

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

**STARWOOD HOTELS & RESORTS
WORLDWIDE INC. d/b/a
THE WESTIN LA CANTERA RESORT¹**

San Antonio, Texas

Employer

and

Case 16-RC-10455

**UNITED FARM WORKERS OF
AMERICA, AFL-CIO**

Petitioner

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

The Petition and Issues Presented

The Petitioner seeks to represent all full-time and part-time banquet servers and housemen in the unit employed by the Employer at its San Antonio, Texas Westin La Cantera Resort and to exclude all other employees, including professional and confidential employees, truck drivers, guards, watchmen, and supervisors as defined in the Act. The Petitioner also seeks to exclude all banquet captains and leads on the basis they are supervisors. Approximately 70 employees are employed in the petitioned-for unit. After the hearing, the Petitioner indicated its willingness to proceed to an election were I to find a unit different from the petitioned-for unit.

The Employer contends that the petitioned-for unit is inappropriate and that an appropriate unit should include all operations employees. Further, the Employer argues captains and leads are not statutory supervisors and, therefore, should be included in the

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

unit. The Employer employs approximately 450 employees in the wall-to-wall unit it urges is the only appropriate unit.

Procedural History

On November 1, 2002, I issued a Decision and Direction of Election finding an appropriate unit of all full-time and part-time banquet employees, including banquet captains and leads. On November 14, the Employer requested review of my decision, maintaining that only a wall-to-wall unit was appropriate.²

On January 22, 2003, the Board remanded the Regional Director's decision for further appropriate action. In its order, the Board held that it was undisputed that the petitioned-for unit was not presumptively appropriate.

Supplemental Findings

Upon further examination of the record, I find the petitioned-for unit of banquet employees not appropriate for the purposes of collective bargaining, and that the appropriate unit must include all food and beverage employees. Further, as I found in my original decision, the Petitioner has failed to prove that banquet captains and leads are statutory supervisors.³ The unit will, therefore, include all full-time and part-time food and beverage employees, including banquet captains and leads.

² An election was conducted on December 16, 2002 and the ballots were impounded pending disposition of the Employer's Request for Review. Thereafter, the Board granted review finding that the petitioned-for unit of banquet employees was not presumptively appropriate and remanded the case to me for further analysis. Accordingly, since I am now directing an election in a unit of food and beverage employees rather than a unit of banquet employees, the election conducted on December 16, 2002 is hereby declared a nullity.

³ Although neither party made the contention, I also find that the evidence shows that the following operations employees do not possess any supervisory authority pursuant to Section 2(11) of the Act: outlet supervisors, stewarding supervisors, service express supervisors, assistant to lead supervisor in the health club, and housekeeping supervisors.

The Employer's Facility

The Westin La Cantera Resort is a luxury hotel and golf resort situated on about 60 acres in San Antonio, Texas. The resort opened in 1999. It features a seven-story hotel with 508 guest rooms, indoor and outdoor banquet facilities, five restaurants, two lounges, five swimming pools, a health spa, a golf academy, two golf courses, a snack shop, two retail centers, and a business center. During the normal course of business, the resort employs about 450 employees who work in operations.

Tony Cherone is the general manager and sits on the executive committee that consists of Cherone, Andrew Czarnecki, director of operations, Frank Walbridge, director of Six Sigma, Melinda Dale, controller, Dave Swift, director of sales and marketing, Glenda Moody, director of human resources, John Bray, director of engineering, and Samira Bitar, front office manager. The executive committee meets weekly and keeps minutes of its meetings. It is responsible for the overall operation of the resort.

The Employer's operations are divided among four departments: food and beverage, front desk, housekeeping, and maintenance. Each department is managed by its own director, who in turn reports to Czarnecki.

Glenda Moody is the human resources director and oversees all personnel matters. She is also a member of the executive committee. The human resources department posts all employment positions, screens all applications, conducts the background investigation and preliminary interview of all applicants, and sends qualified applicants to respective departments for further interviews by the department director. The department director then decides whether to hire the applicant.

The Employer's business volume fluctuates according to the season. When there is a need for more employees in a particular department, the department director will complete an employment requisition form. The general manager or the director of operations then approves it. The executive committee may also make employment requisitions.

