees who had no specific training as guards and did not wear guard uniforms or carry firearms were employed for security purposes, i.e., they enforced against unauthorized persons rules to protect the safety of client equipment, kept unauthorized persons off the property and protected the premises; the Board found it sufficient that they possessed and exercised responsibility to observe and report trespass infractions as this was an essential part of the Employer’s procedures for protecting the premises and equipment); *The Wackenhut Corporation*, 196 NLRB 278, 279 (1972) (where the Board found security toll operators, who among other things, visually check each approaching car to determine whether or not it should be afforded access to the turnpike were 9(b)(3) guards, holding that it was sufficient that the security toll operators possessed and exercised responsibility to observe and report infractions, as this is an essential step in the procedure for enforcement of the highway rules); *Drexel Furniture Co.*, 116 NLRB 1434 (1956) (gateman who directed visitors and trucks entering the plant, collected passes from people leaving the plant during work hours and informed the plant manager of the presence

of unauthorized persons was held to be a guard within the meaning of the Act). See also, *Sho-Me Power Electric Cooperative*, 373 NLRB No. 139 (2024) (where the Board found that dispatchers and central office technicians who monitored and controlled access to the employer's facilities by among other things, opening gates and doors for employees, logging visitors, confirming that outside vendors have legitimate business at the Employer's facilities and reporting to the security department when an employee attempted to access an unauthorized area, were 9(b)(3) guards even though they spent a majority of their time doing other functions). Compare *Wolverine Dispatch, Inc.*, 321 NLRB 796 (1996) (where receptionists, using an intercom, spoke to persons seeking entry and either refused a person if the Employer did not wish to admit them or permitted the person to enter into a secured lobby, were found by the Board not to be guards as their "guard-like" duties were determined incidental to their basic clerical functions.)

Status of Wayfinders

Regarding wayfinders, although they have a customer service / guidance function, they are also charged with ongoing observe and report responsibilities related to their assigned area of the Oculus. In this regard, wayfinders look out for the presence of large crowds gathering or anything else out of the ordinary and notify the Operations Control Center; they directly notify the Port Authority Police Department of any crime in progress and secondarily notify the Operations Control Center hub, and during emergencies, they participate in any evacuation plan by managing crowds away from areas of concern.²³ Thus, the record indicates that an essential attribute of wayfinder responsibilities encompasses monitoring the World Trade Center Oculus for security purposes and reporting concerns such as large crowds gathering and criminal offenses in progress to the security department and the Port Authority Police Department within the World Trade Center, respectively. In addition to acting as an early warning system for such security related incidents, when notified of an emergency event or other condition, wayfinders enforce rules by directing persons on the premises away from areas of concern to protect their safety, effectively engaging in crowd management activities. Accordingly, I find that wayfinders perform functions that enhance security sufficient to establish that they are guards within the meaning of the Act. See e.g., *Rhode Island Hospital*, 313 NLRB 343 (1993) (where the Board found drivers who primarily operated shuttle vans were guards as they were also charged with the responsibilities of being on the lookout for and reporting security problems or rule violations, which the Board found were not a minor or incidental part of their overall responsibilities); *Portland Museum of Art*, 370 NLRB No. 113 (2021) (where the Board found that gallery ambassadors who performed customer service related tasks such as answering questions and promoting museum resources were guards as they were also stationed in the employer's galleries to monitor visitors and other employees and to enforce rules aimed at protecting exhibits). Compare *Hoffman Security, Ltd.*, 302 NLRB 922 (1991) (where receptionists' primary functions were to greet visitors, provide information and directions, and observe and report irregularities, visitors often passed the receptionist's desk unobserved and a 24-hour guard service was present,

²³ Indeed, Employer Regional Account Manager Ruiz testified that based on such duties, wayfinders are "part of the fabric of the security program."

the Board concluded that any guard-like duties that the receptionists performed were incidental to their basic receptionist functions and found them not to be guards.).

