

RB Associates, Incorporated and International Union of Operating Engineers, Local 99-99A, AFL-CIO, Petitioner. Case 5-RC-14470

October 30, 1997

DECISION ON REVIEW AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On May 23, 1997, the National Labor Relations Board granted the Employer's Request for Review of the Regional Director's Decision and Direction of Election (pertinent portions are attached as an appendix).¹ Having carefully reviewed the entire record, we affirm the Regional Director's finding that a single location unit of maintenance employees and painters at the Employer's Washington Plaza hotel, excluding those roving/pool employees not regularly assigned to the Washington Plaza, is an appropriate unit. We find, for the reasons set forth in the Regional Director's decision, that the petitioned-for single-facility unit is presumptively appropriate; that the Employer has failed to meet its burden to overcome the presumption; and that, therefore, the petitioned-for, single-location unit of the Employer's maintenance employees and painters is appropriate for bargaining.²

In affirming the Regional Director, we note that although the painters regularly assigned to the Washington Plaza are termed "pool" painters, the same term given to the Employer's roving painters and maintenance employees, the Washington Plaza painters are distinct. Thus, the pool painters working at the Washington Plaza are regularly assigned to that hotel. Although prior to its purchase of the Washington Plaza, the Employer had used these painters as roving painters at its other hotels, at the time of the hearing, these pool painters had worked on a regular basis at the Washington Plaza for 3 to 4 months. The vice president of maintenance and construction for the Employer expected these painters to continue working at the Washington Plaza indefinitely, perhaps including the entire period of construction which might be 5 years or longer, and considered them for all intents and purposes to be permanent "for now." By contrast, the Employer's pool painters and other pool employees who are not regularly assigned to the Washington Plaza rove from one hotel of the Employer's group to another to perform their work. Indeed, the Employer in

¹The election was held on May 23, 1997, and the ballots impounded.

²The Regional Director excluded pool engineers Anderson and Renderos from the Washington Plaza unit. However, we find that the record is unclear as to whether they are pool employees regularly assigned to the Washington Plaza and whether they have a community of interest with the other unit members. We therefore direct that their ballots be handled in accordance with the Board's normal challenge procedure.

its staffing list distinguishes these pool employees from those regularly assigned to the Washington Plaza because they have more flexibility—they might be working at any of the Employer's hotels next month. The pool employees who are not regularly assigned to the Washington Plaza are occasionally sent there to do special projects. While some have worked for several days or longer at the Washington Plaza, such assignments were not on a regular, long-term basis. Although the Washington Plaza pool employees are classified by the Employer as temporary there, their indefinite but long-term employment with the hotel supports the Regional Director's finding that they should be considered employees of the Washington Plaza for purposes of determining the appropriate unit. *Ameritech Communications*, 297 NLRB 654, 656 (1990).

ORDER

The Regional Director's Decision and Direction of Election is affirmed, and the case is remanded for further appropriate action.

APPENDIX

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Union amended the petition at the hearing and it seeks to represent a unit consisting of:

All full-time and regular part-time maintenance staff employees and helpers, painters, including the painting supervisor, employed by the Employer at the Washington Plaza Hotel in Washington, DC, excluding all other employees, carpenters, chief engineers, roving/pool employees not regularly assigned to the Washington Plaza Hotel, the director of engineering, the lease administrator, the vice president of maintenance and construction, and guards and supervisors as defined in the Act.

There are approximately 14 employees in the unit sought by the Petitioner. The unit sought by the Petitioner includes five painters, including the individual classified as the painting supervisor, whose primary job responsibilities are to perform painting and plastering work at the Washington Plaza. There is an additional part-time painter, Medrano, who works a full shift at another hotel, who the Union would include in the unit. The maintenance staff at the Washington Plaza consists of five general maintenance employees, an HVAC engineer, and a mechanic/electrician. There is also a maintenance helper who the Petitioner would include in the unit. With one exception, the Employer agrees that the 14 employees sought by the Petitioner should be included in any appropriate unit. The exception is the position of painting supervisor; the Employer asserts that this position should be excluded on the ground that the person holding that classification is a supervisor within the meaning of Section 2(11) of the Act. The parties also agree that temporary painters, numbering approximately 14, should be excluded from any appropriate unit. Furthermore, the parties stipulated to the supervisory and managerial status of the director of engineering

at the Washington Plaza Hotel and of the Employer's corporate vice president of maintenance and construction. Finally, the parties agree that the lease administrator should be excluded from any appropriate unit.

