

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

QUEENSTOWN APARTMENTS, LIMITED PARTNERSHIP,
AND EDGEWOOD MANAGEMENT CORPORATION^{1/}

Employer

and

OFFICE AND PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, LOCAL 2, AFL-CIO, CLC

Petitioner

Case 5-RC-14780

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/}
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. ^{3/}
3. The Petitioner involved claims to represent certain employees of the Employer. ^{4/}
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/}

All full-time and regular part-time office employees employed by the Employer at its Mount Rainier, Maryland location, but excluding all facility managers, confidential employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An Election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) 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 that 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, striking employees who have been discharged for cause since the

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strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began 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

**OFFICE AND PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, LOCAL 2, AFL-CIO, CLC**

LIST OF VOTERS

To insure that all eligible voters 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 that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by **March 12, 1999**.

Dated February 26, 1999

at Baltimore, Maryland

/s/ LOUIS J. D'AMICO
Regional Director, Region 5

1/ At the hearing, the Employer amended the petition and formal papers to reflect the correct name of the Employer as Queenstown Apartments, Limited Partnership, and Edgewood Management Corporation.

2/ Petitioner objected to the reopening of the hearing on February 17, 1999. Petitioner contended that if the record did not contain sufficient evidence to show that Errol Bedward, Dianne Williams, Joey Porter, and Chantelle Butler were supervisors under the Act when the record was first closed on January 28, 1999, then the Regional Director was bound to find that the Employer failed to prove that these persons were supervisors. It is true that the party seeking to exclude an individual from voting for a collective bargaining representative has the burden of establishing that the individual is ineligible to vote. Golden Fan Inn, 281 NLRB 226 (1986). However, the Regional Director has the duty to inquire fully into all matters necessary to obtain a full and complete record so that he or she may discharge his or her duties under section 9(c) of the Act. To that end, Section 102.67 of the Board's Rules and Regulation vests upon the Regional Director the unqualified discretion to "proceed, either forthwith upon the record or after oral argument, the submission of briefs, or further hearing, as he may deem proper, to determine the unit appropriate for the purpose of collective bargaining, to determine whether a question concerning representation exists, and to direct an election, dismiss the petition, or make other disposition of the matter." (emphasis added). Accordingly, the Hearing Examiner properly overruled the objection.

3/ The parties stipulated and I find that: Queenstown Apartments, Limited Partnership, and Edgewood Management Corporation, a Maryland corporation, are a Joint Employer (hereinafter the Employer), and have an office and place of business in Mount Rainier, Maryland; the Employer is engaged in the management, ownership, and operation of residential property located at 3301 Chillum Road in Mount Rainier, Maryland; during the last 12 months, a representative period, the Employer, in the course of its business operations described above, derived gross revenues in excess of \$500,000; during the same period, the Employer, in the course and conduct of its business operations described above, purchased and received goods, supplies, commodities, and services valued in excess of \$5,000, which originated outside the State of Maryland.

4/ The parties stipulated and I find that the Office and Professional Employees International Union, Local 2 (hereinafter the Union or Petitioner) is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act (hereinafter the Act).

5/ At the hearing, the Petitioner amended the Petition and is seeking to represent employees in the following unit, which includes 13 employees:

All full-time and regular part-time office employees employed by the Employer at Mount Rainier, Maryland, but excluding all professional employees, facility managers, guards and supervisors, as defined by the Act.

The Employer contends that the appropriate unit for collective bargaining is the following, and that there are 9 employees in that unit:

All full-time and regular part-time office employees employed by the Employer at Mount Rainier, Maryland, but excluding all management assistants, hallway supervisors, maintenance managers, confidential employees, ground supervisors, facility managers, professional employees, managers, guards and supervisors as defined by the Act.

At the outset of the hearing, the Employer sought to specifically exclude leasing managers from its proposed unit but later withdrew that exclusion.

The record contains no evidence regarding employees classified as “professional employees” or “managers.”

The parties stipulated that the following employees are “office employees” and thus eligible to vote: Brenda Mahabir, LaTanya Williams, Marta Del Castillo, Dolores Shefflit, Kevin Anderson, Dawn Shegan, Kevin Kapp, Charles Dennis, and Mark Todd.