Status of Fire and Safety Personnel

Under Board precedent, where employees enforce only the employer's fire and safety rules, even against fellow employees, and do so only incidentally to their other duties, those employees will not be found to be guards within the meaning of Section 9(b)(3). *BPS Guard Services, Inc. d/b/a Burns Security Services, Inc.*, 300 NLRB 298, 299 (1990) enf. denied 942 F.2d 519 (8th Cir. 1991.) See also, *The Boeing Company*, 328 NLRB 128, 131, fn. 11 (1999) (the enforcement of fire and safety rules are not inherently guard duties). However, the Board has found firefighters to be statutory guards where the firefighters' duties encompassed traditional police and plant security functions as well as enforcement of fire and safety regulations. See e.g., *United Technologies Corp.*, 245 NLRB 932 (1979) (where firefighters were primarily concerned with fire prevention but also assisted guards controlling traffic and were authorized to issue speeding tickets, the Board held that their enforcement of plant rules was substantially intermingled with their fire protection duties and found them to be guards).

Regarding Fire and Life Safety Directors, record testimony indicates they enforce rules that help protect the World Trade Center from physical harm/damage and protect the safety of individuals employed at or visiting the World Trade Center. The FLSDs are strategically located in the Operations Control Center where they work in synergy with multiple departments including the security department; they consistently monitor the alarm panel in the Operations Control Center hub and dispatch the Fire Inspection Team members to identify the root cause of any potential issues indicated on the alarm panels sent from fire safety equipment located throughout the World Trade Center. The FLSDs are responsible for shutting down any malfunctioning fire safety system to avoid any property damage and to ensure the system is repaired. Fire Life Safety Directors also notify appropriate stakeholders including the security department, that fire suppression or alarm systems are down in certain areas throughout the day. They work with the Fire Inspection Team to ensure that such areas receive special monitoring until the system is fixed. While I recognize that the FLSDs are not responsible for monitoring the closed-circuit television units in the OCC hub, they work side by side with the security officers within the OCC hub who perform that security duty.²⁴ And, witness testimony indicates that the FLSD's prime functions are to execute emergency evacuation plans and deal with emergency situations; the FLSD ensures the safety of employees and other persons by following the Emergency Action Plan. In this regard, the evidence shows the FLSD is responsible for making announcements throughout the facility advising personnel where and where not to exit. Similarly, Ruiz' testimony indicates that the Fire

²⁴ In *United Protection Service*, 373 NLRB No. 3 (December 13, 2023) the Board found that traffic control officers were guards, noting the significance of the fact that the traffic control unit was placed administratively in the Safety Division which also included the patrol officers who were undisputed guards.

Life and Safety Director is responsible for making a notification when there is a condition/event in an area, prompting other security employees to direct persons away from the area of concern.²⁵

In my view, such evidence including their involvement in crowd management activities, shows that an essential part of the FLSD's responsibilities are security functions. Even assuming that a FLSD spends only a portion of their time on these functions, such is immaterial to the FLSD's guard status.²⁶ Accordingly, I find that the FLSDs are guards within the meaning of Section 9(b)(3) of the Act. See e.g., *North American Aviation, Inc.*, 161 NLRB 297 (1966) (where the Board held that while the primary function of the firemen employees was to fight fires, maintain fire equipment and standby while hazardous operations were being conducted, an essential and significant part of their duties was substantially intermingled and integrated with the enforcement of plant protection rules, thus they were guards). See also *MGM Grand Hotel, Las Vegas*, 274 NLRB 139 (1985) (where the Board found that operators who monitor a sophisticated life-safety system for fire prevention, watch over smoke detectors, chemical fire suppression systems, door exit alarms, stairwell motion detectors and other systems were guards inasmuch as they were intimately involved in security functions and life-safety procedures at the employer's facility). Compare, *American District Telegraph Company of the Cleveland Company*, 160 NLRB 1130, 1138 (1966) ("S-3" operators who worked at a central station, monitored panels or equipment which provided fire protection and building security information and brought alarm signals to the attention of their supervisors who determined whether customer, fire department or the police department should be notified, not found to be guards).

