

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

NEWPORT COAST GOLF COMPANY
d/b/a PELICAN HILL GOLF CLUB¹

Employer

and

Case 21-RC-20396

LABORERS INTERNATIONAL UNION
OF NORTH AMERICA, AFL-CIO,
LOCAL UNION 652

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.

¹ The Employer's name appears as amended at the hearing.

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.

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 a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time maintenance and landscape employees employed by the Employer at its facility located at 6195 East Pacific Coast Highway, Newport Coast, California; excluding all other employees, rangers, outside services employees at the driving range, valet and bag services employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

The Employer operates and maintains a private golf club located at 6195 East Pacific Coast Highway, Newport Coast, California, which consists of two 18-hole golf courses, a driving range, a golf shop, and a restaurant. The Petitioner petitioned for a unit consisting of the Employer's maintenance and landscaping employees.² The Petitioner contends that a unit consisting solely of the maintenance and landscaping employees is an appropriate unit

² At the hearing, the Petitioner amended its petition to include all full-time and regular part-time maintenance employees, mechanics, landscaping employees and equipment operators employed by the Employer at its facility located at 6196 East Pacific Coast Highway, Newport Coast, California; excluding all other employee, rangers, clubhouse

for collective bargaining. The Employer contends that the petitioned-for unit is inappropriate and that an appropriate unit must also include the Employer's rangers, outside services employees employed at the driving range, and valet and bag services employees.

In addition to the above-noted unit dispute, the Petitioner also contends that foremen Jose Hernandez, Hector Higuera, and Luis Zamora are supervisors within the meaning of Section 2(11) of the Act, and therefore should be excluded from the unit.³ The Employer contends that these employees are not supervisors within the meaning of the Act, and should be included in the unit. There are approximately 60 employees in the unit sought by the Petitioner and approximately 98 employees in the unit sought by the Employer.⁴

employees, office clerical employees, pro shop employees, salaried employees, guards and supervisors as defined in the Act.

³ During the hearing, the parties stipulated that Steve Bruton, Glenn Deck, Ruben Gonzalez, Tim Hall, Corey Isom, Michael Kipper, Francis Kluewer, Mario Negrete, and Saul Serrato are supervisors within the meaning of Section 2(11) of the Act inasmuch as they have the power and authority to hire, fire, discipline and/or effectively recommend discipline. Based on the stipulation and the record as a whole, I find that these individuals are supervisors within the meaning of Section 2(11) of the Act and are, therefore, excluded from the unit.

⁴ In its post-hearing brief, the Petitioner stated its willingness to proceed to an election in any unit the Board determines to be appropriate.

The record reveals that the Employer's maintenance department maintains the golf courses and driving range, including cutting and watering the grass, and removing debris. The maintenance department consists of operators, spray technicians, mechanics, the irrigation crew, and the bunker crew. The operators use equipment such as lawn mowers and airifiers to maintain the grass. The spray technicians apply chemicals and fertilizers. The irrigation crew waters the course, the bunker crew rakes and maintains the course bunkers, and the mechanics perform preventive maintenance and repairs on the equipment.

The maintenance department was supervised by Steve Bruton, director of agronomy.⁵ The maintenance employees' hours of work are from 5:00 a.m. to 2:00 p.m. Their days of work are staggered over a 7-day workweek because the golf club is open seven days a week. They are paid on an hourly basis, work full-time, and wear uniforms consisting of a blue T-shirt and beige pants. The maintenance employees' salaries range from \$7.00 to \$14.00 per hour, depending upon their classification.

The landscape department maintains the greenery areas alongside the courses and around the golf club. The landscape employees irrigate, plant, and maintain grass,

⁵ Bruton left the Employer's employment during the course of the hearing in this matter. He had not been replaced at the time the record closed.

trees and shrubbery, pick up trash, provide certain janitorial services, and sweep the course paths. Like the maintenance employees, they were supervised by Steve Bruton. They work full-time and are paid on an hourly basis. Their salary range is from \$7.00 to \$9.00 per hour. They wear the same type of uniform worn by the maintenance employees.

The ranger employees, who are also referred to as marshals or player assistants, patrol the golf course in carts in order to assist the players. These employees are in the outside services department. The primary responsibilities of the rangers include greeting players on the course, filling the players' sand bottles with sand and seed, and filling the players' ice chests with ice. The rangers who patrol the courses spend approximately 70 percent of their time assisting the players. In addition, the rangers replenish sand and seed on the golf course, repair ball marks/divots, rake bunkers, and pick up trash. They apparently perform these functions after the maintenance employees have left for the day. They are supervised by Francis Kluewer, assistant supervisor for the player assistants, who reports to Michael Kipper, guest services manager. There are five full-time and nine part-time rangers. They are paid on an hourly basis and wear uniforms. Unlike the maintenance employees or landscape employees, the rangers wear polo shirts with collars and

three buttons down the front. Different rangers are present at the facility from 6:30 a.m. until the course closes. They are paid between minimum wage and \$9.00 per hour.