All operations employees receive the same first-day orientation, where they learn about Westin standards, safety, and employee benefits. Additionally, all employees undergo one day of customer service training. All employees follow Westin's Eleven Service Basics, printed up on business-sized cards for employees to carry in their uniform pocket. All operations employees who serve alcoholic beverages, predominantly food and beverage employees, receive private, outside training that they pay for from the Texas Alcoholic Beverage Commission (TABC). Front desk managers, executive committee members, and managers on duty are also required to take TABC training. Contrary to the Employer's assertions, the record does not reflect that the Employer cross-trains employees to perform employee tasks in other departments. The only exception is "Service Express" employees, who are cross-trained to perform front desk functions.

"Service Express," a division of the front desk department, provides guests with a "one call does it all" standard. If a guest wishes to utilize Service Express, he or she may call service express agents by pressing a button on their guest room telephone. The service express agent will send the request to the appropriate department or, in many cases, may handle the request independently of other departments. The Service Express standard reflects the Employer's intent to eliminate the departmental boundaries associated with traditional hotels.

All employees share the same time clock, locker areas, employee cafeteria, and parking lot. All employees wear similar name tags which include only the employee's name but not his/her title so that, according to the Employer, guests will feel comfortable asking questions of employees regardless of their department. All employees wear similarly colored and patterned uniforms, but the style of each differs depending on the employee's job classification. All employees' uniforms are managed by the housekeeping department, which has a seamstress and laundry department. If an employee stains or rips her uniform, she will go to housekeeping, who will either mend it or issue her another one. The Employer maintains a skill level rating for each job classification, 1 being the lowest skill and 4 being the highest.

All employees receive the same benefits, including stock ownership, health insurance, a savings and retirement plan, and life and disability insurance. They also are eligible for monthly performance awards. Four times a year employees attend associate meetings, and once a month associates are chosen randomly to attend a "rap lunch" with Glenda Moody. The "rap lunch" is an opportunity for employees to meet other employees in a smaller setting to talk directly with management. Minutes are taken of the "rap lunch" and posted outside Human Resources' offices. All employees receive the daily "Que Pasa," a newsletter of important daily events happening at the resort. All employees receive free meals in the employee cafeteria and are eligible for Westin hotel discounts. Some employees receive a service charge in addition to their base pay and some employees receive a gratuity.

The Employer maintains a uniform disciplinary procedure for all employees. Contrary to the Employer's assertions, the record reflects that most employees are disciplined directly by their department manager or director. However, the operations

manager, general manager, and executive committee may also conduct disciplinary investigations. Neither party presented evidence to show how often senior management is involved in an individual employee's discipline.

All resort departments have access to two-way radios. The resort uses various computer programs to assist management. For example, the front desk and housekeeping departments utilize Fidelio, a property management computer program which tracks guests' expenses and check-in/check-out. Unlike front desk and housekeeping, food and beverage department employees use the computer program Micros to calculate and track guests' food and beverage transactions. The data from Micros is then fed in to the Fidelio program.

The Employer has a manager on duty who works near the front desk area. If a particular department head is out, the manager on duty may step in to handle disciplinary and operations issues. None of the executive committee members work as managers on duty.

The Employer receives 55 percent of its business from group stays and 45 percent from transients. Prior to a group stay, it utilizes a group resume which is created by the catering/convention services manager and outlines what the group needs will be, for example, their food and beverage, housekeeping, purchasing and receiving, engineering, recreation, and activities and transportation requirements. The resume is sent to each department via e-mail about ten days prior to the group's arrival. Additionally, the catering/convention services manager creates a banquet event order (BEO) which is the primary communication device within the food and beverage department. The BEO dictates the group's food requirements, the menus to be served and beverage selections, any banquet set-up and audio-visual details.

Food and Beverage Department

The Employer's food and beverage department totals approximately 275 employees, and is divided into three areas: restaurants, banquets, and culinary. Joe Buononcontri is the director of the entire food and beverage operation. The food and beverage department includes approximately thirteen job classifications. Within the Employer's resort are five restaurants, Francesca's, Brannon's, The Grill, The Palmer House, and The Gantry. The Gantry, the Employer's poolside restaurant, is a seasonal operation, serving guests in warmer weather, usually March 31 to October 1. In addition to providing service in the Employer's five restaurants, food and beverage employees also provide golfing guests with beverages from a roaming beverage cart.

