

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

PRIME HOSPITALITY CORPORATION
d/b/a HILTON CHERRY HILL¹

Employer

and

Case 4-RC-19721

HOTEL EMPLOYEES RESTAURANT
EMPLOYEES INTERNATIONAL UNION,
LOCAL 54, AFL-CIO²

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

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

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

2. 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.

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer operates a hotel now known as the Hilton Cherry Hill in Cherry Hill, New Jersey. The Petitioner seeks a unit of full-time and regular part-time housekeeping, laundry, kitchen, banquet, restaurant, stewarding, housemen, bartender, room service, and cocktail server employees. The Employer, relying on what it argues is a history of collective bargaining at the hotel and on community of interest considerations, contends that the only appropriate unit is a wall-to-wall unit and thus would include in the unit maintenance or engineering associates³ and front office employees, which includes PBX operators, front desk employees, reservations employees, bellmen and life guards. The Petitioner also contends, contrary to the Employer, that Assistant Chief of Maintenance John Schwing and the Employer's three Sous Chefs⁴ are statutory supervisors and should be excluded from the unit. The Employer and the Petitioner agree that all on-call, accounting, executive office, human resource, sales and catering and security employees, chief engineers, night managers, executive housekeepers, executive chefs, directors of restaurants, executive stewards, guards and supervisors as defined in the Act should be excluded from the unit.

The Employer has been managing the hotel since February 1, 1999, when it took over the management from New Castle Hotels, which had operated the hotel since it was purchased in 1994. Prior to 1994, the hotel had been operated as a Hyatt Hotel. The Petitioner represented a unit of employees at the Hyatt which, pursuant to the Hyatt's most recent collective bargaining agreement with the Petitioner (effective July 1, 1993 through June 30, 1998), consisted of the following employees:

All employees . . . employed in the food, beverage, service, housekeeping, maintenance, and telephone departments in the job classifications specifically listed on the Schedule of Wages, but excluding all office clerical employees, secretaries, sales department employees, personnel department employees, front office employees, reservation department employees, professional employees, guards, management trainees, PBX supervisor, Sous Chefs, and all other supervisors as defined by the National Labor Relations Act.

³ The Employer calls all of its employees "associates."

⁴ Lonnell Danbridge, Scott Clarke and Danielle Morelli.

During the hotel's changeover from the Hyatt to Hilton Cherry Hill, the hotel was closed for approximately six months. When it reopened, the physical layout of the hotel remained the same except for the addition of another banquet room.

The hotel is divided into several divisions, each with a separate division head. These divisions include the food and beverage division, the rooms division, and the engineering/ maintenance division. Each division head reports directly to General Manager Robert White, who oversees the operation of the entire hotel. The division heads and White meet weekly for planning, prioritizing, budgeting and forecasting.

Applications for employment are submitted to human resources. If there appears to be an opening for the sought after position, the applicant submits to a series of interviews by the human resources manager and the relevant division and department managers. These individuals make recommendations to the General Manager concerning whether or not to hire the applicant. The General Manager has on a couple of occasions rejected the recommendations of others and refused to hire an applicant because of a lack of experience.

Wage rates are determined by an executive committee. An executive committee consists of the specific division manager, the director of human resources and General Manager Robert White. Within each division of the hotel, a set starting rate is established by the executive committee. Periodic wage increases are recommended by department heads through an annual review process. Although the division head makes the recommendation for an employee's wage increase, the executive committee sets specific parameters regarding maximum raises based upon budget considerations for the overall hotel. To be effective, recommendations must be approved by the committee and the General Manager.

All individuals employed at the hotel enjoy the same health, vision and dental benefits, share the same pension or 401(k) benefit plan and are subject to the same vacation, sick leave and holiday policies. All of the individuals in the proposed unit are paid hourly, except the Sous Chefs and Assistant Chief Engineer Schwing, who are salaried. Although the rate of pay may vary by division, all hourly employees punch the same time clock and wear name tags and most employees wear uniforms specific to their departments.