Within the ranger classification there are also employees called starters and hosts. The starters greet players at the podium/staging area. They check off arriving players' names, note the number in the group, the time they left the staging area, and their cart number, and they enter that information on a daily log. The starters direct the players to the course and notify them when it is their time to tee off. Their shifts are either from 6:30 a.m. to 2:30 p.m., or 10:00 a.m. to closing time.

The hosts greet players at the first tee at either golf course. They give the players pin-placement cards and score cards. They also enter the players' information on a log. The hosts' shifts are either from 6:30 a.m. to 12:30 p.m., or 12:30 p.m. until closing time.

The outside services employees at the driving range primarily pick up balls at the driving range and clean and maintain the transportation vehicles. In addition, the outside services employees may repair ball marks/divots, chip balls out of the trees, and water the range. They are supervised by Glenn Deck, director of instruction. There are three to five full-time and 10 to 12 part-time outside

services employees. They are paid on an hourly basis. They also wear uniforms.

The valet and bag services employees primarily park and retrieve the players' cars, transport players and equipment around the facility, clean and detail the golf carts, clean players' golf clubs, and clean and pick up trash around the valet areas. Similar to the rangers, they also wear uniforms that include a polo shirt. They are supervised by Michael Kipper. There are approximately 12 full-time and 10 part-time valet and bag services employees. They are paid on an hourly basis. Their salary range is from minimum wage to \$9.00 per hour.

It is well established that the Act requires only that a petitioner seek to represent employees in an appropriate unit, and not the most comprehensive or most appropriate unit. Overnight Transportation Company, 322 NLRB 723 (1996); Capital Bakers, 168 NLRB 904 (1967); and Morand Brothers Beverage Co., 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1950). In deciding whether a unit is appropriate, the Board first considers the petition and determines whether the unit sought is appropriate, since a petitioner's desire concerning the composition of the unit that it seeks to represent constitutes a relevant, but not dispositive, consideration. Marks Oxygen Company of Alabama, 147 NLRB 228 (1964).

When determining the appropriate bargaining unit, the Board focuses on whether the employees in question share a community of interest. Overnight Transportation Company, supra at 724 (quoting NLRB v. Action Automotive, 469 U.S. 490 (1985)). The Board has held that in arriving at an appropriate unit determination it weighs various community of interest factors including:

Differences in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and time spent away from the employment or plant situs under State or Federal regulations; the infrequency or lack of contact with other employees; lack of integration with the work functions of other employees or interchange with them; and the history of bargaining. Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

The record shows that the maintenance employees and landscape employees have different responsibilities than the rangers, the outside services employees at the driving range, or the valet and bag services employees. The maintenance employees and landscape employees primarily maintain the grass, trees, and shrubbery at the Employer's facility. Conversely, the rangers, the outside services employees at the driving range, and the valet and bag services employees primarily provide customer service to the players using the facility.

The Employer contends that the rangers and outside services employees repair divots, rake bunkers, and water the grass, which is work also performed by the maintenance

employees. In addition, the Employer contends that these employees clean and pick up debris just like the maintenance employees and landscape employees.

While the Employer's contentions may be true, the maintenance employees and landscape employees still have several distinct responsibilities in caring for the courses, the driving range, and the landscape, such as mowing and planting, which are not shared by the other employees.⁶ Moreover, the fact that the other employees clean and pick up trash appears to be a case of the employees simply maintaining the appearance of the areas in which they work.

The record also reveals that the hours that the maintenance employees and landscape employees work are different from the hours worked by the other employees.⁷ The maintenance and landscape employees work from approximately 5:30 a.m. to 2:00 p.m. In contrast, the various classifications of rangers work staggered shifts from 6:30 a.m. until the facility closes, the outside services employees work staggered shifts from 6:00 a.m. until the facility closes, and the valet and bag services employees work staggered shifts from 5:30 a.m. until the

6 With respect to raking the bunkers, the record demonstrates that the maintenance employees use larger rakes than those used by the other employees. Further, the players themselves use the same small rakes that are used by rangers and other employees to rake the bunkers after the maintenance employees have gone for the day.

7 The record does not reflect a significant difference between the maintenance employees and landscape employees' wages and benefits and those received by the other employees.

facility closes. Further, the record reflects that while the maintenance and landscape employees are full-time employees, these other employees are predominantly part-time employees.

