

R.D. #0005-00
Plainsboro, N.J.

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

HARRISON CONFERENCE SERVICES
Employer

and

CASE 22-RC-11888

**INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL 68, AFL-CIO**
Petitioner¹

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 Relation 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,² the undersigned finds:

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

² A brief filed by the Employer and a letter filed by Petitioner were duly considered.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer [herein also referred to as the Conference Center] 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, the labor organization involved, claims to represent certain employees of the Employer.⁴
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 reasons discussed *infra*.

The Employer declined to stipulate that the Petitioner is a labor organization under the Act. The record reflects that the Petitioner meets the Act's definition of a labor organization as it was formed for the purpose of dealing with employers concerning wages, rates of pay, hours and working conditions on behalf of the employees it represents, as evidenced by the numerous collective bargaining agreements it has with other employers. Moreover, Petitioner allows employees to participate in its affairs by electing officers and shop stewards to conduct those

³ The parties stipulated and, I find, that the Employer, a New Jersey corporation, is engaged in the provision of hotel and conference management services at its Plainsboro, New Jersey location, the only location involved herein.

⁴ The status of the Petitioner as a labor organization will be discussed *infra*.

affairs. At present, Petitioner is staffed by 10 business representatives and one organizer.

There are essentially only two requirements for a party to meet to attain the status of a labor organization as defined by Section 2(5) of the Act: first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment. *Alto Plastics Manufacturing Corp.*, 136 NLRB 850 (1962). I find that the Petitioner has satisfied the definitional requirements. In this regard, noting that the Petitioner has submitted a requisite showing of interest where employees have designated it to represent them in collective bargaining, that based thereon it has filed the instant petition and that it intends to bargain on behalf of employees in the event it becomes their representative, I find that the Petitioner is an organization in which employees participate within the meaning of Section 2(5) of the Act. *Grand Lodge International Association of Machinists*, 159 NLRB 137 (1966); *Pittsburgh Limestone Corporation*, 77 NLRB 710 (1948).

Based upon the above, and the record as a whole, I find the Petitioner to be a labor organization under Section 2(5) of the Act. *Ana Colon, Inc.* 266 NLRB 611, 612 (1983); *Alto Plastics Manufacturing Corp.*, supra.

The Employer, pursuant to its contract with facility-owner Merrill Lynch, provides hotel, restaurant and conference services to its primary client, Merril Lynch, and to other companies, as space allows. The Employer has approximately 330 employees engaged in this enterprise. Petitioner seeks to represent a unit of

maintenance repairers, approximately six or seven employees. The Employer contends that the appropriate unit should encompass all the Housekeeping Department staff, approximately 50 employees. There is no prior bargaining history.

In 1966 the Board reversed *Arlington Hotel Co.*, 126 NLRB 400 (1960), which had established “a rigid rule that only an overall unit consisting of all hotel/motel employees would be found appropriate for bargaining” 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. *Omni International Hotel*, 283 NLRB 475 (1987) 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).⁵

In the instant case, where the issue is the appropriateness of a unit of maintenance employees vis-a-vis the larger Housekeeping Department unit, an application of the Board’s standard for maintenance units is appropriate: “In determining whether a sufficient separate community of interests exists, the Board examines such factors as mutuality of interest in wages, hours and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration.” *Capri Sun, Inc.*, 330 NLRB No. 158 (2000), citing *Ore Ida Foods, Inc.*, 313 NLRB 1016, 1019 (1994) and *Franklin Mint Corp.* 254 NLRB 714, 716 (1981).

The Employer’s Housekeeping Department is directed by an Executive Housekeeper who has overall responsibility for laundry, housekeeping and

maintenance. Three assistant managers report to the Executive Housekeeper; each has a denominated area of responsibility, although the record reflects substantial cross supervision of the Housekeeping Department employees by all the assistant managers. One assistant manager is assigned responsibility for public areas, conference rooms, the executive lobby, bar and restaurant; a second assistant manager is assigned responsibility for all guest rooms; while the third assistant manager oversees maintenance.⁶ Housekeeping Department employees are assigned the following tasks: six work in the laundry during the morning shift, while 10 work during the afternoon shift; five are housemen; nine are general cleaners; 16 are room attendants; and seven are assigned to the maintenance area.

Turning to the first indicium of community of interest, i.e., wages, hours and working conditions, the record reflects that all employees of the Housekeeping Department enjoy substantially the same wages, benefits and working conditions. All are eligible to choose between two health insurance programs and two dental insurance programs; receive \$10,000 free life insurance and are eligible to join the Employer's 401 (k) plan; are covered by a private workers' compensation plan, disability insurance plan and unemployment insurance plan; receive nine paid

⁵ Although the Conference Center is not a hotel or motel *per se*, in that only guests who are part of a conference are eligible to use the facilities, that standard is appropriate.