Regarding the Fire Inspection Team, these employees, who are not firefighters, respond to calls to investigate the cause of alarm panel notifications and take appropriate action to enforce rules that help protect the World Trade Center from physical harm/damage and protect the safety of individuals at the World Trade Center. They also patrol areas of the World Trade Center facility, checking to make sure that fire suppressant equipment is operational and in its rightful place; they make sure areas of concern relative to egress are not blocked. The Board has found that the protection of an employer's property and its inhabitants from fire and other hazards, the enforcement of the employer's fire and safety regulations and the performance of other traditional firefighting responsibilities are not per se guard responsibilities. *The Boeing Company*, 328 NLRB at 131, fn.11. Similarly, the Board has found that regular inspections / building tours to ensure the readiness of fire protections systems and the safety of an employer's ongoing operations are fundamentally fire and safety related in nature and a nonguard responsibility. See e.g., *Id.* at 131. See also, *American Enka Corp.*, 90 NLRB 658 (1950) (the Board found a safety inspector was not employed as a guard where his primary responsibility was the inspection of all safety hazards and firefighting equipment and the investigation of and reporting on all plant accidents; his duties included making regular patrols to check for safety hazards and periodic fire inspections). While there is testimony that the Fire Inspection Team enforces rules that help protect the World Trade Center from physical harm/damage and protect the safety of individuals employed at or visiting the World Trade Center, the evidence does not support a finding that these employees perform traditional police and plant security functions. Accordingly, under existing Board precedent, the

²⁵ The record does not indicate whether such emergency conditions/events would include security events such as an active shooter, bomb threats, etc.

²⁶ As explained by the Board in *Rhode Island Hospital*, *supra*, the controlling factor in determining "guard" status is the nature of the duties of the alleged guard and not the percentage of time which the alleged guard spends performing these duties.

functions of the Fire Inspection Team which are fire and safety related in nature are insufficient to establish that the Fire Inspection Team employees are employed as guards.²⁷ See e.g., *BPS Guard Services, Inc. d/b/a Burns Security Services, Inc.*, *supra*. (where the only regulations of a security service's client enforced by firefighters pertained exclusively to fire and safety, and the firefighters' enforcement of fire regulations against other employees, such as standing fire watches and enforcing non-smoking rules, were incidental to their duties to fight fires and ensure fire safety, the Board held that they were not guards).

Thus, I find that there is insufficient evidence that the three employees in the Fire Inspection Team classification are employed as guards. As indicated above, no party presented evidence on any duties exclusively performed by the two Fire Inspection Team Supervisors, the Fire Inspection Team Manager or the Fire Safety Director Admin Supervisor. It appears that the parties agree the Fire Inspection Team, the FIT supervisors and the FIT Manager are all responsible for the same fire and similar emergency safety at the World Trade Center. Thus, without further evidence of traditional police and plant security duties performed by these employees, there is insufficient evidence to find that the FIT supervisors and FIT manager are employed as guards.

Finally, as there is no clear and specific reference on the record to the Fire Safety Director Admin Supervisor, I find that it is questionable whether this position was sufficiently raised as a disputed position and there is insufficient evidence for any finding related to the guard or nonguard status of the employee in the position of Fire Safety Director Admin Supervisor.²⁸

I note that the Employer and Local 32BJ assert that the Petitioner and LEOSPBA failed to meet their burden of establishing by definitive evidence the nonguard status of the disputed employees, citing *Universal Protection Service, LLC*, 373 NLRB No. 3 (2023). In *Universal Protection*, the Board found that the burden of establishing noncertifiability of an alleged mixed guard-nonguard union required the party alleging noncertifiability of the union to prove by definitive evidence that the union represented nonguards. The Board based this holding on the following explanation, citing *Burns Security Services*, "within the constraints of the guard proviso to Section 9(b), guards are fully entitled to representatives of their own choosing and to join and form local and national labor organizations" thus, "the proviso to Section 9(b), when read in context, requires that the noncertifiability of a guard union must be shown by definitive evidence. Otherwise the rights of guards to be represented by a union and of guard unions to represent guards would be seriously undermined."²⁹ In the instant case, there is no dispute that the incumbent union is noncertifiable. The issue presented concerns the guard or nonguard status of certain employees in the unit covered by a contract alleged to bar the petition, i.e., the contractual unit, as distinguished from an issue as to whether a union seeking to represent guards also represents nonguards. In other words, the issue is not as to the noncertifiability of a *union* as in *Universal Protection* and *Burns Security*; rather the issue concerns the noncertifiability of a *contractual unit*. I know of no case where the Board has extended the above holding of *Universal Protection*

