

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 11

CSX HOTELS, INC. d/b/a THE GREENBRIER
Employer

and

Case No. 11-UC-87

LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA, LOCAL 1182
Petitioner¹

REGIONAL DIRECTOR'S DECISION AND ORDER

The Employer, CSX Hotels, Inc., d/b/a The Greenbrier, operates a hotel and resort located in White Sulphur Springs, West Virginia, where it provides food and lodging for guests, as well as various other amenities, including a spa. The Employer and the Petitioner, Laborers' International Union of North America, Local 1182, have a longstanding collective-bargaining relationship, which is evidenced by a series of collective-bargaining agreements, the most recent of which by its terms is effective from February 1, 2003, through January 31, 2008.² The Petitioner currently represents certain employees of the Employer working in a variety of departments, including the spa department. The Petitioner filed this petition with the National Labor Relations Board (hereinafter Board) under Section 9(c) of the National Labor Relations Act seeking to

¹ The Petitioner's name appears as amended at hearing.

² The parties stipulated, post hearing, to the duration of the current collective bargaining agreement.

clarify the current bargaining unit by including the position of spa clerk,³ a retail sales position within the newly-created spa shop, which is located in the spa department. A hearing officer of the Board held a hearing and the parties filed briefs with the undersigned.

As evidenced at hearing and in the briefs, the sole issue is whether the spa clerk position constitutes an accretion to the existing bargaining unit. The Petitioner argues that: (1) spa clerks share a community of interest with other represented spa department employees; (2) the collective-bargaining agreement specifically states that the Petitioner represents employees in the spa department; and (3) the Board should consider the desires of the employees. In contrast, the Employer argues that spa clerks are not an accretion to the existing bargaining unit because they lack an overwhelming community of interest with bargaining unit employees.

I have considered the evidence and arguments presented by the parties. As discussed below, I conclude that the spa clerk position is not an accretion to the existing bargaining unit, as those employees do not share an overwhelming community of interest with spa department employees. Accordingly, I will issue an order dismissing the petition. To provide a context for my discussion of the issue, I will first provide an overview of the Employer's operations, followed by a discussion of the retail and spa operations. I will then present in detail my analysis and conclusions concerning the determination that spa clerks should not be included in the bargaining unit.

³ The Petitioner and Employer appear to disagree about the correct title for the position at issue, and the record is somewhat confusing on this issue. The Employer contends that the employees are correctly designated as retail sales associates in the Spa Shop/Department. The Petitioner contended at hearing that the correct title is spa clerk, although a witness who Petitioner proffered and who currently holds the position testified that she was a spa sales clerk. Finally, the personnel form proffered into evidence by the

I. OVERVIEW OF THE EMPLOYER'S OPERATIONS

As stated above, the Employer operates a hotel and resort in White Sulphur Springs, West Virginia. In addition to the spa, amenities at the hotel include golf, swimming, tennis, a Land Rover driving school, a shooting range, and horseback riding, as well as 34 retail operation sites, including clothing, jewelry, home furnishings, golf, tennis, craft, and a variety of other shops. Employees working in these retail operations are called retail sales associates.

The Union currently represents employees in the following bargaining unit, which is described in the parties' collective-bargaining agreement:

Employees in Laundry, the Spa Department, and Upholstery Shop, the Golf Courses and Grounds Department, the Motor Service Department, the Gun and Hunt Club, and in the following subsections of the Engineering Department: Labor Pool, Mechanics, Air Conditioning Shop, Sheet Metal Shop, Power Plant, Water Plant, Masons and Helpers of the Masons, Plumbers, Air Conditioning and Carpenters.

There are numerous categories of employees at the hotel who historically have not been included in the bargaining unit. These classifications include retail sales associates, as well as several classifications within the spa department, namely, salon therapists, spa receptionists, spa service coordinators, and spa locker room attendants.