DISPUTED ISSUES

- (1) Whether management assistant Chantelle Butler, should be included in the Unit as an office employee, or excluded as a supervisor or confidential employee.
- (2) Whether hallway supervisor Errol Bedward, operations assistant Joey Porter, and maintenance manager Dianne Williams, should be included in the Unit as office employees, or excluded as supervisors or, if not found to be supervisors, as not sharing a community of interest with office employees.

POSITIONS OF THE PARTIES

PETITIONER

The Petitioner contends that Chantelle Butler, management assistant, Errol Bedward, hallway supervisor, Dianne Williams, maintenance manager, and Joey Porter, operations assistant are all office employees. Accordingly, Petitioner asserts that the aforementioned employees should be included in the Unit.

EMPLOYER

The Employer contends that Chantelle Butler is either a supervisor within the meaning of Section 2(11) of the Act or a confidential employee and, thus, should be excluded from the Unit. The Employer also contends that Errol Bedward, Dianne

Williams, and Joey Porter are supervisors within the meaning of Section 2(11) of the Act or otherwise lack a community of interest with the employees in the petitioned-for Unit. According to the Employer, Bedward, Porter, and Dianne Williams share greater interests with Local 82 employees than with the office employees. Thus, the Employer asserts that these employees should be excluded from the Unit.

BACKGROUND

The Employer owns, operates, and manages a residential apartment complex in Mount Rainier, Maryland. The complex consists of approximately 1052 rental units distributed throughout 150 two- and three-story buildings.

Sonya Hammonds is the property manager. Hammonds is in charge of the financial and overall operation of the complex. Sandra Harrison is the property director. Harrison is in charge of the day-to-day on-site operations. Harrison reports directly to Hammonds. Ron Goff is the facility manager. Goff reports directly to Harrison. Goff oversees the “physical” aspect of the operation, such as maintenance of the buildings, grounds, and all contracted work performed on the property. Petitioner does not seek to represent these individuals. The record clearly shows, and I so find, Hammonds, Harrison, and Goff are supervisors within the meaning of Section 2(11) of the Act.

The Employer employs approximately 30 maintenance and grounds-keeping employees. These employees are represented for the purpose of collective bargaining by the Service Employees International Union, Local 82, AFL-CIO (hereinafter Local 82). These employees are paid by an hourly basis at rates set forth in their collective bargaining agreement. Approximately half of the maintenance employees live in the apartment complex; they are charged \$300 per month for rent, which is deducted from their pay. Lockers are provided for the Local 82 employees in the maintenance shop, where they also share a common area and a bathroom.

The Employer employs 13 employees who work mainly in the apartment complex’s offices. These employees are the subject of this Petition. The parties have stipulated that Brenda Mahabir, LaTanya Williams, Marta Del Castillo, Dolores Shefflic, Kevin Anderson, Dawn Shegan, Charles Dennis, Kevin Kapp, and Mark Todd are office employees and, thus, eligible to vote. Under dispute, as detailed above, are Chantelle Butler, Errol Bedward, Dianne Williams, and Joey Porter.

The Employer’s offices occupy two floors of one of the units. The “upstairs” office is occupied by Hammonds and Harrison. Butler has a desk in the “upstairs” office where she spends approximately 75% of her time. The “downstairs” office is divided into a “front” and “back” office. The “front” office is the leasing office where prospective tenants go to apply for apartments and where current tenants address some of their complaints. Mahabir, LaTanya Williams, Del Castillo, Porter, and Shefflic work in this area. Butler also has a desk in this area, where she works when she is not in the upstairs office. The “back” office contains the maintenance counter, maintenance office

and the bookkeeping office. Tenants go or call to this office to request maintenance work. All maintenance work is coordinated from this office. Goff, Anderson, Shegan, Dennis, Kapp, Todd, Bedward, and Dianne Williams work in this area. Porter spends some time in this area when he is substituting for Bedward, Todd, or Dianne Williams. Bedward and Dianne Williams also spend a substantial portion of their time in the field overseeing the work of Local 82 employees. The upstairs and downstairs offices are connected by stairs. The leasing office and the back office are divided by a door that is kept open. Employees move freely between the leasing office and the back office. The downstairs office has an integrated telephone system containing various lines that can be answered from different points in the office. All the employees in the downstairs office share a kitchen and a bathroom.