The Food and Beverage Division is headed by the Food and Beverage Director, and encompasses the bars, restaurants and banquet areas of the hotel. Separate supervisors are assigned to the banquet, restaurant and kitchen areas, each reporting to the Food and Beverage Director. Within the restaurant and banquet areas are bartenders, food servers, buspersons, hosts and hostesses who perform typical restaurant functions, including serving food and beverages and handling banquets. In addition to the hotel restaurants and banquet areas, limited food service is available at the pool. On weekdays this food is delivered by room service employees to the pool and on weekends it is delivered by a server assigned to the pool. Lifeguards, although not assigned to serve food, may assist in the service of food if there is only one server on duty or if it is a busy time for food service at the pool.

There is one kitchen for both the restaurant and the banquet areas. Working in the kitchen are food preparers, prep persons, dishwashers and the Sous Chefs. All employees in the kitchen, including the Sous Chefs, report to the Executive Chef, who works six days per week, carries a beeper and prepares production lists and work and event schedules. The Sous Chefs and other kitchen employees work from these lists which indicate what is expected of them each day. When a food order comes in, depending upon what they are doing at the time, Sous Chefs may prepare it themselves or have nothing to do with it at all. In addition, Sous Chefs inspect what is going on in the kitchen, and, to expedite production, may float between the restaurant and banquet areas of the kitchen depending upon business demands. The Sous Chefs' salaries place their wage rate about ten percent higher than the rest of the kitchen employees. Aside from the Executive Chef, there are no other employees in the kitchen who are salaried. Sous Chefs do not have the authority to direct or assign work, reward or discipline employees or adjust employee grievances. They can neither hire, fire, transfer, lay off, recall, promote, nor discharge employees.

The Rooms Division Manager heads the Rooms Division of the hotel. Within the Rooms Division are separate supervisors for the Front Office and Housekeeping departments who report directly to the Rooms Division Manager. Within the Front Office, front desk employees are responsible for checking guests in and out, answering questions, and relaying information. PBX operators handle the phones for the hotel and also relay information. Bellmen typically handle guests' baggage, answer questions and get information to and from the guests. Reservations agents handle reservations and incoming telephone calls and can work at either the front desk or the PBX. Lifeguards are full-time employees and considered part of the front office department as well. In addition to guarding the pool, lifeguards are responsible for picking up towels from the pool and bringing towels to and from the laundry. They also help clean and maintain the outside area of the pool. Finally, housekeeping and laundry employees constitute the Housekeeping Department of the Rooms Division. They perform duties typically associated with those positions.

The Front Office Manager is responsible for conducting performance reviews for each of the front office employees, while the Executive Housekeeper, does the same for the housekeeping and laundry employees. Schedules are prepared weekly and are posted in different areas for the front office and the housekeeping employees. The front office schedule is posted in the front office area, while the housekeeping schedule is posted in the housekeeping area.

There are currently eleven maintenance engineers in the Maintenance department.⁵ All of the individuals employed in this department, including Assistant Chief of Maintenance Schwing, report to the Chief Engineer. Generally, the Chief Engineer decides the type and priority of the maintenance work to be done. However, on

⁵ The department is called, interchangeably, the Engineering Department or Maintenance Department. The term "maintenance engineer" will be used to designate employees within this department.

a regular basis maintenance engineers are also given assignments by the heads of departments requiring maintenance work. Maintenance engineers perform minor mechanical repairs for the hotel using tools provided by the hotel. When elaborate maintenance work is required, outside contractors are hired who supply their own equipment. A maintenance engineer is also assigned to perform groundskeeping responsibilities. To cover this function when the engineer is not present, the Chief Engineer has requested assistance from the Executive Housekeeper. The Executive Housekeeper, in turn, has assigned it to a particular houseman. The houseman does groundskeeping work twice per week and during the engineer's vacations.

Maintenance engineers work out of a shop that is located on the 15th floor of the hotel, but they share locker room facilities located on the second floor with other employees at the hotel. The wage scale for maintenance engineers is "in the middle" when compared with other employees at the hotel. Assistant Chief of Maintenance Schwing does not have the authority to hire, transfer, lay off, recall, promote, or discharge employees. He also has no authority to assign work, direct employees or adjust their grievances. His responsibilities include working on any of the equipment in the hotel, such as fixing a faucet or changing a light bulb and inspecting the work of the other engineers. Any problems found by Schwing are reported to the Chief Engineer who assumes authority over the issue. The payment of a salary to Schwing is said by the Employer to not be based upon supervisory status, but rather to reflect his understanding of all of the areas of maintenance at the hotel, including groundskeeping, electrical work, plumbing, and air conditioning.