In addition, the record shows that the maintenance employees and landscape employees have different supervision from the other employees. These employees were supervised by Steve Bruton, director of agronomy. In contrast, the rangers are supervised by Francis Kluewer, assistant supervisor for the player assistants; the outside services employees are supervised by Glenn Deck, director of instruction; and the valet and bag services employees are supervised by Michael Kipper, guest services manager.

The record reveals that, while the maintenance employees and landscape employees have frequent and ongoing contact among themselves, there is infrequent contact between these employees and the other employees. Indeed, the maintenance employees and landscape employees who were witnesses at the hearing testified that they rarely spoke with the other employees and were not aware of the specific responsibilities of the other employees. However, they were able to testify about having never seen these other employees perform specific tasks, such as raking or repairing divots.

The record shows that employees have transferred between the maintenance department and the landscape department. However, there is no evidence that the maintenance and landscape employees ever transfer to the other departments or vice versa.

The evidence reveals that the maintenance and landscape employees wear the same type of uniform. While the other employees wear uniforms, their uniforms are different from those worn by the maintenance and landscape employees.

The record shows that the maintenance and landscape employees have different duties, hours, full-time status, uniforms, and supervision than the rangers, the outside services employees working at the driving range, and the valet and bag services employees. Moreover, the record reveals that there is infrequent contact and a lack of interchange between the maintenance and landscape employees, and the other employees. Based on the above-noted dissimilarities and the record as a whole, I conclude that the rangers, the outside services employees working on the driving range, and the valet and bag services employees do not share a community of interest with the maintenance and landscape employees. Accordingly, I shall exclude them from the unit.

As previously noted, the Petitioner contends that foremen Jose "Lupe" Hernandez, Hector Higuera, and Luis

Zamora are supervisors within the meaning of Section 2(11) of the Act. Conversely, the Employer contends that these three foremen are not supervisors.

The Petitioner presented witnesses who testified that the three foremen assign work to other employees. Gabriel Garcia Martinez, machine operator, testified that foreman Higuera assigns work to the irrigation crew. Martinez also testified that he had been assigned work by foreman Zamora. In addition, Juan Navarro Lopez, also a machine operator, testified that foreman Hernandez assigns work. Lopez also testified that Bruton, who manages the maintenance and landscape department, previously told the employees to obey Hernandez's orders.

Conversely, Robert Heath, director of golf, testified on behalf of the Employer that that the three foremen have no authority to hire, fire, discipline, evaluate performance, or provide pay increases. Further, Heath testified that the three foremen do not recommend any of these actions.

Section 2(11) of the Act sets forth the supervisory indicia:

The term supervisor means any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, 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.
29 U.S.C. Sec. 152(11).

The Board has consistently held that the burden of establishing supervisory status rests on the party asserting that status. Benchmark Mechanical Contractors, Inc., 327 NLRB 829 (1999); Alois Box Co., Inc., 326 NLRB 1177 (1998); Youville Health Care Center, Inc., 326 NLRB 495 (1998).

Other than its witnesses' testimony that the foremen assign work, the Petitioner presented no evidence in support of its contention that the foremen are supervisors within the meaning of the Act. Further, the Petitioner's witnesses were unable to state whether the foremen who assign work were doing so under their own authority or were relaying assignments given to the foremen by the foremen's superior. Given the lack of evidence to support the Petitioner's contention, I find that foremen Jose Hernandez, Hector Higuera, and Luis Zamora are not supervisors within the meaning of Section 2(11) of the Act.

Based on the evidence and the record as a whole, I find that a unit consisting of maintenance and landscape employees is an appropriate unit. My determination is consistent with prior decisions in which the Board has held that a unit of golf course maintenance and landscape employees is an appropriate unit for bargaining. Phoenix

Resort Corporation, d/b/a The Phoenician, 308 NLRB 826

(1992).⁸ There are approximately 63 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 are employed during the payroll period ending immediately preceding the date of the 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 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

⁸ In Phoenix, while the union petitioned for a unit of golf course maintenance employees, the Board concluded that an appropriate unit consisted of both golf course maintenance and landscape employees.

who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **Laborers International Union of North America, AFL-CIO, Local Union 652.**

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 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, 9th Floor, Los Angeles, California 90017, on or before xx, 2001. No extension of time to file the list shall be granted, excepted in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

NOTICE OF POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three (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 five (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 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, D.C. 20570. This request must be received by the Board in Washington by 5 p.m., EDT, on November 29, 2001.

DATED at Los Angeles, California, this 15th day of November 2001.

/s/James Small
James Small
Acting Regional Director, Region 21
National Labor Relations Board

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