⁶ Prior to February 2000, the maintenance area was separately managed by Dennis Hernandez, a 14 year employee. On February 11, 2000, the Employer announced a reorganization that resulted in the demotion of Hernandez from maintenance manager to assistant manager for maintenance in the Housekeeping Department, reporting to the Executive Housekeeper. It is the Petitioner's position that Hernandez has no supervisory authority and, therefore, should be a part of the petitioned for unit. As I do not find the petitioned for unit appropriate, I have no need to reach the issue of Hernandez's supervisory status and therefore decline to do so.

holidays and five paid sick days; accrue the same vacation time based on the same years of service; are paid for bereavement time and jury duty; receive free meals in the employee cafeteria, which is used by all employees, as is the employee smoking area; and are eligible for free employee parking and transportation by the employee van. Wages are substantially similar, the rates being \$7.00 - \$10.00 per hour for maintenance employees and \$6.50 - \$11.00 for housekeeping employees. All employees wear uniforms that are similar, although not identical, as well as name tags. All employees punch a time clock, although the maintenance workers use a separate clock from the rest of the housekeeping employees.⁷

It is undisputed that the Employer utilizes employees in its Engineering Department or outside contractors to perform more skilled maintenance work.

The record reflects that the work of the maintenance staff in the Housekeeping Department is directed on a daily basis, to a greater or lesser extent, by all of that Department's assistant managers. The record also reflects that it is usually the room attendants, general cleaners and their supervisors who first become aware of the maintenance work that needs to be done. They then either post work orders on the maintenance board in each area, call the maintenance office and ask for help or call the assistant managers who then request a maintenance employee to complete the work order. There is substantial record evidence that the two assistant managers who do not have denominated responsibility for maintenance work stop maintenance

⁷ The Employer has entered evidence on the record that the timekeeping system will be changed in the immediate future to provide a single system to be used by all employees of the housekeeping department, including the maintenance employees. I do not rely on that evidence in reaching my decision herein as it is prospective.

employees in the common areas of the conference center and direct the maintenance work that needs to be done; go directly to the maintenance shop and get a maintenance employee; or do the maintenance work themselves.

Maintenance employees are not required to have any licenses, certifications, or specific education or job skills. They spend the majority of their time checking flooding toilets and drains, as well as changing light bulbs and lights. They do not do plumbing work, other than rehooking the floats in toilets, something that is also done by housekeeping employees. Maintenance employees are not permitted to snake toilets or clogged drains or to do more than check the heating and air conditioning systems to see if the dials are correctly indicating function. Work beyond this level is performed by the Engineering Department or outside contractors. The most difficult tasks of which there is record evidence are replacing and/or adjusting locks on doors and securing washing machines to floors. In the latter project, maintenance employees were assisted by housekeeping and security employees. In short, the maintenance employees here do not exercise the range of skills normally characteristic of skilled or craft maintenance employees.

Maintenance employees spend most of their work time in the common areas and guest rooms of the Conference Center. During that time they interact on a regular and frequent basis with other employees. They work with housekeeping in breaking down rooms, i.e., changing sleeping quarters into conference rooms and back again as need requires. They work with housekeeping in dealing with flooding toilets and drains. If housekeeping has not already adjusted them, maintenance will survey the problem and make the needed adjustment or will call Engineering. Housekeeping

employees assist maintenance employees in cleaning any flooded areas. As indicated earlier, maintenance employees are routinely stopped by employees, supervisors and assistant managers as they walk through the common areas and asked to perform tasks. They have also been assigned on an occasional basis to transport laundry or bedding, to help with guest luggage, to shovel snow in winter and to transport other employees to parking lots or other areas. Maintenance employees work closely with housekeeping employees in decorating for Christmas and in bigger cleaning projects such as washing the beaded curtain in the dining room. In addition to the large amount of work time they spend together, all employees have access to the employee cafeteria and to the same smoking room. Thus, the contact between maintenance employees and housekeeping employees is extensive and occurs both during work and break times.

At present, there is one employee working in maintenance who worked as a general cleaner in housekeeping for four years before changing job titles. There is record evidence that transfers between these two areas have taken place at least 10-14 times within the past several years. Given that the record also reflects a large turnover rate overall, 28% in the first three months of this year, I find that transfer figure significant inasmuch as employees usually work for a period of time in a given title before seeking to change jobs. The relatively high turnover figure would indicate a lack of longevity in job title, thereby limiting the occasions for job transfers.

In sum, the record reveals a lack of identifiable job skills or pre-hire requirements of specific job skills or experience. The record also reveals common supervision and extensive contact, interchange and integration between the

maintenance and housekeeping areas. Unlike the circumstances present in *Capri Sun Inc*, supra, where the Board found a separate maintenance unit appropriate, maintenance employees herein do not have significantly higher skill levels than housekeeping employees. Nor are there pre-hire requirements of mechanical, plumbing, electrical or troubleshooting aptitudes or any other specific skills. The facts herein are also distinguishable from those in *Macy's West, Inc.*, 329 NLRB 1 (1999), where maintenance employees were assigned to work on heating and air conditioning units. In the instant case, maintenance employees are not permitted to work on heating and air conditioning units or to perform skilled electrical work. Therefore, in the absence of a distinct community of interest, a unit limited to the petitioned for maintenance employees is inappropriate. *Timber Products Co.*, 164 NLRB 1060 (1967); *U.S. Plywood-Champion Papers*, 174 NLRB 292 (1969); *Franklin Mint Corp.*, supra; *Ore Ida Foods*, supra.

The Petitioner has expressly declined the opportunity to participate in a broader unit than that petitioned for. 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. 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).

ORDER

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

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, DC 20570-0001. This request must be received by the Board in Washington by May 10, 2000.

Signed at Newark, New Jersey this 26th day of April, 2000.

Gary T. Kendellen, Regional Director
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