The banquet department is contained within the food and beverage department, and managed by two banquet supervisors who report to Buononcontri. Banquet events are held indoors and outdoors. Banquet employees set up, serve, and disassemble banquet events. Banquet employees also serve guests on the seventh floor, the Royal Hacienda. The Royal Hacienda floor offers guests complimentary breakfasts, cocktails, hors d' oeuvres, and a concierge service provided by a front desk employee and banquet employee.

Culinary employees work in the kitchens and are supervised by John Northcutt, executive chef, who in turn, reports to Buononcontri. Culinarians prepare food, including gourmet cuisine.

Greeters welcome guests at each restaurant's entrance, seat guests, and may assist in serving or clean up. The Employer rates greeters' skill at 1. Greeters earn between \$6.75 to \$8.92 an hour and typically work within a 5 a.m. to 10 p.m. range. Their specific hours vary depending upon which outlet or restaurant they work in.

Outlet servers work in the Employer's restaurants, including the poolside restaurant during the warm season. Outlet servers take guests' orders and serve food and beverages. Outlet servers are rated at skill level 2; they earn between \$5.15 - \$22.48 an hour and receive a service charge. Outlet servers typically work from 6 a.m. to 10 p.m.

Outlet supervisors work as leads in the Employer's restaurants directing the flow of business. They ensure guests are seated and served properly and quickly. They substitute for an outlet server if there is an absence. Neither party presented evidence that they possess supervisory authority pursuant to Section 2(11) of the Act. Outlet supervisors are rated at skill level 3, earn between \$9.47 to \$12.48 an hour and typically work 5 a.m. to 10 p.m.

Bus attendants/server attendants clear and clean restaurant tables and may assist in serving restaurant guests. Bus attendants are rated at skill level 1, earn between \$6.50 to \$10.65 an hour and typically work 6:30 a.m. to 10 p.m.

Stewarding supervisors function as leads, coordinating additional plates to be served, covering plates, and assisting stewards and banquet servers in bringing food to banquet functions. Stewarding supervisors have a skill rating of 2, earn between \$10.25 to \$12.48 an hour and typically work 5 a.m. to 1 a.m. Neither party presented evidence that stewarding supervisors exhibit any supervisory authority as defined in Section 2(11) of the Act.

Stewards assist restaurant and banquet employees by bringing out food, cleaning up food areas, setting up furniture, polishing food and beverage utensils, such as coffee pots, china, and silverware, removing trash from the food and beverage department, and mopping kitchen floors. Stewards are rated at skill level 1, earn between \$6.75 to \$8.44 an hour and typically work 5 a.m. to 2 a.m.

Bartenders work in the two lounge areas, serve guests alcoholic beverages and also coffee and danish in the morning. Bartenders are rated at skill level 2. They earn between \$8.17 to \$16.30 an hour and work between 6 a.m. and 2 a.m.

Bar attendants assist bartenders by serving guests, polishing glasses, and stocking ice behind the bar counter. Bar attendants are rated at skill level 1. They earn between \$7.87 to \$10.15 an hour and work 4 p.m. to 2 a.m.

Banquet captains oversee banquet set-up and assist in serving and clean-up. Banquet captains are rated at skill level 3. They earn between \$14.05 to \$16.29 an hour. Of all banquet employees, banquet captains receive the largest portion of the 20 percent service charge. The remainder is divided among other banquet employees. Typically, banquet captains work from 4 a.m. to 2 a.m., but their schedule largely depends on business volume.

Banquet servers serve banquet guests. They are rated at skill level 2, earn between \$12.25 and \$16.94 an hour and receive part of the 20 percent banquet service charge. Banquet servers typically work from 4 a.m. to 2 a.m., again, depending on business volume.

Banquet house attendants set up banquet facilities, including tables and chairs and ensure the proper chafing dishes and banquet equipment is ready. They also move furniture both before and after the banquet event. Banquet house attendants have a skill level rating of 1 and earn between \$7.13 and \$11.13 an hour. Banquet house attendants receive part of the banquet service charge and typically work from 4 a.m. to 2 a.m., depending on business volume.

Banquet department employees sometimes have to perform a “tight turn.”⁴ During a “tight turn,” housekeeping attendants, stewards, service express attendants, and other employees, including the general manager himself, may be called upon to assist banquet house attendants in moving furniture. Hence, during a tight turn, employees from food and beverage will work with housekeeping and front desk employees and occasionally senior management employees to ensure the rooms are set up on time and according to the BEO. Tight turns do not occur on a daily basis. Neither party offered evidence to show how frequently tight turns occur, although presumably during the busy banquet season, it is common to have back-to-back banquet events.

