

THE UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

JAMES H. WOODS d/b/a CRUISE AND TOUR SERVICES¹

Employer

and

Case 21-RC-20199

MARINE CLERKS ASSOCIATION,
LOCAL 63, OFFICE CLERICAL UNIT,
INTERNATIONAL LONGSHORE &
WAREHOUSE UNION, AFL-CIO

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.
3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act and seeks to represent certain employees of the Employer.

¹The name of the Employer appears as amended at the hearing.

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

All full-time and regular part-time, pier meet and assist employees employed by the Employer at World Cruise Center, Port of Los Angeles, Berth 91 and 92, San Pedro, California, excluding all other employees, professional employees, managers, guards and supervisors as defined by the Act.

The Petitioner seeks to represent a unit of employees, as amended at the hearing, comprised of all full-time and regular part-time pier meet and assist employees employed by the Employer at the port of Los Angeles pier, herein called the pier, excluding all other employees, professional employees, managers, guards and supervisors as defined by the Act.

The Employer argues that the only appropriate bargaining unit must consist of the 74 meet-and-assist employees employed by Employer who regularly work at both the pier and the Los Angeles International Airport, herein called LAX. There are 26 employees regularly assigned to work at the LAX site and 48 employees assigned to work at the pier site.²

The Employer, a sole proprietorship owned by James Woods, herein called Woods, is engaged in providing staff to assist cruise lines and other customers at the pier and at LAX. The Employer employs 74 employees who meet and assist guests at various sites in southern California, including LAX and

² Contrary to the Employer the Petitioner seeks to exclude employee Gloria Thomas Lewis from the unit on the basis that she is a supervisor within the meaning of Section 2(11) of the Act. Since the appropriate bargaining unit consists of pier meet and assist staff, there is no need to determine the

the pier.³ The Employer does not provide travel services directly, but rather is contracted by companies such as Royal Caribbean, to meet and greet their guests and insure that they make their travel destination whether they are arriving at the pier after flying into LAX or arriving directly at the pier.⁴ The Employer has employees stationed at the pier and at LAX with the expectation that these employees will meet and greet the clients' customers.

The Employer has been in operation since April 1, 1993. Since February 1, 1998, the Employer has maintained a central office located on 302 West 5th Street, Suite 203 in San Pedro, California. The record reflects that Woods' primary base is at the central office and that he regularly visits both the pier and LAX work sites. In addition, Woods has the authority to hire and fire any employees and shares the task of preparing staff assignments with Manager of Operations, Marty Wertz (Wertz).⁵ Both Wertz and Woods prepare work schedules for all employees and both have authority to draft and send warning letters to employees. Woods and Wertz conduct job interviews for all positions, although at times other supervisors are also present.

Mary Reyes, herein called Reyes, supervises pier operations on a day-to-day basis.⁶ In addition to Reyes, Rosie Gregg, herein Gregg,⁷ is the grounds supervisor for the pier operation, while George Gigliello, herein

supervisor status of Gloria Lopez, an LAX meet and assist employee, at this time.

³ The record reveals that LAX and the pier are owned by the City of Los Angeles.

⁴ The record shows that Royal Caribbean is a primary client of the employer.

⁵ The parties stipulated that Wertz has the authority to assign work and discipline employees in the interests of the Employer, and that she is a supervisor as defined in section 2(11) of the Act and should therefore be excluded from any unit found appropriate.

⁶ The parties stipulated that Reyes has the authority to assign work in the interests of the Employer, and that she is a supervisor as defined in section 2(11) of the Act and should therefore be excluded from any unit found appropriate.

⁷ The parties stipulated that Gregg has the authority to assign work in the interests of the Employer, and that she is a supervisor as defined in section 2(11) of the Act, and should therefore be excluded from any unit found appropriate.

called Gigliello, supervises the LAX operation.⁸ Woods testified that no supervisor has authority to directly suspend an employee and that all supervisors must any recommended suspensions to him.⁹

Woods and Wertz prepare the staff schedules for both the pier and LAX.¹⁰ All employees work part-time on Friday, Saturday, Sunday and sometimes on Monday depending on the project. Pier and LAX employees start earning the same rate of \$8.00 per hour and supervisors start earning \$13.00 per hour. Employees at both sites do not receive medical insurance, or any other benefit except for discounted travel opportunity on Royal Caribbean cruise lines, a benefit that is offered directly by Royal Caribbean. The Employer provides bow ties and navy colored slacks for all the men and navy colored skirts and scarves for all the women. All employees have a Cruise and Tours name badge, but, depending on an assignment, they are sometimes directed to wear a Royal Caribbean name badge.

