

R.D. # 0004-00
Princeton, N. J.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

**HYATT CORPORATION d/b/a
HC-PRINCETON ASSOCIATES¹**
Employer

and

CASE 22-RC-11871

**HOTEL EMPLOYEES AND
RESTAURANT EMPLOYEES,
LOCAL #54, AFL-CIO²**
Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein 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,³ 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 (also referred to herein as the Hotel) is engaged in commerce within the meaning of the Act and it will effectuate the

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

² The name of the Petitioner appears as amended at the hearing.

³ Briefs filed by the Employer and the Petitioner were duly considered.

purposes of the Act to assert jurisdiction herein.⁴

3. The Petitioner (also referred to herein as the Union), the labor organization involved, claims to represent certain employees of the Employer.⁵

4. No 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 for the following reasons:

The Employer operates a hotel with a restaurant, lounge and banquet facilities in Princeton, New Jersey. The Petitioner seeks to represent a unit made up of a portion of the Employer's food and beverage service employees. The Employer contends that only a wall-to-wall unit is appropriate or, in the alternative, a food and beverage employees unit broader than that sought here.

As the Board has noted, for a six year period of time in the 1960s, it "applied a rigid rule that only an overall unit consisting of all hotel/motel employees would be found appropriate for bargaining." *Omni International Hotel*, 283 NLRB 475 (1987). In 1966, the Board reversed *Arlington Hotel Co.*, 126 NLRB 400 (1960), which had established this rule, and announced that it would make unit determinations on a case-by-case basis employing the same traditional community of interest criteria used in other industries.

⁴ The parties stipulated, and I find, that the Employer, a Delaware corporation, is engaged in the rental of hotel rooms and related services at its Princeton, New Jersey facility, the only facility involved herein

⁵ The parties stipulated and, I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

Omni International Hotel, supra, citing *77 Operating Co.*, 160 NLRB 927 (1966), enfd. 387 F.2d 646 (4th Cir. 1967); *Dinah's Hotel & Apartments*, 295 NLRB 1100, 1101 (1989).

In conducting the community of interest analysis to determine whether the unit sought is an appropriate one, the Board examines a number of factors, such as bargaining history, functional integration, interchange of employees, hours of work, method of payment of wages, benefits, supervision and differences or similarities in training and skills. *The Westin Hotel*, 277 NLRB 1506, 1508 (1986); *Atlanta Hilton & Towers*, 273 NLRB 87 (1984), mod. on other grds., 275 NLRB 1413 (1985); *Moore Business Forms Inc.*, 173 NLRB 1133 (1968); *Doubleday & Co.*, 165 NLRB 325 (1967); *77 Operating Co.*, supra.

The Board has also found in hotel industry cases that the regular contact and sufficiency of interchange among food and beverage service employees makes units encompassing such employees appropriate. *Dunfey Family Corp., d/b/a Sheraton Motor Inn*, 210 NLRB 790 (1974). Based on a community of interest standard, an attempt to limit the unit, as here, to a portion of employees engaged in the preparation and service of food and beverages must be demonstrated. *Dunfey Family Corp., d/b/a Sheraton Motor Inn*, supra at 792. In the instant matter the Union has petitioned for a unit consisting of all full-time and regular part-time banquet servers, banquet bartenders and convention service workers, excluding all other employees, guards and supervisors as defined in the Act. The central issue here is whether the employees in remaining food and beverage classifications share a community of interest with the petitioned-for employees to such a degree as to permit their exclusion from the unit.

The most relevant classifications of employees which the Union would exclude from the bargaining unit are: restaurant department employees (restaurant servers, restaurant bussers, restaurant hostesses), lounge department employees (lounge bartenders), kitchen department employees (prep employees, pastry cooks and line cooks) and stewarding department employees (stewards). As discussed infra, the record indicates that these employees do in fact share a community of interest with the petitioned for employees which would render their exclusion from the unit inappropriate.

The record reveals that the Hotel's employees are organized in seven separate divisions, namely: executive committee, food and beverage, accounting, engineering, human resources, sales and marketing, and rooms. The above-referenced employees which the Union would exclude, as well as the classifications in the petitioned for unit, are members of the food and beverage division.