Sous chefs prepare the food in the Employer’s five restaurants and for banquets. Sous chefs specialize in pastry, banquet, grill, or fine cuisine. One sous chef works in each of the Employer’s five restaurants, which have different hours. Sous chefs may also work banquets, preparing omelets or carving roasts for guests. Sous chefs are rated at skill level 4, earn between \$15.27 to 15.51 an hour and typically work from 3 a.m. to 10 p.m., depending on their culinary specialty.

Cooks prepare more routine foods. Cooks may also carve meat/create omelets at banquet events. A cook’s skill level is rated between 1 through 4. A cook may earn \$7.00 to \$14.25, depending on his skill level. Cooks work from 3 a.m. to 10 p.m., depending on their skill level.

Front Desk Department

The Employer’s front desk department is divided into three areas: front desk, service express, and the health club. The front desk operates 24 hours a day seven days a week and is supervised and managed by Samira Bitar. Assisting her are three managers

⁴ “Tight turn” is the Employer’s terminology for back-to-back banquet events.

on duty (MOD), Craig Thomas, Charlie Morales, and Vicky Carrier. It is not clear how many total employees work in the front desk department. Approximately eleven job classifications comprise the front desk department operation.

Front desk agents work the front desk, check in guests, handle cash, sell postage, and administer guests' accounts. Front desk agents are rated at skill level 2 and earn between \$7.25 and \$8.11 an hour. The Employer schedules front desk agents to work two shifts to cover the 24-hour period.

Service express agents answer internal and external phone calls, take guests' room service orders and answer guests' requests. According to business volume, service express agents will cross over into the front desk position if there is an absence. Service express agents are rated at skill level 2 and earn between \$7.25 and \$10.12 an hour. As with the front desk, the Employer schedules service express agents to work two shifts to cover the 24-hour period.

Service express attendants deliver room service, guests' packages, luggage, faxes, provide valet parking, and act as a personal valet. Service express attendants are rated at skill level 2. They earn between \$7.71 and \$18.43 an hour and receive a 19 percent service charge. The Employer schedules service express attendants to work two shifts to cover the 24-hour period.

Service express supervisors work any position within front desk operations depending on business volume. Neither party presented evidence that service express supervisors display any supervisory authority as defined by Section 2(11) of the Act. Service express supervisors are rated at skill level 2, earn between \$10.25 and \$12.48 an hour and work 7 a.m. to 11 p.m.

Concierges work in the lobby, the Royal Hacienda floor or the outside Casitas in warmer weather. Concierges provide information and personalized attention to guests. They are also cross-trained to check in guests at the front desk. Concierges are rated at skill level 2. They earn between \$7.25 and \$9.50 an hour. Concierges work 7 a.m. to 10 p.m.

Hospitality attendants work primarily on the Royal Hacienda floor providing personalized attention to guests staying on that floor. They set up the continental breakfast and cocktail hour. Hospitality attendants' skill level are rated at skill level 1 and they earn \$7.80 an hour. The record does not reflect hospitality attendants' hours.

Door attendants work at the front entry greeting guests and taking their luggage. They are rated at skill level 1, earn between \$6.28 and \$10.17 an hour and work from 5 a.m. to 12 a.m.

Drivers operate the Employer's guest shuttles, driving from the resort to area attractions or simply within the resort grounds. Drivers are rated at level 2, earn between \$7.72 and \$8.74 an hour and work from 5:30 a.m. to 12 a.m.

Honor bar attendants re-stock guests' room bars. They use a hand-held Domatic computer, which interfaces with the front desk's Fidelio system. Honor bar attendants' skill level is rated at 1. They earn between \$7.79 to \$9.01 an hour and receive a 15 percent service charge. Honor bar attendants work 9 a.m. to 5 p.m.

Health club attendants clean the health facility, schedule guests for massages, manicures/pedicures, etc. Health club attendants are rated at skill level 1, earn between \$6.50 and \$11.09 an hour and work 6 a.m. to 10 p.m.