Mahabir, Shegan, Butler, Dennis, Kapp, Bedward, Dianne Williams, Porter, and Todd are salaried employees. LaTanya Williams, Del Castillo, Shefflic, and Anderson are hourly employees. All of these employees get a commission whenever they rent an apartment. They are also entitled to free apartments while they are employed by the Employer. All of these employees may serve as witnesses to disciplinary notices given to Local 82 employees. Being a witness, however, does not mean that the employee observed the infraction, but rather that the employee observed that a copy of the disciplinary notice was given to the affected Local 82 employee.

THE STATUS OF THE DISPUTED EMPLOYEES

CHANTELLE BUTLER

Chantelle Butler has been manager assistant for the Employer since April of 1998. Prior to becoming manager assistant, Butler worked as accounts manager. Butler is a salaried employee making \$31,000 per year. Additionally, she gets a free apartment at the complex. Butler spends approximately 75% of her time in the upstairs office near Harrison doing accounts payable functions, such as processing the bills and typing the budget. She is also Harrison's right hand person in the office. In that capacity, Butler often types memos and disciplinary notes for Harrison, and often relays messages back and forth between Harrison and the Employer's attorney relating to employees' discipline. This generally takes place before the affected employee knows of the discipline. Butler spends approximately 25% of her time in the leasing office performing leasing consultant functions, such as interviewing prospect tenants and processing their applications.

When Butler was promoted to manager assistant, Harrison notified Butler that Butler would be trained in certain areas of personnel development and human resources management so that Butler could qualify for an assistant manager position if such a position became available. There has not been an assistant manager at the Employer's complex since May of 1998. The Employer does not plan to hire an assistant manager for the complex in the near future. If the Employer decides to hire an assistant manager, Butler is not guaranteed to get the position. Nevertheless, Harrison has continued to train

Butler for the assistant manager position. As part of her training, Butler participated in the bargaining negotiations between the Employer and Local 82 during the Fall of 1998. Butler attended between 6 and 7 bargaining sessions, where she signed the attendance sheet as a management representative, and various caucuses and strategy sessions with Harrison and the Employer's attorney. During the caucuses, Harrison, Butler, and the Employer's attorney discussed wages, how much to offer, whether to raise or lower certain benefits and other similar matters. Butler actively participated in these caucuses providing her input as to the impact the proposals could have on the day-to-day operations. Bargaining sessions ended in October of 1998 with the ratification of a three-year agreement. If Butler still occupies the same position when bargaining for the next contract takes place, Harrison intends to use Butler during bargaining in a similar fashion. Also as part of Butler's training, Harrison has engaged Butler in disciplinary actions of other employees. Butler, at the direction of Harrison, has prepared warning letters and memos to employees in the leasing office.

Confidential employees are those who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies concerning labor relations, or who regularly substitute for employees having such duties. As a policy matter, the Board excludes such employees from bargaining units. Hampton Roads Maritime Assoc., 178 NLRB 263 (1969); Ladish Co., 178 NLRB 90 (1969); The B.F. Goodrich Co., 115 NLRB 722, 724 (1956); Ford Motor Co., 66 NLRB 1317 (1946). The Supreme Court of the United States explicitly approved that definition of confidential employees in NRLB v. Hendricks County Rural Electric Membership Corp., 454 U.S. 170 (1981).

The Board applies a "labor nexus" test in determining if an employee is a confidential employee: First, the Board looks to whether the employee in question acts in a confidential capacity, and second, whether the specific individuals for whom the employee works are managerial personnel responsible for labor relations policy. Weyerhaeuser Co., 173 NLRB 1170 (1969). The test requires that "a confidential employee [have] a close working relationship with an individual who decides and effectuates management labor policy and is entrusted with decisions and information regarding this policy before it is made known to those affected by it." Intermountain Rural Electric Assoc., 277 NLRB 1, 4 (1985). The Board narrowly construes this category, Dun & Bradstreet, Inc., 240 NLRB 162 (1979), and the Supreme Court in Hendricks County Rural Electric sanctioned this approach.