Positions of the Parties

The Petitioner asserts that this proposed single location unit is an appropriate bargaining unit. The Employer argues that the only appropriate unit must include all maintenance employees, helpers, painters, and carpenters working at the Employer's five hotels located within the District of Columbia. Besides employees at the Washington Plaza Hotel, the Employer would include employees at the Morrison-Clark Inn (the Morrison), the Henley Park Hotel (the Henley), the State Plaza Hotel (the State), and the Hotel Lombardy (the Lombardy). The Employer's proposed multilocation unit would include: an engineer and a painter employed at the Morrison; two general maintenance employees and two painters employed at the Lombardy; an engineer and two general maintenance employees employed at the State; and an engineer and an assistant engineer employed at the Henley. Furthermore, the Employer would include within the multilocation unit four pool carpenters, four pool painters, and a pool helper. These pool employees are not regularly assigned to any one of the Employer's hotels but are assigned to a site as needed. Finally, the Employer would include two pool engineers, Renderos and Anderson. As to Anderson, the Employer asserts that because of the high proportion of time he spends working at the Washington Plaza Hotel, he should be included in the unit even if it is limited to employees employed at that single site. The Petitioner asserts that all of the pool employees should be excluded because they lack a sufficient community of interest to warrant their inclusion. It also asserts that Anderson should be excluded as a supervisor. The parties did stipulate to the supervisory status of the chief engineers employed at the Lombardy and the State. Overall, to the 14 employees sought by the Petitioner, the Employer's proposed multisite unit would add approximately 21 employees. The Petitioner expressed its willingness to proceed to an election in a unit larger than the one it asserts is appropriate.

The Employer's Operations

The Employer purchased the Washington Plaza Hotel in October 1996. Along with a restaurant located in the Georgetown section of the District of Columbia and a hotel located in Virginia, the Employer refers to and markets the five hotels involved in this proceeding as its classic collection. Three of the hotels, the Morrison, the Henley, and the Washington Plaza Hotel, are located within several blocks of each other. The State and Lombardy are a bit more distant, located more than a mile away from the other three hotels. Possessing 338 rooms, the Washington Plaza is the largest of the 5 hotels. The Morrison has 54 guest rooms, the Henley has 96, the Lombardy has 125, and the State has 223 rooms. Since purchasing the Washington Plaza Hotel, the Employer has been involved in integrating that hotel into its classic collection, a process that remains in progress.

Stephen Golsch holds the position of the Employer's director of human resources, a position he has held since November 1996. In this capacity Golsch oversees matters per-

taining to human resources at all five hotels involved in this proceeding. The personnel policies applicable to the five hotels are the same. The Employer has one employee handbook that describes employee benefits and rules and regulations. This handbook applies to employees at all five hotels.

New employees at all five hotels are subject to a 3-month probationary period, which is subject to extension at the sole discretion of the Employer. The handbook establishes a regular workday for employees at all five hotels, consisting of 8 consecutive hours, excluding a 30-minute unpaid lunch period, as scheduled by the Employer. If an employee desires to leave work during working hours, the handbook requires that the employee receive permission from his supervisor or department head. With regard to overtime, the handbook states that employees will be compensated at the rate of time and a half for hours worked in excess of 40 in a work rate. However, overtime work must be approved in writing by the employee's supervisor.

Concerning the subject of performance reviews, the handbook provides that new employees will be evaluated after their first 3 months of employment and at the end of their first year. After that employees are evaluated on an annual basis.

The employer handbook declares that promotion from within is the Company's policy, whenever it is advisable, in the Company's judgment, to follow that course. As to transfers, the handbooks says that employees transferring within from one property to another do not lose benefits or seniority.

The handbook establishes that employees will be paid on Fridays for the work they performed the previous week. If a particular Friday happens to be a holiday, employees will be paid on the last workday preceding the holiday. The handbook lists paid eight holidays which all regular part-time employees who have completed their probationary period receive, provided they work on the last regularly scheduled workday before and the first regularly scheduled workday after the holiday. However, employees may be required by the Employer to work on a holiday, in which case the Employer will grant the employee another day off later in the same week.