The Employer employs two health club supervisors, lead supervisor Glen Ross and his assistant, Heather Minton. Both monitor the health club's reservation book,

ensure health club attendants are scheduling guests, and stock the club with adequate supplies. Ross has authority to discipline health club attendants and schedule their work hours. Minton does not have the authority to discipline employees or schedule health club attendants' work hours. Health club supervisors are rated at level 3, earn \$11.53 an hour and work from 6 a.m. to 10 p.m.

Housekeeping Department

The Employer's housekeeping department is divided into three areas: cleaning guest rooms, cleaning public areas of the hotel and resort, and laundering the resort's linens, including food and beverage linens. Housekeeping employees are supervised by Ampy Barretto, housekeeping director. Within housekeeping are approximately seven classifications.

House attendants move housekeeping equipment, remove dirty linen from guest rooms to laundry, stock housekeeping supplies, and assist the room attendants. House attendants are rated at skill level 1, earn \$6.75 to \$7.59 an hour and work 7 a.m. to 3 p.m. or 3 p.m. to 11 p.m.

Room attendants clean guest rooms. Room attendants are rated at skill level 1, earn \$6.75 to \$8.16 an hour and work 8 a.m. to 5 p.m.

Housekeeping administrative assistants/housekeeping coordinators receive and issue employee uniforms, perform uniform and drapery alterations, and assist house attendants as necessary with room cleaning. They are rated at skill level 1, earn between \$8.32 and 10.25 an hour and work 7 a.m. to 3 p.m. or 3 p.m to 11 p.m.

Housekeeping supervisors work as leads directing the housekeeping shift, inspecting cleaned rooms and ensuring housekeeping has proper equipment and supplies. Neither party provided evidence to show that they exercise supervisory authority

pursuant to Section 2(11) of the Act. Housekeeping supervisors are rated at skill level 3, earn between \$10.66 and \$11.53 an hour and work 7 a.m. to 3 p.m. or 3 p.m. to 11 p.m.

Public area attendants keep clean all public areas of the resort such as the lobby, walkways, bathrooms, pools, pavilions, clubhouse, snack shop, and golf course. Public area attendants have a skill rating of 1. They earn \$7.28 to 7.87 an hour and work 7 a.m. to 3 p.m. or 3 p.m. to 11 p.m.

Turn down attendants provide turn down service for all VIP and requesting guests. Turn down service entails refreshing and preparing guest rooms for the evening. They also assist in stocking room attendant carts. Turn down attendants are rated at skill level 1 and earn \$7 - \$7.57 an hour. Turn down attendants typically work 4 p.m. to 12 a.m. The Employer's need for the position varies with the resort's business volume.

Laundry attendants clean resort linens, including room linens and food and beverage linens. Laundry attendants also launder poolside guest towels and robes, which are more widely used during the warm season. They are rated at skill level 1. Laundry attendants earn \$ 6.75 to 8.16 an hour and work 7 a.m. to 4 p.m.

Maintenance and Engineering Department

John Bray supervises the maintenance and engineering department employees. The maintenance department is staffed by general maintenance engineers. General maintenance engineers maintain and repair the Employer's physical plant, repair laundry equipment, air conditioning units, plumbing, and hotel woodwork, among other things. Additionally, they may provide assistance to other departments if there is a more complicated mechanical need. For example, a request to replace chandelier light bulbs would be assigned to maintenance and engineering. However, any employee may replace a burned out bulb on the wall. General maintenance engineers' skill rating ranges

from 2 to 4. They earn \$9.15 to \$14.60 an hour and the Employer schedules two shifts for them to cover the 24-hour period.

Analysis

In its Request for Review, the Employer strongly urges that only a wall-to-wall unit is appropriate. I decline to follow the Employer's rationale, and find that a food and beverage unit is appropriate.

The Act allows a union to petition for an appropriate unit, and does not require it seek the most appropriate unit, even when a different than petitioned-for unit might be more appropriate. *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), enfd. 190 F.2d 576 (7th Cir. 1951); *Omni-Dunfey Hotels, Inc.*, 283 NLRB 475 (1987); *Federal Electric Corp.*, 157 NLRB 1130, 1132 (1966); *Capital Bakers*, 168 NLRB 904, 905 (1967). Moreover, a union is not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger's Paramus*, 151 NLRB 748, 751 (1965); *Purity Food Stores*, 160 NLRB 651 (1966). Indeed, "the Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employees." *Bartlett Collins Co.*, 334 NLRB No. 76 (2001).