II. RETAIL OPERATIONS

A. The Retail Sites

In addition to the 34 retail sites located at the Employer's facility, the Employer operates a retail shop in the town of White Sulphur Springs, as well as a shop located in a craft center situated about 50 miles from the Employer's facility. Most of the Employer's

Employer refers to the position simply as sales clerk. For consistency, I will refer to the position at issue as spa clerk.

on-site retail shops are located on a long corridor extending from the hotel's main lobby, in an area referred to "the shop level." There are also several retail sites located elsewhere throughout the facility, including the tennis, golf, gun, and riding shops. Some of the retail shops are denominated "hybrid" shops, which combine the two functions of retail activity and the provision of services specific to that shop's area. For example, in the golf shop, guests may both purchase golf equipment and sign up for golf lessons.

B. Retail Supervision

All of the retail operations are overseen by the Director of Retail Operations (hereinafter Retail Director). The duties of the Retail Director include naming and developing new concepts for the shops, overseeing the purchasing of products, and managing the shops on a daily basis. Each shop that is strictly retail has a manager, who reports directly to the Retail Director. In each hybrid shop, there is shared responsibility and supervision between the Retail Director and the particular shop manager, who does not report to the Retail Director. In these hybrid shops retail employees report to the shop manager on a daily basis, and the Retail Director shares responsibility and authority with that manager in regard to hiring or disciplinary matters involving those employees.

C. Retail Sales Associates

Approximately 110 employees who are designated as retail sales associates work in the various retail shops. The job duties of these employees include stocking, selling and packaging products for guests, and tending to computerized cash register transactions, called point-of-sale transactions. As noted above, retail sales associates have never been included in the bargaining unit.

The Employer maintains specific procedures and policies concerning operations, training and method of compensation that are applicable solely to retail sales associates. The Employer's procedures and policies concerning retail operations are contained in a manual entitled "The Greenbrier Retail Department Standard Operating Procedures" (hereinafter "manual"). This manual sets out the procedures that are to be followed in all of the retail shops, including opening/closing procedures, attendance, telephone manners, guest greeting and assistance, product knowledge, teamwork, appearance, gift wrapping, merchandising, sales techniques, and inventory awareness.

Similarly, the Employer provides uniform training for all retail sales associates, both after an associate is hired and annually thereafter each spring. This training, which is conducted by the Employer's retail sales trainer, is directed only to employees working in retail sales.

The Employer provides a bonus system specifically for retail sales associates, under which an employee receives, in addition to a base hourly salary, an incentive bonus based on whether sales in the particular store where the employee works reach the projected monthly goal. The Employer holds periodic meetings to present and explain this incentive system to its retail sales associates. This incentive program is applicable and available only to retail sales associates.

In regard to interchange between retail sales associates and unit classifications, the record supports the conclusion that retail sales associates do not regularly encounter significant contact or interchange with any bargaining unit classifications.

III. SPA DEPARTMENT

The spa department encompasses a large area within the hotel located close to the indoor swimming pool. The spa facility is comprised of over 32 rooms, including a retail area, treatment rooms, locker rooms and a stock room, as well as various waiting areas for guests.

There are about 100 employees working in the spa department, including approximately 48 spa therapists, 25 salon therapists, 14 spa service coordinators, eight locker room attendants and three spa clerks. Of the foregoing classifications, as reflected in the bargaining unit description set out above, only the spa therapists are currently included in the bargaining unit.

The spa shop is situated in the front three rooms of the department. At the back of this retail area there is a long desk, where the spa service coordinators work. Behind this desk there is a solid wall that separates the front three rooms from the rest of the spa department, where the spa and salon therapists and locker room attendants work. Guests enter the spa department through the retail area, and are either directed or escorted to the spa reservation desk by the spa clerks. At the reservation desk the spa service coordinators check in the guests and arrange for the spa or salon services that the guests have requested. The guests then enter the interior of the spa department.

A. Establishment of the Spa Shop

The spa shop came into existence in late 2001, and officially opened in March 2002. The impetus for opening the spa shop came from the Employer's decision in 2001 to close the swim shop that had been located adjacent to the indoor pool area. While this swim shop was operating, some spa products were sold there. During this same time, the spa contained a small reception area where a receptionist, who was not a member of the

bargaining unit, also sold spa products from a case. At the end of 2001, however, the Employer closed the swim shop and thereafter opened the spa shop, where it began selling both swim and spa products. The spa shop encompasses not only the old reception area of the spa, but additional space designed for expanded retail functions. The Retail Director testified that the new spa shop had been designed specifically as a "bona fide retail space."