The record discloses that Woods or Wertz telephone LAX meet-and-assist employees to notify them of their work schedules. At the start of the work day, LAX employees must report to Gigliello, who is stationed inside his car located at

⁸ The parties stipulated Gigliello have the authority to assign work in the interests of the employer, and that he is a supervisor as defined in section 2(11) of the Act and should therefore be excluded from any unit found appropriate.

⁹ However, Employer's Exhibit 18, an abstract of suspensions, terminations, and absenteeism, compiled by the Employer shows that Gigliello was involved in one employee termination.

¹⁰ Lynne Woods is married to James H. Woods and also has the authority to assign shifts to employees. The parties stipulated that Lynne Woods is not

an LAX parking structure.¹¹ Gigliello will then give each LAX employee a folder containing their work assignment for the day. LAX employees receive hand-held radios so that they can alert their terminal leaders when flights have arrived and communicate with other employees within LAX. The record discloses that LAX employees do not use the radios for communicating with pier employees.¹² In performance of their work, LAX employees are assigned to greet guests at designated gates and hold signs indicating the cruise agency that they represent on that particular day.¹³ Other employees at LAX will assist guests with baggage and escort them to a coach that will transport them to the pier for their cruise.¹⁴ Once LAX employees meet and greet the guests, they insure that the guests collect their luggage and have their cruise documents prepared along with proper identification, ie. passport, birth certificate. LAX employees are prepared to answer any questions relating to their guests' travel plans. Once all guests have been accounted for and they are ready to depart on the coach to the pier, Gigliello contacts

appropriately included in the bargaining unit because she is a confidential employee as defined by the Act and does not perform unit work.

¹¹ Apparently Gigliello attempts to secure the same parking space so that LAX employees have a regular location where he can be located.

¹² The record fails to disclose whether LAX employees are restricted from communicating with pier employees or whether the radios are incapable of conducting such a communication.

¹³ The record shows that the Employer has provided services to three cruise lines since 1993, namely Royal Caribbean, Celebrity Cruises and the Radisson Seven Seas Cruises. In addition, the Employer sometimes provides services for conventions and travel agents.

¹⁴ The record discloses that the coaches utilized are contracted by the Employer. Thus, they are owned and operated by entities other than the Employer.

the pier supervisor to let her know that the guests are on the way. LAX employees do not accompany the guests as they are transported to the pier.

The record discloses that at the pier, the employees conduct several job functions depending on whether they are debarking or embarking passengers. Two to three pier employees are assigned to work the debarkation operation known as "supercharge". The supercharge employees arrive to work at 7:00 a.m. to insure that passengers close out their accounts of charges made while on board the cruise ship. At 8:15-8:30 a.m., the next group of pier employees arrive to set up the automation system for embarkation, and then at 8:30-9:00 a.m., the rest of the pier employees arrive to complete the debarkation of the ship. Some pier employees work the gangway of the ship and inform passengers where they may locate their luggage, while others are assigned to work as "customs director" and must insure that all passengers have all pertinent immigration information ready for their inspection at customs. Other pier employees assigned to work the front desk insure that passengers have all their luggage and they also provide claim forms to those passengers whose luggage was damaged in the course of the cruise.

Some pier employees are scheduled to work the buses, and these employees report to Grounds Supervisor Rosie Gregg.

These employees meet guests as they debark the ship and escort them to the coaches which will transport them to LAX. In this function, the employee will indicate which terminal each passenger should report to in order to continue with their travel. Once the debarkation process is complete, Reyes contacts Gigliello at LAX to inform him that the guests have debarked the ship and are on their way to catch their flights at LAX.¹⁵ Pier employees do not accompany the passengers to LAX.

Aside from the debarkation of passengers, pier employees also perform embarkation procedures for passengers arriving at the pier. Pier employees check to see that guests have all needed documents completed and that they remove important documents from their cruise document packet for presentation. Other pier employees take the guests to the embarkation line and the embarkation check-in process begins. In this process, a pier employee checks that the guest has identification and the employee makes the proper notation into the computer. The record reflects that computer training was conducted on May 8, 1999, by a Royal Caribbean employee, at which all pier employees were in attendance. The record discloses that six LAX employees also attended the initial training, which was supplemented 4 months later with additional training. Four months later the pier employees were required to

¹⁵ The record fails to disclose the manner in which Gigliello communicates with

attend an additional computer training. After the computer check-in process takes place, the guest's ticket and boarding pass is collected, the guests receive a landing card and the guests embark the ship.

At the pier, there are various pier coordinators whose jobs are to resolve problems that could not be resolved by the regular embarkation staff. Also, when guests do not pay the entire cruise fare, they must report to the pier coordinator. According to the record, Wertz spends most of her time at the pier and Gigliello spends most of his time at LAX.