At one time the Board applied a rigid rule specific to the hotel-motel industry, that only an overall unit consisting of all hotel-motel employees would be found appropriate for bargaining. *Arlington Hotel Co.*, 126 NLRB 400 (1960). However, the Board abandoned the rule as it gained more experience and insight into the hotel-motel industry, in favor of making unit determinations in the industry on a case-by-case basis, utilizing the same community of interest criteria used in other industries. *77 Operating Co.*, 160 NLRB 927 (1966), enfd. 387 F. 2d 646 (4th Cir. 1967); *Omni-Dunfey Hotels*,

283 NLRB 475 (1987); *Dinah's Hotel & Apartments*, 295 NLRB 1100 (1989). Although in *Arlington Hotel* the Board recognized that hotel-motel employees share a basic mutuality of interest, the Board also recognized that neither their functions nor their mutual interests are, in all cases, integrated to such a high degree that an overall unit should be found the only appropriate unit. *ACL Corp. d/b/a Atlanta Hilton and Towers*, 273 NLRB 87 at 89 (1984).

In numerous decisions, the Board has found appropriate non-comprehensive units in the hotel industry. For instance, in *Sheraton Motor Inn*, the Board found appropriate a unit of food and beverage employees. 210 NLRB 790 (1974). In this case, the petitioner petitioned for a unit of employees in the dining room and lounges while the employer contended that a hotelwide unit was the most appropriate unit. *Id.* In finding appropriate a unit of employees in the kitchen, restaurant, lounge, and banquet departments, the Board reasoned that there was little contact between these employees and others and that they worked under separate supervision and belonged to a separate department.

As in *Sheraton Motor Inn*, under the instant facts, the food and beverage employees belong to a separate and defined department and report to a common manager, Director Buononcontri for immediate supervision. Further, like *Sheraton Motor Inn*, the instant food and beverage employees' hours differ from front desk and maintenance. Food and beverage employees' hours vary depending on business volume, whereas front desk and maintenance employees cover two shifts during the 24-hour period. Moreover, banquet employees perform almost all of their functions in connection with food and beverage employees, not housekeeping, front desk or maintenance employees. For example, stewards assist banquet housemen in bringing the food to the banquet room.

Cooks assist banquet employees by dishing food onto plates. Similarly, banquet stewards often work in other food and beverage positions such as bus attendants, pool attendants, bar attendants, and stewards.

Also like *Sheraton Motor Inn*, the Employer in the instant case temporarily transfers other food and beverage employees to food and beverage outlets when the need arises. For example, during the winter months when banquet events tend to increase, additional employees, mostly from food and beverage, are temporarily transferred to banquets to assist. Similarly, during the warm months when the Employer's poolside restaurant is open, banquet employees are transferred to assist serving guests food and beverage by the pool. Such temporary transfers among food and beverage occur because food and beverage employees share similar job functions.

Another Board case in which a non-comprehensive unit was found appropriate is *Los Angeles Airport Hilton*, 287 NLRB 359 (1987). There, the engineering department employees were the most highly compensated employees, possessed different skills, and worked under separate supervision and in a separate area. *Id.* at 359-60. In addition, the Employer in *Los Angeles Airport Hilton* permanently transferred only six employees into the department and the area bargaining pattern was mixed.

As in *Los Angeles Airport Hilton*, the food and beverage employees in the instant case belong to a separate department and work under separate supervision and in separate areas. Although the instant record reveals some evidence of inter-department interchange, for example, "tight turns," the interchange among food and beverage employees is far greater than the interchange between front desk and food and beverage, housekeeping and food and beverage, or maintenance and food and beverage. Indeed, the evidence shows that food and beverage employees work more within the realm of

food and beverage than they do in other departments. Moreover, here, there is no area bargaining pattern to compel finding an overall unit.

The Board found appropriate a unit of food and beverage employees in *Inverrary Country Club, Inc.*, 251 NLRB 1143 (1980). In *Inverrary*, a year-round country club with a seasonal operation, the petitioner requested a unit of employees in the food and beverage, house maintenance, and laundry departments at a private membership club. The Regional Director found that such a unit was inappropriate and that a broader unit was appropriate. In reversing the Regional Director's decision and finding appropriate a unit limited to food and beverage employees, the Board noted minimal interchange between the food and beverage employees and other departments and that the food and beverage employees were separately supervised. The Board also stated that "employees performing food and beverage service functions may themselves constitute an appropriate bargaining unit if they are a definable and sufficiently distinct group apart from the other employees." *Id.* at 1144-45.