None of the maintenance employees are expected to have advanced degrees, and little specialized knowledge above "experience in working with machinery or equipment" is required to perform maintenance work. However, the hotel does provide regular training sessions for maintenance engineers to attend. They are joined in these meeting by employees from other pertinent divisions of the hotel. Training sessions are conducted either by the Chief Engineer or by an outside person such as a fire extinguisher company or a local laboratory.

In deciding the appropriate unit, the Board first considers the union's petition and whether that unit is appropriate. *P.J. Dick Contracting*, 290 NLRB 150 (1988). The Act allows a labor organization to petition for *an* appropriate bargaining unit, and does not require it to seek the *most* appropriate unit, even when a different unit than the petitioned-for unit might be more appropriate than the one it seeks. *Omni-Dunfey Hotels, Inc. d/b/a Omni International Hotel of Detroit*, 283 NLRB 475 (1987); *Stanford Park Hotel*, 287 NLRB 1291 (1988).

At one time the Board applied a rigid rule that only an overall unit consisting of all hotel/motel employees would be found appropriate for bargaining. See *Arlington Hotel Co.*, 126 NLRB 400 (1960). Subsequently, the Board reversed that decision, finding that the inflexible rule was based on the false premise that all hotel and motel employees share such a high degree of integration of function and mutuality of interest that only an overall unit could be appropriate. *Holiday Inn Restaurant*, 160 NLRB 927

(1966), enfd. 387 F.2d 646 (4th Cir. 1967). Since then, the Board has reaffirmed its intent to make unit determinations in the hotel/motel industry on a case-by-case basis applying the same community-of-interest criteria used in other industries, such as distinctions in skills and functions of particular employees, separate supervision, the Employer's organizational structure, differences in wages and hours, integration of operations, employee transfers, interchange and contact, and bargaining history. *Omni-Dunfey Hotels, Inc. d/b/a Omni International Hotel of Detroit*, supra.; *Maxim's de Paris Suite Hotel*, 285 NLRB 377 (1987); *Westin Hotel*, 277 NLRB 1506 (1986); *NLRB v. French International Corp.*, 999 F.2d 1409 (9th Cir. 1993).

Although the Board is traditionally reluctant to disturb bargaining units in which there have been long histories of continuous and harmonious collective bargaining, unless required to do so by the dictates of the Act or other compelling circumstances, here, contrary to the contention of the Employer, there is no history of collective bargaining. *St. Joseph Hospital & Medical Center*, 219 NLRB 892 (1975). Although the Petitioner represented a similar bargaining unit employed by another employer in the same building, no labor organization has represented the Employer's employees sought to be represented here.

Applying the community of interest criteria referred to above, I find that the petitioned for unit with the addition of maintenance engineers comprises the smallest unit appropriate for the purposes of collective bargaining. The maintenance engineers perform minor mechanical repairs and otherwise help maintain the hotel. Working in this capacity they supplement a function also performed by the housekeeping employees and to a lesser extent employees employed in the food and beverage division. Engaged in this common goal of maintaining the property, the maintenance engineers interact with and assist the unit employees in their work. They receive assignments either from the Chief Engineer or the head of any department requiring their assistance. A maintenance engineer and an employee from housekeeping regularly share groundskeeping duties. Although the maintenance engineers must be able to use tools, the maintenance engineers do not possess unique or specialized skills which set them apart from unit employees. Indeed, training for maintenance employees also includes relevant unit employees. There is no evidence that the maintenance engineers occupy classifications which are traditional craft positions. Like other unit employees, they wear uniforms. Also, their wage rates fall within the middle range of the rates received by unit employees. Although the maintenance engineers have separate immediate supervision and there was no evidence presented of either permanent or temporary interchange with other unit positions, I find that, on balance, maintenance engineers share a close community of interest with unit employees and I shall include them in the same bargaining unit. *Ramada Inns, Inc.*, 221 NLRB 689 (1975). Cf. *Ore-Ida Foods*, 313 NLRB 1016, 1019-20 (1994); *Hilton Hotel Corp.*, 287 NLRB 359 (1987); *Maxim's de Paris Suite Hotel*, supra.; *Omni-Dunfey Hotels, Inc. d/b/a Omni International Hotel of Detroit*, supra.; *Sheraton-Anaheim Hotel*, 252 NLRB 959, 961-62 (1980).

