

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

MGM GRAND DETROIT, LLC

Employer

and

CASE 7-RC-21574

LOCAL 58, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL-CIO

Petitioner

and

MICHIGAN REGIONAL COUNCIL OF CARPENTERS

Intervenor

and

DETROIT CASINO COUNCIL

Intervenor

APPEARANCES:

Michael A. Taylor and Ann Benedetto Stevens, Attorneys, of Washington D.C.,
for the Employer.

James M. Moore, Attorney, of Detroit, Michigan, for the Petitioner.

Nicholas R. Nahat and Lynn F. McGuire, Attorneys, of Southfield, Michigan,
for Michigan Regional Council of Carpenters.

Nancy Schiffer, Attorney, of Detroit, Michigan, for Detroit Casino Council.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, 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 had delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ 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.

3. The labor organizations involved claim to represent certain employees of the Employer.²

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

5. Petitioner seeks to represent a unit consisting of all slot technicians employed by the Employer at its Detroit, Michigan facility, but excluding office clerical employees, guards and supervisors as defined in the Act, and all other employees. The Employer asserts that the petition is premature, claiming there currently is no representative complement of employees employed at its Detroit facility. Alternatively, the Employer asserts that either a wall-to-wall unit, consisting of all hourly slot operations department and gaming table department employees, or a unit limited to all hourly slot operations employees would be the only units appropriate for the purposes of collective bargaining. The Michigan Regional Council of Carpenters subscribes to the Petitioner's position. The Detroit Casino Council also argues that the petition is premature, and that a wall-to-wall unit would be the only appropriate unit for the purposes of collective bargaining. There has been no bargaining history in respect to any of the Employer's Detroit, Michigan, facility employees.

The Employer plans to begin operation of a casino at its facility located at 1300 John C. Lodge, Detroit, Michigan in the summer of 1999. The casino is planned to occupy over 60,000 square feet and to operate 2300 slot machines. The casino anticipates hiring about 2000 hourly employees. To date the Employer has hired managerial/supervisory employees and is now going through the process of hiring dealers, technicians, and food and beverage employees. Maintenance employees will be hired later. The Employer will have three principal employing departments within its Detroit operation. They are the food & beverage/property administration department, table games operations department and the slot operations department. The senior vice president of casino operations heads the slot operations department. The slot operations department itself has two functional lines or chains of command. A vice president of slot operations heads the slot operations line, and an executive director heads the slot operations/technical services line.

¹ The parties filed briefs which have been carefully considered.

² The Michigan Regional Council of Carpenters and the Detroit Casino Council intervened at the hearing. The parties stipulated that each is a labor organization within the meaning of the Act, and I so find. The Detroit Casino Council is a coalition of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America; Hotel Employees & Restaurant Employees International Union; International Union of Operating Engineers; and International Brotherhood of Teamsters.

The executive director is responsible for the overall operation of the slot operations department and for the development of casino property. The executive director is also responsible for the day-to-day technical operations of the department. He is specifically responsible for the staffing, evaluation and discipline of the supervisory employees within the technical service function of the department. A slot technical manager reports to the executive director. Reporting to the slot technical manager are three to four slot technical shift managers who, by shift, generally oversee the slot technical supervisors and technical personnel, and the performance of their duties and responsibilities. Slot technical supervisors report to the slot technical managers and directly supervise the casino technicians I, II, and III, who are also referred to as slot technicians or mechanics. Petitioner seeks to represent these technicians. In the slot operations functional line, the supervisory chain tracks that of the technical line. There is a slot shift manager, slot shift supervisors and slot supervisors. The slot supervisors directly supervise slot attendants and slot change attendants. Each of the aforementioned managerial and supervisory categories has the responsibility to evaluate and the authority to discipline employees.