The record discloses that any employee can volunteer to work at both the pier and at LAX. For example, pier employee Loretta Jones testified that she regularly seeks and she is regularly given work at LAX to earn extra money.

The record reflects that employees are required to be cross-trained. Thus, cross training is accomplished by, on a once-a-year basis, assigning LAX employees to work with pier employees at the pier, and vice-versa. Cross-training is usually conducted during the business's slow period.¹⁶

The record reflects that one employee has been permanently transferred from LAX to the pier. Conversely, the record shows that no employee has ever been permanently

Reyes.

transferred from the pier to LAX. The record reflects that aside from cross training, the Employer does not require that any pier employee work at LAX, or that any LAX employee work at the pier. The record reflects that on average, the distance from LAX to the pier would require one half to one full hour of driving on the freeway.¹⁷

The record discloses that in addition to the work performed at the pier, pier employees are occasionally assigned to work at the John Wayne Airport in Orange County.¹⁸ The record reflects that Wertz prepares the schedules for work at the John Wayne Airport depending on customer' requirements. In these assignments, pier employees meet and greet guests near the statue of John Wayne at the John Wayne Airport, and accompany them to the pier. Unlike the LAX airport employees, the pier employees, when working at the John Wayne airport, accompany the guests to the pier.

The record reflects that the Employer also conducts meet-and-assist services at the San Diego Airport and pier. Thus, the record discloses that that in the past 2 years, the

¹⁶ The parties stipulated that employees at both sites have been cross-trained, but no stipulation as to the nature and duration of the cross-training was received.

¹⁷ Administrative notice is taken that the pier location is approximately 20 miles from LAX.

¹⁸ The record reveals that no LAX employees are assigned to work at the John Wayne Airport.

Employer performed 20 to 22 meet-and-assist services in San Diego. On occasion, the Employer will assign employees regularly assigned to both the LAX and the pier work locations, to work in San Diego, although assignments are strictly on a voluntary basis. When services are provided in San Diego, the LAX employees and the pier employees meet at the pier and travel together on employer provided buses or vans to San Diego.

In addition, Woods testified that he drives his own van to San Diego and transports several employees. The pier employees are dropped off at the San Diego pier and perform similar functions to that worked at the Los Angeles pier. The bus or van then drops off the LAX employees at the San Diego airport to perform similar functions as in LAX. According to Woods, when the airport staff finishes their work they return to the San Diego pier to assist with any necessary duties. If the pier employees are finished with their work, then both groups of employees depart on the same transportation that brought them into San Diego. Woods testified that he had no recollection of personally seeing the airport staff work at the San Diego pier, but that the supervisor would have assigned the airport staff work since the employees were still on work time. The record disclosed four pier employees who have worked at the San Diego pier who testified that they never saw LAX employees perform work at the San Diego pier.

Based on the record presented, the Employer argues that the petitioned-for bargaining unit is inappropriate in that there is a functional integration so substantial among the Employer's two locations that the only appropriate unit must consist of all employees employed in the petitioned-for classifications at both the LAX and the pier locations. The Petitioner submits that the single-location unit which it seeks is presumptively appropriate and that the Employer has failed to demonstrate that it is not an appropriate unit.

In Britain Transportation Co., 330 NLRB No. 57 (1999), the Board reiterated the applicable standard in determining appropriate units in multi-facility operations such as the one under consideration herein. The Board noted as follows:

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. J&L Plate, Inc., 310 NLRB 429 (1993). To determine whether the presumption has been rebutted, the Board considers such factors as centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; geographic proximity; and bargaining history, if any. J&L Plate, supra; Bowie Hall Trucking, 290 NLRB 41 (1988); D&L Transportation, Inc., 324 NLRB 160 (1997); Esco Corp., 298 NLRB 837, 839 (1990).

The record discloses that the Employer has, to a certain extent, centralized its labor relations in that apparently employees at both locations enjoy the same benefits. In addition, the Employer centrally sets the base wage rates for all employees and prepares employee work schedules for both locations. The Employer maintains ultimate centralized control over the hiring and firing of employees. Centralized control over personnel and labor relations alone, however, is not sufficient to rebut the single-

location presumption where the evidence demonstrates significant local autonomy over labor relations. Britain, supra at 1.

The record discloses that supervision at each location is handled by a specific supervisor. Each supervisor can issue tardy warnings or absentee warnings which in turn are placed in employee files that later are reviewed by the Employer. In this manner, supervisors can effectively recommend that discipline be taken against certain employees. Further, supervisors have the authority to make changes to the schedule and work assignments prepared by the Employer when employees fail to report to work and the location becomes short staffed.