B. Supervision in the Spa Department

The spa department is operated by a Director of Spa Operations and three supervisors, each of whom has an area of primary responsibility. One of these three is the retail supervisor, who directly supervises the spa clerks, as well as the spa therapists. This retail supervisor has a direct reporting line to the Director of Spa Operations, who does not report to the Retail Director. The retail supervisor also has a dotted reporting line to the Retail Director, with whom she is required to consult concerning any retail-related issues. The spa shop, therefore, functions as one of the hybrid shops described above.

C. The Spa Clerks

The Retail Director, in consultation with the Director of Spa Operations, interviewed and placed the three individuals now filling the spa clerk positions. Of the three current spa clerks, one was employed formerly in the inside swim shop as a retail sales associate. The record does not reflect where the other two spa clerks had worked previously.

The job duties of the spa clerks are identical to the duties of the retail sales associates in other retail shops. In particular, the one spa clerk who testified stated that

her current job duties were identical to those that she had performed in the old swim shop.

Likewise, spa clerks receive the same benefits and are paid under the same wage structure as retail sales associates. Specifically, spa clerks receive the non-bargaining unit benefits package, receive free lunch as part of their employment, and are paid under the retail bonus incentive program. In regard to the incentive program, the spa clerks attended the meeting at which the most recent incentive plan was presented and explained to all retail sales associates.

The Retail Director testified that the same training applies to spa clerks and retail sales associates, and that spa clerks are included in the annual training session that occurs just before the facility opens in the spring. The spa clerk testified that she had been trained when she first began working as a retail sales associate in the candy store at the Employer's facility and that when she became a spa clerk in March 2002 she received additional specific training on the newly-implemented computer system.

The Retail Director further testified that spa clerks are required to follow the procedures set out in the Employer's guideline manual for retail operations. Although the spa clerk testified that she had been told by an assistant manager of another shop that it was unclear whether these guidelines actually applied to the spa shop, it is undisputed that the manual had been provided to her for her review, and that it was maintained in a drawer in the spa shop.

D. Contact and Interchange Between Spa Clerks and Spa Therapists

The spa clerks have limited contact with spa therapists, as spa therapists do not share common work or break areas with spa clerks. Rather, spa therapists spend their work days primarily in the treatment rooms, which are located in the area on the other side of the wall that separates the retail area from the rest of the spa. The limited contacts may occur when spa therapists bring supply tickets to the spa clerks, although the record does not establish the frequency with which this happens over the course of a workweek. The only other contact occurs when the spa therapists pass through the retail area on their way to lunch.

In regard to job duties, there is no interchange of job duties between the spa clerks and the spa therapists. The spa therapists have no responsibility for selling spa products, and do not receive any commission if a sale results from one of their suggestions to a guest concerning a particular product. Similarly, spa clerks do not fill in for or interchange with spa therapists for any purpose.

E. Contact and Interchange with Non-Unit Classifications

To the extent that spa clerks experience contact and interchange with other employees, this occurs almost exclusively with non-unit employees. Thus, spa clerks have regular contact with spa service coordinators when the spa clerks escort customers to the reservation desk. When the spa clerk position requires coverage due to a lunch break, the spa service coordinators provide this coverage. When spa clerks are absent for the day, although the testimony on this issue is somewhat contradictory,⁴ I find that the weight of the evidence supports the conclusion that the Employer provides coverage

⁴ The spa clerk testified that she had been told earlier by the spa retail supervisor that spa clerks were not eligible for floater coverage because they “were not retail.” She further testified, however, that she herself had filled in for a retail sales associate at the outdoor swim shop, thereby demonstrating interchange with an established retail operation.

through its retail floater system. In this regard, the record is undisputed that a retail floater was covering the absence of the spa clerk who testified at hearing.

IV. ANALYSIS AND CONCLUSIONS

A. Applicable Legal Authority

The Board has articulated two general principles that are relevant to this determination. First, in determining whether a group of employees should be accreted into an existing bargaining unit⁵ the Board routinely has held that it must be shown that the group to be added must share an overwhelming community of interest with the represented employees. Safeway Stores, Inc., 256 NLRB 918, 918 (1981). Second, the Board has ruled that it is inappropriate to accrete some, but not all, of a job classification to an existing unit. See, e.g., United Parcel Service, 325 NLRB 37 (1997) I will address each of these issues in turn, and then will address the Petitioner's arguments.