Currently, the Employer has assigned the casino technicians to inspect for damage, check operation and install slot machines. They are also installing the requisite communications cabling for the slot data tracking system, the floor wiring to ensure that the slot machines are operational. They work with their supervisors and slot machine manufacturer representatives in performing this work. The Employer has currently hired 37 of the 46 technicians it plans to employ. The surveillance employees are the only other category of employee that has been hired to date. The technician hiring process began on April 19, 1999. All casino technicians must have Level 2 occupational licenses issued by the Michigan Gaming Control Board. Once the casino is in operation, slot machines will principally be located on the first and second floors of the facility. A fewer number (300) will be on the third floor. A casino (slot) technician shop (slot shop) will be on the fourth floor next to an employee training center. In the slot shop "bench techs" (3-4 per 24 hour day) employed in the casino technician III category will do slot machine circuit board repair at the component level. There will also be some casino technicians performing mechanical repairs to the slot machines in the slot shop. The remainder of the casino technicians called "floor techs" will work on the slot machine floors. They are to keep slot machines in service. These "floor techs" will change components at the board level and do mechanical repairs on mechanisms such as coin acceptors and hoppers. Some may work in the fourth floor slot shop on a temporary basis if necessitated by a system upgrade. The technicians may also may be required to maintain and fix other electronic and mechanical devices on the casino floor such as coin and chip counting equipment. Hence, they are sometimes called casino technicians.

All applicants for technician positions attend an eight week MGM Grand Detroit Slot Technical Academy where they are trained by manufacturers and slot technical staff personnel on various gaming equipment, diagnosing common problems, trouble shooting machines, and finding solutions. All current hires have completed the program. There is no formal apprenticeship program for technician positions. Casino technician I employees are to have prior slot mechanic experience or gaming tech school requirements, and 1000 hours of formal or other training in electronics. Each higher level technician is to have more experience, and possess superior electronics and mechanical aptitude and troubleshooting abilities. In keeping with their skills, training, education and ability, the casino technicians are to be the highest hourly-rated, non-salaried employees in the slot operations department of the casino. They will receive different hourly rates of pay based upon their training and experience.

The Level III technicians are the highest paid and have either direct gaming experience or superior electronics formal training and background. Level II technicians have lesser degrees of training and experience. Level I technicians are an entry level position who will receive on-the-job training and are required to have a minimum of 1,000 hours of formal school, community college, or university electronics training. Technicians will wear identifying uniforms or clothing with their occupational license displayed indicating slot technical department.

The casino technicians may from time to time have contact with those in the slot operations chain of supervision, particularly if there is a large or disputed slot machine jackpot requiring verification of the accuracy of the slot machine. However, normally, if there is a problem, it is the slot technical manager who contacts the casino technicians to attend to the matter. Additionally, the slot attendants may note suspected or actually malfunctioning machines and call their supervision for the "floor techs" to diagnose and repair the slot machine problem. However, only the casino technicians or manufacturers representatives have the skills and training to repair the slot machines.

In the slot operations functional line of the slot operations department, the Employer plans to hire 250 slot attendants and 150 slot change attendants. At the time of the hearing none had been hired. The slot attendants and the slot change attendants will work on the slot machine floors. The slot attendants fill a customer service roll, answering customer questions about the slot machine games and replenishing machines (fills) with money if they run out. The slot attendants also attend to coin and/or bill jams that may occur on the slot machines. Also, the slot attendants pay all jackpots on the floor. Sometimes they will call a casino technician to verify that the machine was not malfunctioning at the time of the jackpot payout. Upon verification of no malfunction the technician signs a jackpot slip. The jackpot slip may also be countersigned by more than one manager or supervisor depending on the level of the jackpot. In this regard the slot attendants as well as the technicians are also to note machines that pay more than 5 times per 24-hour period. The slot change attendants handle change banks and make change for customers so that they can play the slot machines. If a slot change attendant or a slot attendant notes a machine malfunction, he or she brings the matter to the attention of supervision who would in turn summon the technicians for diagnosis and repair.

Slot change attendants are paid less than slot attendants who in turn are paid less than the casino technicians. The slot attendants and the slot change attendants are to wear uniforms different from each other and from the technicians. They each report to work on the third floor at the key and radio room to obtain their equipment and then cover the casino gaming floors. There is no interchange of slot attendants or slot change attendants and casino technicians.

