International Union,
Security ★ Police ★ Fire
Professionals of America (SPFPA)
25510 Kelly Road, Roseville, Michigan 48066
(586) 772-7250 / FAX (586) 772-9644
www.SPFPA.org

DAVID L. HICKEY
International President

DENNIS T. ECK
International Secretary-Treasurer

DWIGHT E. DULEY
Vice President at Large

STATEMENT OF DAVID L. HICKEY, PRESIDENT INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA)

To

THE HOUSE SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS

In

OPPOSITION TO COMBINING GUARDS AND OTHER EMPLOYEES IN BARAINING UNITS

September 28, 2006
Washington, D.C.

As President of the International Union, Security, Police and Fire Professionals of America (SPFPA), I vigorously oppose any amendment to Section 9(b)(3) of the National Labor Relations Act, as amended, which would combine statutory "guards" with non-guards in a common bargaining unit. Such a change is antithetical to the original legislative philosophy and intent of the Act, and its promotion of industrial stability. Moreover, it would be inimical with national security.

The International Union, United Plant Guard Workers of America (UPGWA) was founded on February 17, 1948 and has become the world's largest Union devoted to the representation of guards and security employees exclusively.[1] Our Union represents industrial and agency guards in every major industry and at numerous Government installations throughout the United States and Puerto Rico. Throughout the years we have negotiated successive National Bargaining Agreements with General Motors Corporation, DaimlerChrysler Corporation, Ford Motor Company and other major corporations. Many of our collective bargaining units are at Government facilities, such as the Kennedy Space Center, Savannah River, Oak Ridge, Idaho National Lab, King's Bay Submarine Base, military forts, nuclear power plants and with defense contractors such as Boeing.

Our Union did not seek the initial enactment of Section 9(b)(3). We were the product of it. Prior to 1947, the core of what was to become the UPGWA was known as

[1] The Union's name was changed to International Union, Security, Police and Fire Professionals of America (SPFPA) in May 2000.

Local 114, UAW. In 1947 the labor movement did not seem unduly disturbed about Section 9(b)(3). Industrial guards were regarded as representatives of management. Indeed, the original House Bill would have included guards within the definition of "supervisor." The compromise, of course, was to place guards in separate bargaining units and separate guard unions. Thus we were left to our own devices and resources to form an international guard union.

Despite our statutory exile from the house of labor, the UPGWA/SPFPA has always enjoyed a close relationship with leaders of the AFL-CIO and its affiliated unions. Although we must presently avoid any affiliation, directly or indirectly, with an organization which admits to membership employees other than guards, our Union has achieved international union status and has accepted and performed a significant role in the labor movement.

Since its enactment in 1947, the philosophy of Section 9(b)(3) has proven workable and effective. Guard employees have unique and special hours and other terms and conditions of employment. The National Labor Relations Act has, of course, recognized the special community of interest enjoyed by guard employees and has, therefore, directed that guards be placed in separate bargaining units. This rule has resulted in a stability and continuity of labor relations not always enjoyed by other bargaining units of employees. For example, guard units are not subject to NLRB petitions for craft or departmental severance. The maintenance of guards in separate bargaining units and unions has avoided conflicts of interest between the enforcement of plant rules and the obligations of union membership. Equally, conflicts of interest

have been avoided in strikes and other labor disputes while preserving the rights of the respective parties. Since industrial crime and terrorism is on the increase, the continued need for a separate identity of guard employees is even more apparent.

The Congress has rejected prior efforts to amend 9(b)(3) to combine guards and non-guards or to permit guard representation by non-guard unions.

In 1978 our Union successfully opposed the so-called "Riegle Amendment" to S. 1883 which would have limited 9(b)(3) to guard agencies only. Directly employed or in-house guards would lose the protection of 9(b)(3).

In 1983-1984, we opposed H.R. 2197 and 2198 which would have permitted non-guard unions to represent guards at employers and locations where it did not represent non-guards.

Similarly, in 1986, we opposed S. 1018 which would amend 9(b)(3) to apply to "plant guards" only. Agency guards would not be subject to 9(b)(3), and thus the NLRB could certify a non-guard union to represent a mixed bargaining unit.

It is evident that committees of both the Senate and House have recognized the adage that "If it ain't broke, don't fix it." Section 9(b)(3) is not broken and will continue to serve its purpose of providing statutory "guards" with the right to representation while avoiding the serious problem of divided loyalties.

The SPFPA represents statutory guards at numerous military, space and defense installations throughout the country. The security personnel at such facilities are not traditional "plant guards." They are highly trained, dedicated and motivated professionals who are prepared to meet the current challenges of terrorism, sabotage

and treason. Mixed bargaining units would destroy the stability and community of interest created by Section 9(b)(3) by placing statutory guards in heterogeneous units with representation by non-guard unions.