Similar to *Inverrary*, in the instant case, food and beverage employees are a definable and distinct group of employees apart from the other employees at the resort. They belong to a distinct department, separate from the other resort departments and answer to one department head and their respective supervisors. For example, outlet servers are supervised by outlet managers and banquet employees are supervised by two banquet supervisors. These supervisors in turn, answer to food and beverage director Buononcontri. Likewise, food and beverage employees' functions are similar and they frequently perform their jobs primarily in connection with other food and beverage employees. Moreover, food and beverage employees frequently exchange job duties through temporary transfers when business volume requires it.

Also like *Inverrary*, where the Employer curtailed operations during certain months and hired many part-time banquet employees into other positions, under the instant facts, the record shows considerable temporary transfer within the banquet operation to other areas of food and beverage based on business volume and banquet demand. *Id.* at 1143. (See also *Sheraton Motor Inn*, where the Employer shifted food and beverage employees around to cover a shortage of food and beverage employees. 210 NLRB 790 (1974)).

Another case in which the Board rejected the idea that only a wall-to-wall hotel unit was appropriate was *Stanford Park Hotel*, 287 NLRB 1291 (1988). In *Stanford Park Hotel* the Board held that the petitioned-for unit of housekeeping and maintenance department employees was appropriate. In so holding, the Board reversed the Regional Director's finding that the petitioned-for unit was inappropriate and that the appropriate unit must include all employees. In *Stanford Park Hotel*, the petitioned-for employees did not regularly perform functions of other employees and vice versa. The petitioned-for employees had common supervision and the Employer permanently transferred a minimal number of employees. *Id.* at 1291-92. The Board also held that the fact that all hotel employees received the same fringe benefits and were subject to the same personnel policies did not compel a finding that a non-comprehensive unit was inappropriate. *Id.* at 1292.

Similar to the employees in *Stanford Park Hotel*, the food and beverage employees in the instant case do not regularly interchange functions with employees in other departments, nor do employees in other departments regularly perform the work of food and beverage employees.

Notwithstanding the above cases in which the Board found appropriate non-comprehensive units, the Employer argues that *Atlanta Hilton and Towers* should govern in this case because its facility, like the facility in *Atlanta Hilton*, has a high degree of functional integration, a centralized personnel management, a uniform transfer policy, and a high degree of interaction among the employees. 273 NLRB 87, 90 (1984).

Although the record reflects some similarities between the facts in *Atlanta Hilton* and those in the instant case, these facts are not so similar as to compel a finding that the only appropriate unit is a wall-to-wall unit. Like *Atlanta Hilton*, the front desk clerks issue keys to other departments. Here, front desk clerks may issue a VING card to banquet employees so that they may have access to banquet rooms. In *Atlanta Hilton*, employees communicated via a walkie-talkie system and the Employer used a computer system to link its operations departments. In the instant case, employees maintain radio contact via two-way radios and use various computer systems which are channeled into the Employer's overall property management system, Fidelio.

Notwithstanding these similarities, the instant case is distinguishable from *Atlanta Hilton*. First, although the Employer uses a group resume as did the Employer in *Atlanta Hilton*, it does not use it to the same extent. In *Atlanta Hilton*, the Employer used a convention resume to outline the convention functions and particular roles of each area or department. *Id.* at 88. Here, too, the Employer uses a group resume and sends it to all operations departments so that each area is aware of the guest group's overall requirements. However, in *Atlanta Hilton*, 83 percent of the Employer's gross revenue came from convention business. In contrast, here, only 55 percent of the Employer's gross revenue comes from group stays and convention business. Thus, under the instant

facts, the group resume is not used to the same degree as the convention resume was used in *Atlanta Hilton*.