The Employer plans to employ general electricians in the building maintenance and engineering department who will install new power boxes to supply the slot machines which have been moved. They will work in coordination with the technicians in scheduling such machine moves and slot operations or casino management determines the movements. The technicians will handle the actual moving of the machines. However, it is not anticipated that the electricians will have the skills or training necessary to work on new slot machines.

The table games operations department has a vice president who reports to the senior vice president of casino operations. Within the department there will be three to four casino shift managers,

one per shift. The department will have 36 pit managers, 26 of whom have already been hired. The Employer has assigned the pit managers to designated areas which by state law (Michigan Gaming Control Board) cannot encompass more than 24 tables. The pit managers monitor and motivate the floor staff and administer Employer policies and procedures. The pit managers will supervise 212 floor supervisors/box persons of which about 80 of the 125 offered employment had been hired as of the date of the hearing. The floor supervisors each will supervise four to five games per pit. The floor supervisors ensure game integrity by making sure that customer service procedures are followed and that dealers make correct payoffs. The box person supervises the three dice dealers and serves as a relief dealer. He monitors policy and procedure, checks dice, and makes sure that the stick person at the dice table makes correct calls.

All of the floor supervisors/box persons, and pit managers will have the authority to discipline employees. The shift managers will determine whether overtime will be granted. The shift managers, the floor supervisors and the pit managers will all be involved in the employee evaluation process. The table games operations department supervisors will sometimes deal with slots operations supervision or technicians directly. If dealers note a problem with a roulette wheel, they will notify their supervisor who in turn notifies the pit manager. The pit managers contact casino technician supervision or the casino technicians directly by pager or telephone to balance and maintain the integrity of roulette wheels. The technicians have the skills necessary to fix roulette wheels.

The Employer projects that the table operations department will employ 680 blackjack dealers and 90 dice dealers of which about 337 have completed their training and 84 of whom have begun a period of unpaid training. These dealers, as they are trained, will also operate roulette wheels. The dealers will also handle other forms of poker. The State of Michigan requires Level 2 licensure for dealers. The State has not yet approved any of the dealer applicants for licensure. Dealers will be paid hourly and will be recipients of 24 hour pooled tipping. They will work 3 shifts in a 24-hour a day operation. The shifts will run from 12 noon – 8:00 p.m., 8:00 p.m. – 4:00 a.m., and 4:00 a.m. to 12 noon. The busier shifts will have more dealers assigned to them. The dealers will work on the first or second floors. The dealers will be uniformed. The dealers will not have contact with the casino technicians when they are dealing table.

The food and beverage/property administration department has a vice president, an executive chef, a PBX communications manager, a valet transportation manager and a facilities director. This department will employ over 550 employees as valet and PBX employees, facilities cleaners, facility specialists, maintenance helpers, carpenter/gardeners/painters, engineers, Grandettes, Barback/Bar Porters, bartenders, inventory control clerks, warehouse attendants, warehousemen, receiving attendants, kitchen workers and stewards, culinary utility persons, cooks, cooks/action, bus persons, coffee attendants, hosts and hostesses (Buffet and Brown Derby), servers (Buffet and Brown Derby), and Brown Derby lead servers. Not all of these employees require state licensure. However, certain of the casino areas are accessible only to employees with appropriate licensure. The employees wear badges marked with a color strip indicating what area is accessible to that employee. The supervision of this department, including the EVS manager, beverage manager, the buffet manager, the Brown Derby manager, the EDR chief manager, commissary chef, buffet chef, Brown Derby chef, facilities director, PBX communications manager, valet transportation manager, and lower level supervisor positions, such as the day, swing, sunrise and relief supervisors under EVS (all salaried), shift

supervisors, and the warehouse manager, each will have the authority to discipline or terminate employees. The food and beverage trainer, a salaried employee, will not have such authority.