Whether employees are subject to the same supervision is a relevant factor in making a community of interest finding. *Kalamazoo Paper Box Co.*, 136 NLRB 134 (1962). The food and beverage division employees are all under the general supervision of Deborah Jarvie, the Executive Assistant Manager for that division. Jarvie has final approval of all applicants for positions and reviews all job evaluations and discipline for employees in the division. In addition to Jarvie's supervisory role over all food and beverage employees, on the day of a banquet function, stewards, convention service workers (otherwise known as housepeople), banquet servers and banquet bartenders all report to the banquet manager.

The Board has found that sharing benefits and other terms and conditions of employment is highly relevant to making a community of interest resolution. *Kalamazoo Paper Box Co.*, supra. As with all non-supervisory employees of the Hotel, the record reveals that all food and beverage division employees work in the same building, have the same benefits,⁶ eat Employer provided meals in the same employee cafeteria, use the same employee entrance to the facility, use the same employee locker rooms, punch the same time clock, wear name tags and uniforms,⁷ and are subject to the same policies as dictated by the Employer's employee handbook. Like banquet department employees, restaurant and lounge department employees are paid an hourly wage and share in their departments' pool of tips.⁸ The Board has found that even where some employees reported to different supervisors and petitioned for employees were in different departments, the employees' shared terms and conditions, including work rules and fringe benefits, indicated that they had a sufficient community of interest to be included in the same bargaining unit. *Keller Crescent Co., Inc.*, 326 NLRB No. 108 (1998).

⁶ Employee benefits include sick days, vacation days, medical and dental plans and free rooms at other facilities owned by the Employer. These benefits are distinguished only by the full or part-time status of the employees, not by the department in which the employee works.

⁷ All uniforms are laundered by the Employer.

⁸ While tips for tables of fewer than six restaurant guests are discretionary and gratuities are automatically added to banquet bills, all tips in both departments are pooled. The Board has found that an identical distinction in tip policy is insufficient to offset other evidence establishing the community of interest of food and beverage department employees. *Dunfey Family Corp., d/b/a Sheraton Motor Inn*, supra at 792.

The record shows that the departments in the food and beverage division are functionally integrated. Banquet functions are held in special function rooms, in the Hotel's restaurant and in guest suites. Before a function starts, housepeople clean the banquet rooms, put out furniture and put on table linens and skirting. Stewarding department employees wash the china, silver and glassware and deliver clean tableware to stations behind the banquet rooms. Banquet servers set the tables and set out chafing dishes when needed. Stewards clean the kitchen and back hallways of the function areas. Kitchen employees cook the food for all banquets, as well as the Hotel's restaurant and room service. Stewards help the kitchen staff put banquet food on plates, put the plated food into hot boxes and move the boxes to the hallway areas behind the Hotel's banquet function rooms. Banquet servers then take the food from the hot boxes and serve it to the guests. Stewards also toss salads, put the salads on plates and give the dressed salads to the banquet servers who then serve the guests. The banquet bartenders stock portable bars with alcoholic and non-alcoholic beverages and serve beverages to the function guests. Stewards stock the bars with glassware. When a banquet is over, banquet servers clear the dirty dishes to trays which are picked up by stewards. Housepeople take down the furniture after a function and clean the function rooms.

In situations where time between functions held in the same banquet room is limited, banquet servers help the housepeople set up the function rooms. Likewise the housepeople and any other available hotel employee, including managers, help the banquet servers clear the tables when needed.

For the continental breakfast which the Hotel often provides to its function guests, banquet servers pick up the food directly from the kitchen, just as stewards do for other functions, and take the food to the function room. During other banquet functions, if they need additional food, banquet servers can either make a request through the banquet captains or call the kitchen themselves for more food. At functions in guest suites, stewards deliver the food to banquet servers who, at the conclusion of the function, return the dirty tableware and glassware to the stewarding department, just as stewards would do for larger functions.