In 1984 the NLRB placed its guard representation policy in harmony with the legislative intent of Section 9(b)(3). In ***University of Chicago***, 272 NLRB No. 126, 117 LRRM 1377 (1984), it was held that a guard/non-guard union is barred from intervening in an election for a guard unit. The Board stated in relevant part as follows:

> "As enacted, Section 9(b)(3) applies both to mixed units of guards and other employees and to guard/non-guard unions. The statute renders the former inherently inappropriate, and proscribes the Board from certifying the latter. Although the provision addresses two different situations, we conclude that, given the purpose underlying its enactment, Section 9(b)(3) was intended to achieve a uniform result. Thus, we find no basis for distinguishing between the degree of exclusion to be applied to a mixed unit and that to be applied to a guard/non-guard union. Such a distinction is at odds with the fundamental purpose of Section 9(b)(3) inasmuch as it permits a guard/non-guard union to attain indirectly that which it cannot attain directly, that is, a place on the ballot in the Board conducted election. Moreover, it can scarcely be gainsaid that placing a guard/non-guard union on the ballot contributes to a result antithetical to the legislative history of Section 9(b)(3). Clearly, this practice creates the false impression that the guard/non-guard union is equally as capable of securing the protections of the Act as other candidates on the same ballot. As we noted in Brink's, supra, we shall not, indeed cannot, sanction a practice which utilizes Board processes in furtherance of an end which a specific provision of the Act was plainly intended to discourage.
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> Thus, we construe Section 9(b)(3) not only to bar the formality of certification, but also to preclude a disqualified labor organization from taking advantage of the Board's election processes, including the privilege of being placed on the ballot as an intervenor with an accompanying certification of the arithmetical results. Therefore, we hereby over rule Burns II, Bally's Park Place, and their progeny." (117LRRM 1379-1381, emphasis added).

Also, to the same effect is Board policy set forth in ***Brink's, Inc.***, 272 NLRB No. 125, 117 LRRM 1385 (1984) and ***Wells Fargo Armored Service Corp.***, 270 NLRB No. 106, 116 LRRM 1129 (1984).

Edward Miller, a former NLRB Chair, appeared before a Senate subcommittee in 1986 and urged no change in 9(b)(3) as follows:

> Under the *Armored Motor Services* case, and for thirty years and more now, [the NLRB] has applied the law to all guards, including armored car guards and courier guards. This has been true under both Republican and Democratic administrations. Neither the courts nor the Congress have found the Board to be in error.... I know of no evidence that the various unions which do limit their membership to guards are not representing them well, effectively, and honestly.... Does the Congress have any solid evidence that there are a lot of guards out there seeking union representation whom the established guard unions are not trying to organize or are not interested in organizing? Or is it simply the fact that some other non-guard unions would like an opportunity to raid the guard unions? I hope it is not the latter.... Is this Congress really interested in furthering internal union disputes and raiding tactics? I doubt it.

In their definitive study "Guard Unions And The Problem Of Divided Loyalties" published in 1989 by the Wharton School, Industrial Research Unit, the authors stated conclusions that are timely today and applicable to this Subcommittee's inquiry as follows:

> Indeed, legislation to repeal or weaken section 9(b)(3) would seem to fly in the face of the current public policy trend toward greater sensitivity to conflicts of interest involving persons who serve in positions of trust whether with respect to labor disputes, terrorism, or day-to-day security.
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> Congress in 1947 had no trouble seeing that serious conflict of interest problems could arise if guards could be mixed together in the same bargaining units, or represented by the same labor organizations, as nonguard employees. Guards, by definition, serve in positions of special trust. They are charged with protecting property and safety. They are the people employers depend on to prevent unauthorized entry, sabotage, and other misconduct during labor disputes or otherwise. To put such persons in positions where their loyalties could be divided between their

duties to the employer and their allegiance to a union would undermine the very essence of their function.

> Section 9(b)(3) is a carefully drawn safeguard against such potential conflicts of interests. It allows guards to join, assist, and form guard unions and exercise all the rights of employees under the NLRA as to collective bargaining. It simply requires that they do so in the context of separate bargaining units and through separate, independent unions. Senator Taft recognized in 1947 that the slight limitation section 9(b)(3) thus placed on guards' rights under the NLRA was "a minor one, nevertheless a reasonable one."
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> Nothing has happened in the forty-plus years since 9(b)(3)'s enactment to warrant a different conclusion today. The limitations placed on guards have indeed proven very minor. It has not prevented them from having effective, powerful labor unions of their own choosing. There is no indication that guards have fared any less well from a labor relations standpoint than non-guard employees. And the safeguard that section 9(b)(3) established is every bit as reasonable by today's standards as it was by 1947's. The problem of potential conflicting loyalties is certainly as real today as it was then, and the American public has, if anything, grown far less tolerant of such conflicts – or even the appearance of conflicts of interest.

The SPFPA continues to protect and advance the rights of security employees. The occupation and profession of security officers will not gain from an amendment of 9(b)(3) that would combine guards and non-guards in bargaining units.

The UPGWA/SPFPA did not sponsor or support the original 9(b)(3) in 1947. We were temporarily orphaned by it. We survived and grew however because of an ability to recognize and deal with the special problems and needs of security officers. This has been accomplished in accordance with the finest traditions of trade unionism and consistent with sound labor relations policy. Any amendment of 9(b)(3) would be destructive of 59 years of progress in the exclusive representation of security

employees, and contrary to national security. It would detract from the mission of security officers at all levels of private security.

Contemporary security officers have become first responders with responsibilities unknown prior to 9/11. They must not be encumbered by restraints unrelated to the security function such as conflicts of interest arising from the enforcement of rules against non-guard co-workers.

National security demands a strengthening of the security profession, not a diminution of it in opposition to established federal labor policy.

This Subcommittee should recommend that there be no change in Section 9(b)(3) or NLRB precedent.

Respectfully submitted,

David L. Hickey, President
International Union, SPFPA

DLH/GAG/pg
9/25/06