The party asserting confidential status has the burden of proving that the employee in question indeed falls under that category. Crest Mark Packing Co., 283 NLRB 999 (1987). Mere handling of or access to confidential business or labor relations information, including personnel and financial records, is insufficient by itself to render an employee "confidential." The Bakersfield Californian, 316 NLRB 1211, 1212 (1995); Rhode Island Hospital, 313 NLRB 343 (1993); Ernst & Ernst National Warehouse, 228 NLRB 590 (1977); Union Oil Company of California, Inc. v. NLRB, 607 F.2d 852 (9th Cir. 1979) (computer operators having access to personnel and statistical information upon which labor relations policy is based not confidential employees). An employee's

access to personnel records and the fact that the employee can bring information to the attention of management that may ultimately lead to disciplinary action by management is not enough to qualify an employee as confidential. RCA Communications, Inc., 154 NLRB 34, 37 (1965). On the other hand, secretaries who assist in the preparation of labor relations information such as the employer's data in preparation for contract negotiations and minutes of negotiating sessions, were found to be confidential. Firestone Synthetic Latex Co., 201 NLRB 347 (1973); Kieckhefer Container Co., 118 NLRB 950, 953 (1957) (employee who has access to confidential matters dealing with contract negotiations is confidential employee). Such information, however, has to be confidential and not known or available to the Union. The Bakersfield Californian, 316 NLRB 1211, 1212 (1995) (holding that mere typing of bargaining session notes not enough to make employee confidential because information in notes is already known to the Union).

Applying the test for confidential status in a narrow manner, as required by NLRB v. Hendricks County Rural Electrical Membership Corp., I find that Chantelle Butler is a confidential employee.

It is undisputed that Property Director Harrison formulates, determines, and effectuates management policies concerning labor relations. Harrison served on the Employer's contract negotiating team during the contract negotiations with Local 82. Harrison was the highest ranking management representative on the team. Harrison participated in the formulation of the Employer's negotiation strategy, deciding how much to offer in terms of wages, and how to adjust benefit offers. Finally, Harrison, on her own initiative, decides and administers discipline to all employees in the complex.

The record shows that Butler assists and acts in a confidential capacity to Harrison. Butler is Harrison's right-hand person in the complex. Butler attended 6 or 7 bargaining sessions with Harrison. Butler also participated in the Employer's private caucuses and strategy sessions. Harrison sought and obtained from Butler input and opinion regarding the impact that certain proposal would have in the day-to-day operation of the facility. During the strategy sessions, Butler was privy to discussions over wages, how much to offer, whether to raise or lower certain benefits, and similar matters. If an employee who types notes of bargaining strategy sessions is a confidential employee, then, a fortiori, an employee who sits-in and actively participates in those sessions is a confidential employee.

Accordingly, I find that **Chantell Butler** is a confidential employee and is, thus, **excluded** from the Unit and **not eligible to vote** in the election.

Because I have found Butler to be a confidential employee, it is unnecessary for me to resolve whether Butler is a supervisor within the meaning of Section 2(11) of the Act.

ERROL BEDWARD & DIANNE WILLIAMS

Errol Bedward works as a hallway supervisor for the Employer. Bedward is a salaried employee making \$24,000 per year. Bedward also gets a free apartment at the complex. Bedward's duties are to ensure that the property hallways are maintained and cleaned. Bedward directs a group of approximately ten Local 82 employees. These employees have assigned duties and areas of work, but Bedward has the authority to redistribute the employees to compensate for any absences in his crew. Bedward inspects the work performed by the employees under his direction, and he has the authority to order an employee to re-do work not properly performed. Bedward does not have the authority to independently discipline employees under his direction; Bedward must get authorization from Harrison or Goff before disciplining an employee. Bedward, however, often recommends to Harrison or Goff that an employee be disciplined, and Bedward's recommendation is often followed. For example, on three separate occasions Bedward recommended that employees be given warnings for failing to turn in their daily worksheets. On those three occasions, Harrison, without independently investigating the matter, adopted Bedward's recommendation and authorized Bedward to issue the warnings. Bedward spends approximately 80% of his time in the field overseeing the employees under his direction. The remaining 20% of the time, Bedward is in the maintenance office ordering supplies, preparing requisitions, answering the phones, taking maintenance requests from tenants, and reviewing the worksheets of his crew. Bedward himself performs, on occasion, physical work in the field.