The Employer has a progressive discipline policy that applies to employees at all five of the hotels. According to Golsch, he is involved in all decisions to terminate employees. A manager or supervisor at one of the hotels may suspend an employee pending termination, but before a termination action becomes final Golsch must approve the action. This system is designed, in part, to maintain consistency in the application of the Employer's disciplinary policies at its various properties.

Golsch is also involved in the process of hiring employees for all five hotels. There is a single application form which the Employer uses for all of its properties. Applications are submitted to the Employer's corporate office and are routed through Golsch. Golsch also reviews all appraisals for employees at the five hotels. The purpose of his review is to maintain consistency in the application of the Employer's standards. After reviewing the appraisal, assuming that he does not perceive any problems with it, Golsch signs the appraisal and routes it to the owner of the Employer. Appraisals are supposed to be prepared on employee anniversary dates. A part of the evaluation process involves granting an

employee a wage increase. The employee's manager or supervisor prepares the appraisal and sets the employee's job rating. Golsch determines the actual increase that an employee will receive, although this determination appears to involve a minimal exercise of discretion because the Employer has a formula linking the size of an increase to a particular rating level. The same appraisal form is used at all of the Employer's properties.

Employees receive their paycheck at the hotel where they work. Pooled employees receive their checks at the site where they are working on payday. The checks for pooled employees are taken to the appropriate site by Willard McGraw, vice president of maintenance and construction.

The Employer maintains its payroll in one company account. Each hotel also has an operating account. Once payroll information is compiled by a hotel, the information is submitted to the corporate office. From the corporate account an individual hotel is provided funds to cover its payroll. Employees regularly assigned to work at a hotel receive a check with the name of the hotel on it. Pooled employees receive a check containing the name of RB Associates. The Washington Plaza has a separate payroll system which the Employer is in the process of integrating into its overall system, a process that should be completed by May 1997.

Employees at all of the Employer's hotels wear uniforms, but the uniforms vary a bit. The Employer attempts to design uniforms that blend with the decor of a particular hotel. Employees at the Washington Plaza wear name tags; employees at several other of the hotels do not wear name tags. Vice President for Hotel and Restaurant Operations Rawson makes the principal decisions concerning the type of uniforms worn by employees at the various hotels.

The Employer has a centralized purchasing procedure. There is a corporate purchasing manager who is in charge of purchases for all of the hotels comprising the classic collection. The office of the purchasing manager is located at the Washington Plaza. Individual hotels do make small purchases from time to time, particularly when there is a pressing need to obtain an unavailable item.

The Employer conducts orientation meetings once a month. The location of these meetings is rotated from site to site among the properties comprising the classic collection. All employees are invited to attend these meetings.

The Employer has a system designed to facilitate transfers by employees from one of its properties to another. It maintains what it refers to as an open-position list which lists vacancies at the properties comprising the classic collection. This list is generated by Golsch. The list is routed to and posted at each of the classic collection properties. If an employee is interested in transferring to a vacant position, the employee can contact his or her supervisor or Golsch. The decision about whether to transfer an employee is made by Golsch in conjunction with the general managers at the affected properties. This transfer procedure has only been in place since February 1997. It does not appear that any rank-and-file employees have transferred under this new procedure. The evidence does show that a number of supervisors and managers have been transferred by the Employer from one hotel to another, including the general manager at the Washington Plaza, who transferred from the Morrisson. In addition, there have been involuntary transfers of rank-and-file employees from one hotel to another.

The maintenance staff at the Washington Plaza performs tasks such as changing light bulbs, changing filters, checking problems with heating and air-conditioning, checking electrical problems, and performing minor plumbing repairs. Once in a while members of the maintenance staff assist in the renovation of rooms or portions of the hotel. On such occasions they perform tasks such as removing drapes, curtain rods, pictures, headboards, or other furniture, performing minor electrical work, and, after the renovation work is completed, putting things back in place. Maintenance engineers receive some of their work assignments in the form of tickets outlining repairs that need to be undertaken. The members of the maintenance crew are largely interchangeable from the standpoint of their respective skills, but not entirely so. The HVAC engineer has more knowledge regarding air-conditioners. Likewise, the mechanic/electrician spends a lot of time working on the washers and dryers in the hotel laundry. All members of the maintenance staff at the Washington Plaza are supervised by the chief engineer, Ewin. Ewin, in turn, reports to the director of engineering, Sardarbegians. The maintenance engineers are assigned to specific shifts, referred to as watch shifts. Maintenance staff members punch a timeclock located near the entrance of the building.