²⁷ Indeed, there is record testimony that the Fire Inspection Team is part of overall public safety by way of fire safety.

²⁸ Section 9(b)(3) of the Act does not impose upon the Board a duty to police every contract voluntarily established by the parties, to determine the status of individual employees whom the Board, if called upon to make a decision, would exclude. See e.g., *American Dyewood*, 99 NLRB 78 (1952),

²⁹ *Burns Security Services*, 278 NLRB 565, 568 (1986).

Services and *Burns Security* to find that the burden of establishing noncertifiability of a *unit* by definitive evidence rests with the party asserting it. Thus, I do not find that there was a burden on the Petitioner and LEOSU to prove by definitive evidence that the Fire Inspection Team employees are nonguards. I find that the record evidence is insufficient to establish that these employees were employed as guards and that there is sufficient record evidence to establish by the preponderance of the evidence that certain employees in the contract unit are nonguards under existing Board law as explained above.

Contract bar

Section 9(c)(1) of the National Labor Relations Act states that establishing a question concerning representation is required prior to directing any election. The Board's "contract bar" doctrine dictates that where employees are already covered by a collective-bargaining agreement no question concerning representation exists. *Hexton Furniture Co.*, 111 NLRB 342, 344 (1955). Accordingly, assuming the agreement meets certain requirements, the petition will be dismissed. *Id.*

Under the Board's contract-bar doctrine, a collective bargaining agreement will bar a representation election encompassing the petitioned-for employees under certain circumstances. *Direct Press Modern Litho, Inc.*, 328 NLRB 860 (1999); *Hexton Furniture Co.*, 111 NLRB 342 (1955). The purpose of the doctrine is to achieve a reasonable balance between the aims of industrial stability and employee free choice. *Seton Medical Center*, 317 NLRB 87, 88 (1995); *Appalachian Shale Products Co.*, 121 NLRB 1160, 1161 (1958). It is well settled that the party or parties asserting that the contract is a bar to an election must sustain by a preponderance of the evidence the burden of proof that a written signed contract exists. *Road & Rail Services, Inc.*, 344 NLRB 388, 389 (2005); *Roosevelt Memorial Park, Inc.*, 187 NLRB 517 (1970); *Bo-Low Lamp Corp.*, 111 NLRB 505, 508 (1955). The Board has a well-established set of requirements that must be met for a contract to act as a bar, including that the contract must encompass the petitioned-for employees, be written and signed by the parties, cover an appropriate unit, and address substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship. *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958).

The Board has established a window period from 60 to 90 days prior to the expiration of an existing contract, during which the contract will not serve as a bar to a petition for an election of the unit covered by the contract. *Leonard Wholesale Meats, Inc.*, 136 NLRB 1000 (1962); *Crompton Company, Inc.*, 260 NLRB 417, 418 (1982). The 60-day period preceding and including the expiration date is referred to as the "insulated period," and a petition filed during this period will be dismissed as untimely. *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1000 (1958).

An exception to the contract bar policy is raised in the context of mixed guard-nonguard units. An agreement between an employer and a union representing a mixed guard-nonguard unit will not bar a petition for a guard-only unit. *Corrections Corp. of America*, 327 NLRB 577 (1999); *Monsanto Chemical Co.*, 108 NLRB 870 (1954). However, the Board will find a contract covering a unit of guards between an employer and a union that admitted to membership both guards and nonguards a bar to a petition during the term of that contract. *Stay Security*, 311 NLRB 252 (1993);

The William J. Burns International Detective Agency, Inc., 134 NLRB 451 (1961). Furthermore, in order to avoid the disruption of a stable bargaining relationship, the Board has found a contract to bar a petition for production and maintenance employees where the employer and the incumbent union voluntarily included a fringe category of employees – guards-- in the overall unit of production and maintenance employees, which the Board, when exercising its affirmative statutory powers, would concededly lack authority to direct the parties to include. *American Dyewood*, 99 NLRB 78 (1954).