B. Community of Interest Factors

The record fails to establish that spa clerks share an overwhelming community of interest with unit employees. In this regard, spa clerks have different benefits, are paid under a different wage structure, and have different working conditions from spa therapists. Also, spa clerks experience minimal contact and have no interchange with spa therapists.

In contrast, both the job duties and working conditions of spa clerks are directly aligned with retail sales associates, a non-bargaining unit classification. Thus,

⁵ Accretion principles are appropriate for this analysis as neither party contends that the Board's "same basic functions test" as set out in Premcor, Inc., 333 NLRB No. 164 (2001), should apply. Under that test, if the duties of the petitioned-for classification grew out of or are similar to duties of unit classifications, then the new classification is simply deemed to be subsumed within the existing unit and the Board does not apply accretion principles. Here, the Petitioner does not contend that duties of the spa clerks either grew out of or are similar to duties in unit classifications.

spa clerks exclusively perform retail duties, and share the same benefits, working conditions, training and wage structure with those retail employees. The Board has relied upon this type of consanguinity between a petitioned-for group and a non-bargaining unit group to find that accretion is inappropriate. See Dennison Manufacturing Company, 296 NLRB 1034, 1037 (1989) (Board dismisses unit clarification petition seeking to accrete newly-established classification of shredders/sorters to unit of powerhouse employees; despite common supervision and daily contact, accretion not appropriate when duties of the new employees originated from and were more closely aligned with ongoing non-unit work).

The Petitioner asserts that spa clerks share a community of interest with spa therapists because the Spa Department is functionally integrated, with spa clerks sharing common supervision, and because spa clerks work in close proximity to spa therapists. I find that these factors are insufficient to establish the requisite overwhelming community of interest. See Dennison Manufacturing, supra.

C. The Subgroup Issue

The record makes clear, as set out above, that the three spa clerks constitute but a small portion of the total complement of retail employees at the Employer's facility. Rather than functioning as a discrete and homogeneous subgroup, the spa clerks work simply as part of the overall classification of retail employees, subject to the same policies, procedures and working conditions. It is, therefore, inappropriate to accrete this fragment of the retail sales associate classification into the bargaining unit. See United Parcel Service, supra; Abbott-Northwestern Hospital, 274 NLRB 1063 (1985).

D. Petitioner's Arguments

Petitioner additionally argues that the spa clerks have evidenced their interest in being included in the bargaining unit and that their desires should be taken into account. Petitioner also asserts that the Employer agreed recently to include the spa service coordinators into the bargaining unit, if a majority of those employees so desired, and that this recent agreement militates for finding that the spa clerks should be accreted. Neither of these two arguments is persuasive.

In regard to Petitioner's first argument, it is settled that the desires of employees do not constitute a dispositive factor in a unit determination. Ideal Laundry and Dry Cleaning Co., 152 NLRB 1130 (1965), enf'd 372 F.2d 307 (10th Cir. 1967) When, as here, the petitioned-for group of employees represents but a fragment of all employees in a job classification, the desires of those employees must be accorded less weight in the balance of interests, as the Board has underscored the paramount need for stable and efficient labor relations in this context. See United Parcel Service, supra.

In regard to Petitioner's second argument, that the Employer agreed to include spa service coordinators in the existing bargaining unit does not bear on the relevant determination here, that is, whether spa clerks share an overwhelming community of interest with the existing bargaining unit. As the spa service coordinators voted not to join the bargaining unit, there is no basis for using that job classification to bootstrap a finding of a community of interest between the existing bargaining unit and spa clerks.

Based on the foregoing, I find that the spa clerks do not share a sufficient community of interest with the existing bargaining unit to warrant their accretion into the existing bargaining unit.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are 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 in this case.
3. The Petitioner claims to represent certain employees of the Employer.
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)(7) of the Act for the reasons set out above.

VI. ORDER

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

VII. 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., EST on July 9, 2003. The request may **not** be filed by facsimile.

Dated at Winston-Salem, North Carolina, on the 25th day of June 2003.

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