The painters at the Washington Plaza all work a shift from 7:30 a.m. to 4 p.m. They punch the same timeclock as is used by maintenance employees. The work assignments of painters are determined by the director of engineering, who communicates the assignments to the painting supervisor, Nelson Del Cid. Del Cid informs the other painters about their assignments. Del Cid performs painting and plastering work alongside the other painters. Painters also perform tasks related to repairing damaged walls, caulking, and removing wallpaper. At the end of the day Del Cid reports to the director of engineering and informs him about the amount of work accomplished. Painters ordinarily do not work alongside the maintenance engineers. When the pooled carpenters perform work at the Washington Plaza, after the carpenters have finished their work the painters go in and paint and plaster the renovated area. However, the painters normally do not work alongside the carpenters. In addition to painting and plastering, painters sometimes perform functions such as removing wallpaper. Painters at the Washington Plaza wear white uniforms. Del Cid wears the same uniform as the other painters. When overtime work is required for painters, the decision about which painters should work the overtime is made by the director of engineering. The wage rates of the painters range from about \$11 per hour to \$14 per hour. Del Cid, the painting supervisor, earns \$15.50 per hour. Medrano, who regularly works part-time as a painter at the Washington Plaza, earns \$9 per hour. He receives a lower wage rate because he is a houseman who does not have much experience painting and plastering.

The helper at the Washington Plaza performs functions such as pressure washing the driveway to the hotel, removing carpet from around the swimming pool, cleaning up after construction work, and mopping hallways. Occasionally the helper assists with sanding, caulking or cleaning work performed in connection with a renovation project.

The pooled employees, who the Employer would include in the unit, work on special projects at the various hotels comprising the classic collection. The project could involve work such as renovating a floor at a hotel or installing a new

office, which recently occurred at the Washington Plaza. Other examples of special projects performed by pool employees are a bar/lounge in the process of being installed at the Lombardy, a new suite built at the Henley and two new rooms built at the State. On occasion pooled employees perform more routine work. For instance pooled employees recently fixed a water leak under the kitchen at the State. There are a total of 11 pooled employees: 2 engineers, 4 carpenters, 4 painters; and 1 helper.

The pooled employees are supervised by McGraw, the vice president of maintenance and construction. McGraw determines where pooled employees will work and oversees their work. He determines the scheduling of special projects and allocates personnel depending on what is required to perform a job. Pooled employees use their own tools as well as tools provided by the Employer. They bring their own tools to the site where they are working. If a pool employee requires a new tool, that employee would contact McGraw about the matter. McGraw also prepares the appraisals of the pooled employees. Pooled employees receive the benefits as employees assigned regularly to work at a specific hotel. Pooled employees do not use a timeclock; they fill out daily timesheets. If a pooled employee needs to leave during the day he would obtain permission from McGraw. McGraw carries a pager which ordinarily makes him easy to contact. If for some reason McGraw is unavailable, the pooled employee would leave a message for McGraw at his office.

The record reflects that pooled employees occasionally come into contact with employees regularly assigned to a hotel, but that the contact between these two groups of employees is limited and sporadic. Even when pooled employees are working on a project at the Washington Plaza, they ordinarily do not work in conjunction with the maintenance employees or painters assigned to that site.

The maintenance employees and painters regularly assigned to the other hotels perform functions at their respective hotels similar to those performed by the maintenance employees at the Washington Plaza. Supervision of these employees is provided by the chief engineer or other supervisor at the respective hotel. For the most part these employees do not work at other hotels, but once in a while they are assigned to work at another site when the workload requires it.

Analysis and Conclusion

Section 9(b) of the Act states that the "Board shall decide in each case whether, to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purpose of collective bargaining shall be the employer unit, craft unit, or subdivision thereof."