Dianne Williams works as a maintenance manager for the Employer. Williams is a salaried employee making \$38,000 per year. Williams is entitled to a free apartment, but is not currently occupying one. Williams' duties are to ensure that apartments are made ready for "move-in" after they are vacated and to oversee the maintenance work done at the complex. Williams directs a group of approximately nine Local 82 employees. These employees have assigned duties, and Williams distributes them among the apartments that need maintenance or "turn-over" work. Williams inspects the work performed by the employees under her direction, and she has the authority to order an employee to re-do work not properly performed. Williams does not have the authority to independently discipline employees under her direction; Williams must get authorization from Harrison or Goff before disciplining an employee. Williams, like Bedward, has the ability to recommend to Harrison or Goff that an employee be disciplined, but she has never exercised that prerogative. Williams spends approximately 50% of her time in the field overseeing the employees under her direction. The remaining 50% of the time, Williams is at the maintenance counter answering the phones, taking maintenance requests from tenants, and reviewing the worksheets of her crew. Williams also schedules work to be performed by outside contractors, such as painting of the apartments, and inspects the apartments when they are turned-in by former tenants to determine extent of damages. Williams does not perform any physical maintenance work herself.

Section 2(11) of the Act, 29 U.S.C. Section 152, states:

The term 'supervisor' means 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.

In determining whether a person is a statutory supervisor, the Board holds that a person must possess only one of the specific responsibilities listed in Section 2(11). Applying Section 2(11) to the duties and responsibilities of any given person requires that the Board determine whether the person in question exercises any of the functions listed in Section 2(11), uses independent judgment in performing any of those supervisory functions, and does so in the interest of management. Hydro Conduit Corp., 254 NLRB 433, 437 (1981). As pointed-out in Westinghouse Electric Corp. v. NLRB, 424 F.2d 151, 1158 (7th Cir. 1970), cited in Hydro Conduit Corp.: "the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect."

In enacting Section 2(11), Congress emphasized its intention that only supervisory personnel vested with "genuine management prerogatives" should be considered supervisors, and not "straw bosses, leadmen, setup men and other minor supervisory employees." See Senate Rep. No. 105, 80th Cong., 1st Sess. 4, reprinted in 1 NLRB LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, 1947. The Board has long recognized "there are highly skilled employees whose primary function is physical participation in the production or operating processes of their employer's plants and who incidentally direct the movements and operations of less skilled subordinate employees," who nevertheless are not supervisors within the meaning of the Act, since their authority is based on their working skills and experience. Southern Bleachery & Print Works, Inc., 115 NLRB 787, 791 (1956), enf'd. 257 F.2d 235 (4th Cir. 1958), cert. denied, 359 U.S. 911; Gulf Bottlers, Inc., 127 NLRB 850, n. 3, 858-861 (1960), enf'd. sub nom, United Brewery Workers v. NLRB, 298 F.2d 297 (D.C. Cir. 1961); Koons Ford of Annapolis, 282 NLRB 506, 513-514 (1986), enf'd. 833 F.2d 310 (4th Cir. 1987), cert. denied 485 U.S. 1021 (1988).

Moreover, the party seeking to exclude an individual from voting for a collective-bargaining representative has the burden of establishing that the individual is ineligible to vote. Golden Fan Inn, 281 NLRB 226, 229-230 fn. 12 (1986). As stated in The Ohio Masonic Home, 295 NLRB 390, 393 (1989): "in representation proceedings such as this, the burden of proving that an individual is a supervisor rests on the party alleging that supervisory status exists." Accord: Bennett Industries, 313 NLRB 1363 (1994); The Dickinson-Iron Community Action Agency, 283 NLRB 1029, 1034 (1987); Tucson Gas & Electric Co., 241 NLRB 181 (1979). Conclusory evidence, "without specific explanation that the [disputed person or classification] in fact exercised independent judgment," does not establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193 (1991). Furthermore, "whenever the evidence is in conflict or otherwise

inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia." Phelps Community Medical Center, 295 NLRB 486, 490 (1989).

Applying these criteria, I conclude that **Errol Bedward** and **Dianne Williams** are supervisors within the meaning of Section 2(11) of the Act, should be **excluded** from the Unit and are **ineligible to vote** in the election. The record clearly shows that Errol Bedward has the authority to effectively recommend discipline of employees under his direction. He has done so on at least three separate occasions. As noted above, Section 2(11) is read in the disjunctive, and a showing that an individual possesses only one of the specific responsibilities listed in that section is sufficient to establish that the individual is a statutory supervisor. The record also shows that Dianne Williams has the authority to effectively recommend discipline of employees under her direction. The record shows that Williams has never exercised this prerogative. It is the existence of the power, however, and not whether it has ever been exercised, that determines whether an employee is a supervisor under the Act. West Penn Power Co. v. NLRB, 337 F.2d 993, 996 (3rd Cir. 1964). The un rebutted testimony of Harrison establishes that Williams has the same power as Bedward to effectively recommend discipline. The parallels between the positions of Bedward and Williams support that finding. It is undisputed that Bedward and Williams each direct approximately ten Local 82 employees. It is also undisputed that both Bedward and Williams direct these employees on a daily basis, review their worksheets to ensure they are completing their work in an efficient manner, inspect their work when completed, and if necessary, order them to re-do work improperly done. On this evidence I conclude that Williams, like Bedward, has the power to effectively recommend discipline of the employees under her supervision.