The front office department, with the exception of the lifeguards, is primarily involved with taking reservations, handling phone calls and checking guests in and out of

the hotel. Although lifeguards pick up towels from the pool, generally maintain the area around the pool and on occasion help out with food service in the pool area, they are primarily involved with the traditional duties associated with the position. Similarly, the fact that a guest's call for room service may be taken at the front desk or by a PBX operator does not change the fact that their jobs are primarily clerical. Thus, even though the front office department is in the same division as the housekeeping department, they have separate immediate supervision and for the most part, have distinct functions different from the duties of the positions in the bargaining unit. The front office employees work in discrete areas of the hotel, which are separate from the areas in which most of the bargaining unit work is performed. Although there is interchange among the front office employees, such as bellmen helping with reservations or lifeguards performing PBX operations, there is no evidence of significant permanent or temporary interchange between front office employees and employees in the bargaining unit. Based on the foregoing, I find that the employees in the front office department share a community of interest sufficiently different and distinct from the bargaining unit to warrant their exclusion from it. *Dinah's Hotel & Apartments*, 295 NLRB 1100, 1101 (1995); *Ramada Inn West*, 225 NLRB 1279 (1976); *Ramada Inns, Inc.*, supra.

Contrary to the Employer, the Petitioner contends that the Assistant Chief Maintenance Engineer and the Sous Chefs should be excluded as supervisors. The burden of proving supervisory status rests on the party contending such status exists. *Bennett Industries, Inc*, 313 NLRB 1363 (1994). The record reveals that the only authority exercised by these individuals which distinguishes them from other employees working in the bargaining unit is that they inspect the work of others. As there is no evidence that they thereby perform anything other than a quality control function, this duty does not establish supervisory authority. *Somerset Welding & Steel*, 291 NLRB 913 (1988). Similarly, the fact they are paid by salary, while the rest of unit is paid by the hour only establishes a secondary indicator of supervisory status, which in the absence of any statutory indicia can not support a supervisory finding. *Northcrest Nursing Home*, 313 NLRB 491, 498 (1993). In any event, neither the Assistant Chief of Maintenance nor the Sous Chefs earn significantly more than other employees in their work areas who are paid by the hour. In sum, I find the record falls short of establishing that Assistant Chief of Maintenance John Schwing and Sous Chefs Lonnell Danbridge, Scott Clarke and Danielle Morelli are supervisors with the meaning of the Act, and I shall include them in the bargaining unit.

I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time housekeeping, laundry, kitchen, banquet, restaurant, stewarding, housemen, bartender, room service and cocktail server employees, maintenance engineers, Sous Chefs and Assistant Chiefs of Maintenance employed by the Employer at its hotel located in Cherry Hill, New Jersey, excluding guards, front office employees (including telephone PBX, front desk, reservations

employees, bellmen and lifeguards), on call employees, accounting employees, executive office employees, human resource employees, sales employees, catering and security employees, chief engineers, night managers, executive housekeepers, executive chefs, directors of restaurants, executive stewards, and supervisors as defined by the National Labor Relations Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,⁶ subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

**HOTEL EMPLOYEES RESTAURANT EMPLOYEES
INTERNATIONAL UNION, LOCAL 54, AFL-CIO**

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of an election eligibility list,

⁶ Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

containing the *full* names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be clearly legible, and computer-generated lists should be printed in at least 12-point type. In order to be timely filed, such list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **August 18, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, NW, Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **August 25, 1999**.

Signed August 11, 1999

at Philadelphia, PA

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

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