In *American Dyewood*, the petitioning union was not seeking to represent the fringe guard employees and the Board found that the coincidental inclusion of a small group of guards in the broad overall unit did not warrant disruption of the stable bargaining relationship which had been established by the employer and the incumbent union for the production and maintenance employees. *Monsanto Chemical Co.*, *supra* at 871. In finding that the contract between the parties operated as a bar the Board noted that to disrupt that relationship, “should require something more than a finding that several employees should not have been included in an otherwise clearly appropriate unit.” And, that to make the Board’s contract bar doctrine inapplicable “would invite wholesale examination of existing contracts as a first step toward raids by competing labor organizations. It would jeopardize numberless existing contracts for no reason other than the parties’ voluntary inclusion of a fringe category of employees whom this Board, when exercising its affirmative statutory powers, would concededly lack authority to direct them to include. *American Dyewood*, *supra* at 80.

In the instant case, there is no dispute that the petition was filed during the insulated period and thus it is untimely filed and subject to dismissal assuming the contract is of bar quality. As noted above, the Petitioner and LEOSPBA assert that the contract does not have bar quality because it encompasses a mixed guard-nonguard unit.³⁰ While I recognize that in exercising its affirmative statutory powers, the Board would not establish as appropriate a mixed unit of guards and non-guards, in the circumstances of this case, I find that the coincidental inclusion of a small group of nonguards, i.e., six employees or 0.4% of a broad overall unit of about 1,396 employees, does not warrant the disruption of the stable collective bargaining relationship between the Employer and Local 32BJ. I note that I do not establish as appropriate a unit containing guards and nonguards. Accordingly, I find that the contract bar doctrine is applicable herein. See e.g., *American Dyewood*, 99 NLRB 78 (1954).

³⁰ Similar to *American Dyewood*, *supra*, the Petitioner does not seek to represent the fringe unit of employees that it contends are not guards.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this proceeding, the undersigned finds and concludes as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The parties stipulated, and I find, that 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.³¹

3. The parties stipulated, and I hereby find, that the Petitioner, LEOSPBA and SPFPA are labor organizations within the meaning of Section 2(5) of the Act. It is undisputed that these labor organizations are qualified guard unions.

The parties stipulated and I hereby find, that Local 32BJ is a labor organization within the meaning of Section 2(5) of the Act. Local 32BJ stipulated that it admits into membership both guards and nonguards.

The above-named labor organizations claim to represent certain employees of the Employer.

4. I find the following employees constitute a unit appropriate for the purposes of the application of the contract bar doctrine:

All full-time and regular part-time security officer employees working in New York, Kings, Queens, Bronx, Richmond, Westchester and Nassau Counties, but excluding all administrative and clerical, professional, confidential, seasonal, non-guard employees, supervisors and managerial personnel as defined by the Act.

5. As discussed above, I find that the contract bar doctrine bars an election in the petitioned-for unit at this time. No question concerning representation 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.

ORDER

Accordingly, it is hereby ordered that the petition in Case No. 29-RC-338819 be, and it hereby is, dismissed.

³¹ The parties stipulated that the Employer, Inter-Con Security Systems, Inc., is a California corporation with an office and place of business located at JFK Building 141, 141 Federal Circle, Jamaica, NY 11430, and has been engaged in providing security services. During the past 12-month period, the Employer, in conducting its business operations has gross revenues of over \$50,000 and provided services valued in excess of \$5,000, to entities directly engaged in interstate commerce including the Port Authority of New York and New Jersey.

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 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 July 11, 2025**, 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 July 11, 2025**.

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 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: June 27, 2025



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