The record is clear that the Employer's food and beverage division is functionally integrated to a degree that would render exclusion of some of its departments inappropriate. Banquet servers and bartenders cannot do their jobs without the kitchen employees to prepare the food, the housepeople to clean and set up the function rooms and the stewards to wash and transport the dishes and transport the food.

The record indicates that employees in the different food and beverage departments have substantial contact. Kitchen employees, stewards and banquet servers all interact during the preparation and delivery of food from the kitchen, whether for banquets, continental breakfasts or brunches. Banquet servers and stewards work together in the hallways behind the function rooms cleaning, stocking and retrieving tableware and glassware and delivering and retrieving food. Stewards and banquet servers also have contact during the preparation and serving of salad courses. While the Petitioner contends that only about a third of the stewarding department actually interacts with banquet employees during functions, the other

stewards wash dishes and perform other functions integral to the smooth operation of the kitchen, banquets, restaurant and lounge.

The record reveals that there is interchange between the different food and beverage division departments. The Employer has instituted what it calls a “borrowed board,” where a department can post its needs for extra help from the Employer’s other departments if it is shorthanded. The record shows that employees from other food and beverage departments, as well as other divisions, have been trained and have worked as banquet servers when there is a need for additional help because of high demand, or when a particular banquet server wants a day off and the regular banquet servers have all been asked to work. Housepeople, restaurant bussers and restaurant servers have all worked as banquet servers.

The Board has found where employees have similar skills, qualifications and training, their inclusion in the same bargaining unit is appropriate. *Keeler Brass Co.*, 301 NLRB 769, 777 (1991). The skills and functions of the lounge bartenders and restaurant servers are the same as those required of banquet servers and bartenders. The lounge bartenders serve guests of the restaurant as well as the lounge. They perform the same function with those guests as the banquet bartenders do with the banquet guests. The restaurant servers perform the same food service function as the banquet servers, who as discussed supra, serve food for functions in the banquet rooms, restaurant and guest suites. The restaurant bussers set and clear the tables just as the banquet servers do for banquets. Additionally, stewards supply and clean the table and glassware for the restaurants and lounge just as they do for banquets. Stewards also keep the food supplied at the Sunday brunch buffet. Housepeople

perform the same duties in the restaurant as they do for banquets: rearranging furniture and preparing for the restaurant's Sunday brunch.

All of the Hotel's employees go through the same initial training and orientation and, after passing a probationary period, all take classes focused on serving the Hotel's guests. They then receive additional training from their departmental managers. *Keeler Brass*, supra.⁹

Based upon the above community of interest standards, and the record as a whole, noting the functional integration of the food and beverage departments, the interchange of employees and significant contact among employees of the food and beverage departments, I find that a unit limited to the petitioned for portion of food and beverage employees would be inappropriate. *Dunfey Family Corp., d/b/a Sheraton Motor Inn*, supra.

The Petitioner has expressly declined the opportunity to participate in a broader unit than the petitioned for unit. Therefore, as the Petitioner has clearly indicated that it would not proceed to an election in any other unit if the unit it sought were deemed inappropriate, I dismiss the petition filed herein.¹⁰ Cf. *The Folger Coffee Co.*, 250 NLRB 1 (1980) (petitioner expressed willingness to proceed to election in any broader unit found appropriate); *N. Sumergrade & Sons*, 121 NLRB 667, 670 (1958) (petitioner changed its position and stated willingness to proceed).

⁹ While the Petitioner, citing *Omni International Hotel*, supra at 475, is correct in its assertion that the Board does not require a petition for the most appropriate unit, the Board nevertheless does not permit a petition to go forward in a unit that is inappropriate. *Dunfey Family Corp., d/b/a Sheraton Motor Inn*, supra.

¹⁰ In view of this determination it is unnecessary for me to decide the supervisory status of the Employer's banquet and bartending captains. Likewise, it is unnecessary to decide the issues raised by the Employer's request to include additional classifications in a wall-to-wall unit.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provision 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, DC 20570-0001. This request must be received by the Board in Washington by April 7, 2000.

Signed at Newark, New Jersey this 24th day of March, 2000.

Gary T. Kendellen, Regional Director
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