The statute does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act requires only that the unit be "appropriate, that is, appropriate to insure to employees in each case the fullest freedom in exercising the rights guaranteed by this Act." *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951); *Parson Investment Co.*, 152 NLRB 192 *fn.* 1 (1965); *Federal Electric Corp.*, 157 NLRB 1130 (1966); *Capital Bakers*, 168 NLRB 904, 905 (1968); *National Cash Register Co.*, 166 NLRB 173 (1967); and *Dezcon, Inc.*, 295 NLRB 109 (1989). When seeking to represent employees, a union is not required to

seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger's Paramus*, 151 NLRB 748, 751 (1965); *Purity Food Stores*, 160 NLRB 651 (1966). There is typically more than one way to group employees for purposes of collective bargaining. *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-423 (4th Cir. 1963), *cert. denied* 375 U.S. 478, 480 (1964); *Mountain Telephone Co. v. NLRB*, 310 F.2d 478, 480 (10th Cir. 1962). Recently, the Board affirmed that, in determining whether a petitioned-for unit is appropriate, the unit sought by the petitioning union is always a relevant consideration. *Lundy Packing Co.*, 314 NLRB 1042, 1043 (1994), citing *E. H. Koester Bakery & Co.*, 136 NLRB 1006 (1962).

In the hotel industry, at one time the Board applied a rigid rule mandating that an overall unit of hotel employees was presumptively appropriate. See *Arlington Hotel Co.*, 126 NLRB 400 (1960); *77 Operating Co.*, 160 NLRB 927 (1966), *enfd.* 387 F.2d 646 (4th Cir. 1967). The Board, however, rejected that approach in *Omni International Hotel*, 283 NLRB 475 (1987). In *Omni*, the Board decided to make unit determinations in the hotel industry on a case-by-case basis utilizing traditional community-of-interest criteria. It is also clear that the well-established principle that under the Act a union may petition for an appropriate unit, and is not required to seek the most appropriate unit, applies to the hotel industry. See *Dinah's Hotel & Apartments*, 295 NLRB 1100 (1989).

In the instant proceeding, the Petitioner seeks to represent the maintenance employees, including the painters, at the Washington Plaza, whereas the Employer maintains that this single-location unit is not appropriate. In determining whether to direct an election in a single-facility unit or a broader, multisite unit, the Board looks at a variety of factors, including bargaining history, centralization of labor relations, and local autonomy and supervision. The Board begins, however, with the **presumption** that a **single location unit** is an appropriate unit for collective bargaining. *Penn Color, Inc.*, 249 NLRB 1117, 1119 (1980); *Hegins Corp.*, 255 NLRB 160 (1981); *Sentry Security Services*, 230 NLRB 1170 (1977). This presumption applies even where a larger, more comprehensive unit might also be found appropriate. *Dixie Belle Mills, Inc.*, 139 NLRB 629, 631 (1962). The role of the Board is to find "an appropriate unit" and not necessarily "the most appropriate unit." *NLRB v. Pinkertons, Inc.*, 416 F.2d 627, 628 (7th Cir. 1969). As stated in *J&L Plate, Inc.*, 310 NLRB 429 (1993):

A single plant or store unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *Dixie Belle Mills*, 139 NLRB 629, 631 (1962). To determine whether the presumption has been rebutted, the Board looks at such factors as central control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; distance between locations; and bargaining history, if any. *Esco Corp.*, 298 NLRB 837, 839 (1990), and cases cited.

. . . .

The presumption is in favor of petitioned-for single facility units, and the burden is on the party opposing that unit to present evidence overcoming the presumption. See *Red Lobster*, 300 NLRB 908, 910-911 (1990); *Esco Corp.*, supra. Hence, in the instant case it was the Employer's burden to rebut the presumption by introducing affirmative evidence establishing a lack of autonomy at the individual plant level. This the Employer failed to do, and the Regional Director erred by construing the absence of evidence regarding local autonomy (i.e., that the record was supposedly silent) as being the equivalent of affirmatively presenting the evidence to rebut the presumption.

J&L Plate, Inc., 310 NLRB at 429.

In evaluating issues regarding the appropriateness of a single-location unit, although the Board must take into consideration the organizational structure of the employer's operation, such structure is not controlling. The Board must balance the needs of employee organizational activities against possibly competing interests of an employer. While an employer has an expectation of "reasonably adequate protection from the disruptive effects of piecemeal unionization," *NLRB v. Pinkertons, Inc.*, 428 F.2d 479, 485 (6th Cir. 1970), the Board must also "assure to employees the fullest freedom in exercising the rights guaranteed by the Act." *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 139 (1962).

I now turn to the issue of whether the Petitioner's sought-after single-site unit is appropriate. Consistent with the Board's well-established directives concerning this issue, I must begin with the presumption that the single-location unit is appropriate. This presumption may be overcome by showing functional integration so substantial as to negate the separate identity of the single-location unit. In making findings in such matters, the Board considers factors such as control over daily operations and labor relations, skills and functions of employees, employee interchange, geographic location of the sites in relation to each other and general working conditions. It is the Employer's burden to demonstrate that the presumption is overcome. I do not find that the Employer has here met its burden.