The Employer will maintain a three shift operation. The technicians will work all three shifts. The shifts for technicians will run from 7:00 a.m. – 3:00 p.m., 3:00 p.m. – 11:00 p.m., 11:00 p.m. – 7:00 a.m. Currently, the Employer is operating a single 8:00 a.m. – 5:00 p.m. shift. The other classifications of employees will be assigned to similar but not necessarily identical shifts. Employee timekeeping will be done by a time sheet, timeclock or a chronos timekeeping system. All employees will have common offsite shuttled parking. The casino technicians will be at the highest level of hourly paid employees not counting tips. In the slot operations department the casino technicians will be paid in the range of \$23,000 - \$40,000. The slot attendants are in the \$20,000 - \$25,000 range. The slot change attendants and the food service workers are in a yet lower pay range. Dealers, valet, food service employees, host and hostesses may receive tips from a tip pool. Pay periods for all employees will be every other week. The Employer pays its employees by check or direct deposit. All hourly employees are to have the same benefits available to them including a 401(k) retirement plan, a stock purchase plan, life insurance, optional employee and dependant life insurance, short-term and long-term disability plans, health care benefits including dental and vision plans, a paid time-off program, vacation benefits, tuition assistance, and various employee assistance and employee recognition. All employees, salaried and non-salaried, will share a common employee dining room on the third floor for meals and breaks. Their lunches will be staggered in mid shift for half hour lunch periods. All employees will receive one free meal a day.

The Act does not require that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit; the Act requires only that the petitioned-for unit be appropriate. *Transerv Systems*, 311 NLRB 766 (1993); *Morand Brothers Beverage Co.*, 91 NLRB 409, 418 (1950). A union is not required to seek representation in the most comprehensive grouping of employees unless such grouping alone constitutes an appropriate unit. *Bamberger's Paramus*, 151 NLRB 748 (1965). Additionally, a petitioner's desires as to unit is always a relevant consideration. *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964). In determining whether a particular unit is appropriate the Board determines whether the employees share a community of interest. *Kalamazoo Paper Box Co.*, 136 NLRB 134 (1962).

The record shows that the casino technicians do share some community of interest with other employees of the casino, particularly the other slot operations department employees. However, there are significant differences between the casino technicians unit sought by the Petitioner and the other employees. The casino technicians wear distinguishing uniforms and they are separately supervised from the other employees. They are the only employees who have the requisite skills, experience and training to work on the slot machines, which requires substantial training and experience. The casino technicians do not interchange with any of the other employees. They are also the highest hourly-rated employees at the casino. Based upon these facts, I find that the casino technicians are skilled craftsmen who share a distinct community of interest and constitute an appropriate unit for the purposes of collective bargaining. *Freemont Hotel, Inc.*, 168 NLRB 115 (1967).

Although Intervenor Detroit Casino Council proposes to represent the casino technicians in a broader unit, no such broader unit currently exists, and as discussed below there is no substantial

reason for delaying the existing employees' selection of a bargaining representative. Furthermore, even if a broader unit may be more appropriate, as found herein, the casino technicians nevertheless constitute an appropriate unit.

In determining whether the employee complement is "representative and substantial" so as to warrant holding an immediate election, the Board has avoided the use of hard and fast rules. The size of the employee complement at the time of the hearing; the nature of the industry; the time expected to elapse before a full, or substantially larger, complement of employees is on hand; and other variables all militate against a rigid formula and dictate the Board's approach. The Board must often balance what are sometimes conflicting desiderata, the assurance of maximum employee participation in the selection of a bargaining agent, and permitting employees who wish to be represented as immediate representation as possible. Thus, it would unduly frustrate existing employees' choice to delay selection of a bargaining representative until the very last employee is hired. In the instant case, as of the time of the hearing 37, or about 80%, of the anticipated 46 casino technicians had already been hired. Thus it appears that a substantial and representative complement of employees is currently employed in the unit found appropriate herein. See *General Cable Corp.*, 173 NLRB 25 (1968); *Endicott Johnson De Puerto Rico*, 172 NLRB 1676 (1968).

6. In view of the foregoing, and the record evidence considered as a whole, I find that the following employees constitute an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time casino technicians employed by the Employer at its facility located at 1300 John C. Lodge, Detroit, Michigan, but excluding guards and supervisors as defined in the Act, and all other employees.

Those eligible to vote shall vote whether they wish to be represented for the purposes of collective bargaining as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 28th day of June, 1999.

(SEAL)

/s/ William C. Schaub, Jr.
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