Because I have found that Errol Bedward and Dianne Williams are supervisors within the meaning of Section 2(11) of the Act, it is unnecessary for me to resolve whether their interests lie with the Unit under consideration.

JOEY PORTER

Joey Porter works as an operations assistant for the Employer. Porter is a salaried employee making \$24,000 per year. Porter also gets commissions for the apartments he rents. Porter gets a free apartment at the complex. Porter's duties are mainly to assist in the overall operation of the apartment complex. Since Porter was hired as an operations assistant in July of 1998, Porter has spent approximately 70% of his time working in the leasing office doing the same work as Marta Del Castillo and LaTanya Williams, both of whom were stipulated to be office employees. The remaining 30% of the time, Porter mans the maintenance counter in a manner similar to Mark Todd, also stipulated to be an office employee, performing some physical maintenance work, and substituting for Bedward and Williams when they are absent. The record is devoid of any evidence showing that Porter has exercised any of the powers listed in Section 2(11) of the Act since he was hired in July of 1998. At best, the record only shows that Porter sporadically substitutes for Bedward and Williams when they are absent and no evidence was produced to establish the frequency or length of these substitution. See Aladdin

Hotel, 270 NLRB 838 (1984). Nor is there any evidence in the record of specific instances in which these substitutions have occurred. On this evidence I conclude that the Employer has not met its burden of showing that Porter is a supervisor within the meaning of Section 2(11) of the Act.

The Employer argues that it has decided to promote Porter to the position of “grounds supervisor,” and urges me to find that the “grounds supervisor” position is a supervisory position within the meaning of Section 2(11) of the Act, and that on that basis I should find that Porter is a supervisor. Regarding the alleged decision to promote Porter, the evidence in the record is ambiguous at best. Harrison testified that the Employer had decided in December of 1998 to eliminate the position of operations assistant and to move Porter to the position of grounds supervisor. Harrison further testified that Porter has not been formally told about this decision, that no date has been set for the transfer, and that the date for the transfer depends on “the outcome of these proceedings.” Porter, on the other hand, testified that he was asked informally whether he was interested in becoming grounds supervisor, that he stated that he was not interested, and that the Employer has not approached him again about the subject. Harrison testified that the 1999 budget was the only document that would prove that a decision had been made to move Porter to the grounds supervisor position. The Employer, however, refused to introduce this document into the record. In light of the circumstances herein, including (a) the Employer’s declining to introduce the budget document reflecting Porter’s placement as the grounds supervisor; (b) Porter’s testimony that he declined any interest in the position; and (c) the lack of any named employee in that position, I am constrained to decline to make a determination of the supervisory status of that position. Cf. Washington Post, 254 NLRB 168, 199 n.84 (1981); Southwestern Bell Telephone Co., 222 NLRB 407, 411 (1976).

Finally, the Employer argues that Porter’s interests lie with the employees represented by Local 82 rather than with the Unit under consideration. I disagree. The record clearly shows that the Local 82 employees are paid an hourly basis at rates established by their collective bargaining agreement. Some of these employees are required to live in the apartment complex and are charged \$300 per month for rent. The Local 82 employees spend most of their time in the field doing physical maintenance work; they share a common area and bathroom in the maintenance shop; they have lockers in the shop and they are supervised by Bedward and Williams. Porter, on the other hand, like most of the office employees, is salaried; spends the majority of his time in the office area; gets a free apartment; gets commissions for each unit he rents; shares a kitchen, bathroom, and telephone with the office employees and, like Mark Todd, is supervised by Ron Goff. The evidence thus clearly shows, and I so find, that Joey Porter shares a community of interest with the office employees.

For the foregoing reasons, I will **include Joey Porter** in the unit found appropriate herein and he is **eligible to vote** in the election.

177-2401-6800; 177-8520-0800; 177-8520-1600; 177-8520-6200;
177-8520-8500; 177-8560-1800; 177-8560-5000