To be sure there are factors that support the Employer's position that a multisite unit is appropriate. Through its director of human resources the Employer exercises centralized control of its labor relations. Among other things, hiring, discipline, and the development of work rules and benefits are channeled through this centralized system. It is also apparent that the work performed by the employees at the Washington Plaza is virtually identical to the type of work performed by the employees at the other hotels that the Employer seeks to include. The skills of all the employees are also similar. Seniority is Employer-wide. Purchasing is also handled through a centralized process. The relative proximity of the hotels comprising the classic collection also tends to support the Employer's position in favor of a multilocation unit.

There are, however, factors favoring the single-site unit sought by the Petitioner. Unit employees at the Washington Plaza are supervised by an individual employed at that hotel. The maintenance employees work under the direction of the chief engineer. The chief engineer reports to the director of engineering, who is also based at the Washington Plaza. Likewise, the painters work under the direction of the paint-

ing supervisor (a disputed supervisor) who also reports to the director of engineering. The actual day-to-day work of the maintenance employees and painters at the Washington Plaza is directed entirely by supervisors stationed at that site. Pool employees are separately supervised by the vice president of maintenance and construction. Maintenance employees and painters at the other hotels are supervised by supervisors based at the other hotels. In addition, the evidence shows that the interaction between the petitioned-for employees and those the Employer would seek to include is irregular and sporadic. Pooled employees are assigned to work on special projects that only occasionally and for limited periods involve employees assigned to a particular hotel. And while there is evidence of some interchange among employees at the various hotels, the interchange appears to be quite limited. Indeed, it appears that employees regularly assigned to one hotel very infrequently work at another hotel. The painter Medrano is an exception to this rule, but he is distinct from other employees because, as a practical matter, he has two regular shifts at two different hotels. There is no evidence of any other employee with a similar arrangement. The evidence also establishes that the employees at the various hotels wear uniforms that differ a bit from those worn at other hotels.

In sum, I find that the evidence establishes that the Washington Plaza operates with a sufficient degree of autonomy, with a sufficiently segregated, identifiable work force to justify a finding that single-site unit is appropriate. In making this determination, of course, I am not required to find that the single-site unit is either the only appropriate or even most appropriate unit. Rather, it is sufficient that the evidence show that a unit limited to employees at the Washington Plaza constitutes an appropriate unit. Taken as a whole, the record evidence establishes that the petitioned-for unit is an appropriate one. Accordingly, I find that the petitioned-for unit to be appropriate for purposes of collective bargaining.

Unit Composition Issues

Having determined that a unit limited to the maintenance employees and painters at the Washington Plaza is appropriate, there remain to be decided two issues concerning the composition of that unit. The first issue involves the supervisory status of the painting supervisor, Nelson Del Cid. The Employer would exclude Del Cid as a supervisor while the Petitioner contends that Del Cid is not a supervisor within the meaning of Section 2(11) of the Act. The second issue involves the status of pool engineer Jim Anderson. The Petitioner would exclude Anderson as lacking a sufficient community of interest to warrant his inclusion. Contrary to the Petitioner, the Employer contends that because he spends the great majority of his time working at the Washington Plaza, Anderson should be included in the unit, even if the unit is limited to that single site.

Turning first to the position of painting supervisor, the evidence shows that Del Cid assumed the position of painting supervisor at the Washington Plaza in or around early January of this year. Prior to that Del Cid had worked as a painter for the Employer at other sites. In total Del Cid has worked for the Employer for about 5 years. Del Cid's wage rate is \$15.50 an hour, at least 50-cents-per-hour higher than any other painter. Del Cid works alongside the other painters

and performs the same type of work as the others. He also wears the same uniform.

Del Cid plays some role in directing the work of the other painters. The Employer contends that Del Cid oversees and directs the work of the other painters. Del Cid, on the other hand, contends that he acts more of a conduit of information between the director of engineering and the painters. There is a similar dispute about what role, if any, Del Cid plays in disciplining employees. The Employer introduced testimony about Del Cid's presence at the counseling of an employee in regard to his attitude and performance problems. Del Cid's testimony suggests that he attended the session more in the role of an interpreter rather in the role as a representative of management. The evidence does show that Del Cid signed termination forms given to two employees. It also appears that before the decision to terminate these employees was finalized the Employer sought Del Cid's assessment of the employees' work performance. From Del Cid's testimony, however, there is some dispute about whether he exercised any independent judgment or authority in these matters, or simply acted in a ministerial function.