In Esco Corporation, 298 NLRB 837 (1990), the Board was confronted by a situation similar to the instant case. In that case, the Board found that, as is the case in present scenario, there was centralized administration and labor relations policy among the Employer's various facilities. However, the Board concluded that the centralization of operations and labor relations, limited local autonomy and the common skills and functions of the employees at all three locations, did not overcome the lack of regular and substantial interchange or contact between the various groups of employees considered and the great distances between the various locations.

Thus, the record discloses that there is a lack of significant employee interchange between the pier and LAX employees. The fact 62 out of the 74 employees have been cross-trained, does not establish that the contact between LAX and pier staff was a regular occurrence. To the contrary, the record demonstrates that cross-training occurs only once a year and the Employer does not require LAX employees to work the pier or vice versa.

In Renzetti's Market, 238 NLRB 174, 176 (1978), the Board found that 10 employee transfers in a 5-year period was insufficient evidence of interchange to overcome the single-site presumption. Here, the Employer

permanently transferred one LAX employee to the pier operation and there were no permanent transfers from the pier to the LAX operation. Moreover, Woods testified that the single permanent transfer resulted because an employee requested a different location to accommodate a change in her lifestyle. Such voluntary interchange merits less weight in determining if employees from different locations share common identity. In fact, five meet-and-assist employees testified that on occasions where both LAX and pier employees ride the vans and buses together, LAX employees and pier employees generally do not socialize and prefer to sit with their respective groupings. Thus, this significant deficit in employee transfers and contact demonstrates a lack of employee interchange. D&L Transportation, 324 NLRB at 162 fn.7.

Additionally, the distance between the pier and LAX is 20 miles. In Red Lobster, 300 NLRB 908 (1990), the union was seeking to represent a single-store unit, where the average distance among the Employer's stores was about seven miles. The Board concluded that the Red Lobster restaurants were not geographically proximate to each other, which rendered the likelihood of employee interchange between the locations unlikely. The same is true in the present case where the distance is about 20 miles and there is little history of interchange.

In the Red Lobster case, the Employer maintained centralized operations but each general manager retained sufficient authority and responsibility for day-to-day operations. Similarly, the Employer in the present case administers the work assignment on a broad scale, but it is the LAX supervisor and pier supervisor separately who carry out the needs of the Employer at each location. In fact, when meet and assist staff are required to work in San Diego, they are again separated into pier meet-and-assist and airport meet-and-assist employees and each group continues to be separately supervised while performing their work.

Finally, I also note that there is no bargaining history of, or any request for, representation on a broader basis, which weighs in favor of finding the single-location unit appropriate. Renzetti's Market, 238 NLRB 174, 176 (1978).

The Employer attempts to rebut the presumptive appropriateness of the single-location unit by arguing that both locations operate as a single operation. The Employer argues that greeting customers at LAX and at the pier is a "seamless" operation and that both the pier staff and LAX staff provide an "integral process" of delivering passengers and their luggage from LAX to the pier. In support of its contention, the Employer cites Neodata Product/Distribution, Inc., 312 NLRB 987 (1983). The Employer's reliance on Neodata, is misplaced.

In the Neodata case, unlike the present scenario, the Board concluded that the inventory supply employees of two facilities were supervised by the same individual. Also, the Board found that there was frequent personal, telephonic and facsimile communications between employees at both locations. In addition, employees from one facility would visit the other facility three to four times a week to gather needed information. Finally, the Board noted that 20 employees from the Washington facility had transferred to the 10th Street facility and 17 employees from the 10th Street facility transferred to the Washington facility.

The record reflects that pier and LAX employees do not have frequent or regular contact with each other. Supervision is separate and the two groups operate, for the most part, as separate operations. Moreover, unlike Neodata, only one employee has transferred from one location to the other. Accordingly, Neodata, fails to support the Employer's contention.

Accordingly, based on the above-noted considerations and the record as a whole, I find that the Employer has failed to rebut the presumption that the single-location unit is an appropriate unit for

collective-bargaining purposes, and I shall, therefore, direct an election in the noted appropriate unit. Britain, supra; Red Lobster, supra; Esco Corporation, supra.

There are approximately 48 employees in the unit.

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, 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 those 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 **Marine Clerks Association, Local 63, Office Clerical Unit, International Longshore & Warehouse Union, 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 in the unit 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, two copies of an alphabetized election eligibility list, 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 (1994). In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, Ninth Floor, Los Angeles, California 90017, on or before May 18, 2000. No extension of time to file the list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement herein imposed.

NOTICE OF POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.21, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the day of the election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

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, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by 5 p.m., EDT, on May 25, 2000.

DATED at Los Angeles, California, this 11th day of May, 2000.

/s/Peter Tovar
Peter Tovar
Acting Regional Director, Region 21
National Labor Relations Board

440-1720-0133