What is not disputed is Del Cid's role in the hiring of three temporary painters. The evidence shows that Del Cid recommended to management that additional painters were required at the Washington Plaza. After the Employer advertised for painters, the Employer gave the approximately 20 applications it received to Del Cid, who was asked to evaluate the qualifications of the applicants and to select the three most qualified applicants. Del Cid reviewed the applications, from which he selected three. The evidence establishes that no one else made an independent assessment of the three applicants selected by Del Cid. The three applicants selected by Del Cid were hired.

Section 2(11) of the Act defines a supervisor as "any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment." It is well established that the statutory indicia of supervisory status are written in the disjunctive, the possession of only one of the indicia is sufficient to confer supervisory status on an individual. *Opelika Foundry*, 281 NLRB 897, 899 (1986); *Allen Services Co.*, 314 NLRB 1060, 1061 (1994). The evidence in this case shows that Del Cid exercised significant authority with regard to the hiring of three temporary painters. He was asked to review a large number of applications and to select three candidates based on his assessment of the applicants' respective qualifications. The three applicants selected by Del Cid were hired. No one else conducted any sort of assessment of the applicants' qualifications. This evidence persuades me that, at a minimum, Del Cid possesses the authority to make effective recommendations in hiring and that he exercises independent judgment in performing that function. Accordingly, I find that the painting supervisor is a supervisory position that should be excluded from the unit.

The final issue left for determination is the status of Anderson, a pool engineer. Although he is a pool employee, the evidence shows that in recent months Anderson has spent the

bulk of his worktime, estimated at about 75 percent, at the Washington Plaza. However, Anderson does not report to the chief engineer, like the regular maintenance employees at the Washington Plaza. Rather he reports directly to McGraw, who supervises all of the Employer's pool employees.

Anderson possesses a higher level of skills than other maintenance employees. Because of his skills he is assigned to maintain and repair large, complicated equipment, functions which other members of the maintenance staff are unable to perform. Anderson also is assigned to work on special projects that require the greater skill and expertise that he can bring to a problem.

Unlike any other member of the maintenance staff, Anderson is paid a salary. His pay is also significantly higher than any other member of the maintenance staff. Also, because he is salaried Anderson does not have to punch a timeclock. He also receives benefits that are not received by other members of the maintenance staff. For instance he does not pay for parking at the Washington Plaza. Unlike other maintenance employees, Anderson does not wear a uniform. He also has greater ability to order parts and equipment and to call in outside contractors.

While the Petitioner initially asserted that Anderson should be excluded from the unit as a supervisor, in its posthearing brief the Petitioner appears to have abandoned this assertion. In any event, I find that the evidence fails to establish that Anderson possesses supervisory authority. On the other hand, the Petitioner argues that Anderson should be excluded because he lacks a sufficient community of interest with other unit employees. Based on the record evidence I find the Petitioner's contention on this issue to be persuasive. While Anderson appears to work a majority of his time at the Washington Plaza, as a pool employee he is subject to being assigned to work at any of the hotels comprising the classic collection. More significantly, he is paid a salary, does not punch a timeclock, receives benefits that other employees do not receive, has entirely separate supervision, and possesses unique authority to order supplies and to bring in outside contractors. Anderson also possesses skills and knowledge that differentiate him from the other maintenance employees in the unit. These factors persuade me that Anderson lacks a sufficient community of interest to warrant his inclusion in the unit. Accordingly, I shall exclude Anderson from the unit.

Conclusion

I find that the petitioned-for bargaining unit is appropriate for purposes of collective bargaining and I shall direct an election among the employees in the following bargaining unit:

All full-time and regular part-time maintenance staff employees and helpers, and painters employed by the Employer at the Washington Plaza Hotel in Washington, D.C., excluding all other employees, carpenters, chief engineers, roving/pool employees not regularly assigned to the Washington Plaza Hotel, the director of engineering, the lease administrator, the vice president of maintenance and construction, the painting supervisor and guards and supervisors as defined in the Act.