More importantly, and, unlike the instant facts, in *Atlanta Hilton* the Board noted substantial evidence of transfers between departments. Here, the record shows most transfers occur as promotions to supervisory or sales positions or transfers within the food and beverage department. For example, in 2002, the Employer transferred fifty-four employees from various departments. Twenty-five of these transfers were to supervisory and sales positions.⁵ Of the remaining twenty-nine transfers, thirteen consisted of food and beverage employees transferring to another food and beverage position. Only four food and beverage employees transferred to a position outside the food and beverage department. Likewise, only two non-food and beverage employees transferred to the food and beverage department, and the remaining ten transfers consisted of non-food and beverage employees transferring to other non-food and beverage departments. The year 2001 reveals a similar pattern: of seventy-six transfers, twenty-one employees from various departments moved to supervisory and sales positions. Of the remaining fifty-five positions, thirty-two consisted of food and beverage employees transferring to another food and beverage position. In contrast, only seven food and beverage employees transferred outside the food and beverage department. Likewise, only six non-food and beverage employees transferred into the food and beverage department, and the remaining ten transfers consisted of non-food and beverage employees transferring to other departments. Thus, for both 2001 and 2002, the record shows that a large portion of the transfers were to supervisory and sales positions or occurred within the food and beverage department.

The Employer further analogizes its case to *Atlanta Hilton* by arguing that a high degree of temporary transfer occurs, which also warrants a finding that a wall-to-wall unit is the only appropriate unit. However, the record shows most hours worked in temporary transfer occur within the food and beverage realm. For example, within the last three years, of the 950 total hours non-banquet employees worked in banquet positions, more than half were worked by food and beverage employees. Similarly, although limited only to banquet employees, the record shows that within the last three years, banquet employees worked 4,669 hours in non-banquet positions. A majority of those hours were spent working other food and beverage jobs. Thus, the record shows a high degree of temporary transfer within the food and beverage department. Moreover, it shows the majority of temporary transfers occur within the food and beverage department, and that the transferred employees are food and beverage employees temporarily transferring to other food and beverage positions.

The Employer also argues that because its operations employees enjoy the same fringe benefits and share the same personnel policies, only a wall-to-wall unit is appropriate. However, as the Board clearly stated in *Stanford Park Hotel*, the fact that all hotel employees receive the same fringe benefits and are subject to the same personnel policies does not compel a finding that a non-comprehensive unit is inappropriate. 287 NLRB 1291, 1292 (1988) (reversing the Regional Director's determination and finding appropriate a unit consisting of housekeeping and maintenance employees.)

Likewise, the Employer tries to square the instant facts to *Ramada Inns*, 278 NLRB 691 (1986.) Again, although some similarities may exist between *Ramada Inns* and the instant case, there are more significant differences. Although the Employer, like

⁵ Or, in the case of five employees, transferred to positions not detailed by the record (night audit, pool

the Employer in *Ramada Inns*, has an executive committee which sets a centralized personnel policy, it does not have a “manager on duty” program like that of *Ramada Inns*. There, the Employer’s “manager on duty” program required that the executive committee members, who were also department heads, fulfill the function of general manager during “off hours” on a rotating schedule three to four times each month. *Ramada Inns*, 278 NLRB 691 (1986). In contrast, in the instant case, none of the executive committee members act as “managers on duty,” and not all of the executive committee members are operation department heads. In fact, the record shows the three “managers on duty,” Craig Thomas, Charlie Morales, and Vicky Carrier, are lower level management personnel, and that the individuals who serve on the Employer’s executive committee are senior-level personnel. Although the Employer claims these senior-level members of management routinely participate in disciplinary and hiring decisions, the record reflects otherwise. Under the instant facts, it is the individual department director or department manager who decides to hire and fire. Although the executive committee may be involved in these decisions, the record shows no evidence that executive committee members actually involve themselves in hiring, firing or discipline. On the contrary, the record shows they are more involved in directing the management of the hotel, implementing employee satisfaction surveys, reviewing profit and loss data, and dealing with how to meet the hotel’s staffing needs during times of business fluctuation.

Additionally, and unlike *Ramada Inns*, the instant facts reveal no evidence that housekeeping personnel clean the food and beverage operations in addition to the guestrooms, lobby, and common areas. In fact, from the record evidence, it appears that kitchens are cleaned by stewards and kitchen personnel, that the Employer’s five

supervisor, refreshment center attendant.)

restaurants are cleaned by food and beverage staff, and that, aside from the banquet events in which housekeeping may assist, food and beverage maintains its own areas. *Ramada Inns*, 278 NLRB 691 (1986).

The Employer also relies on a Decision and Order issued by the Regional Director of Region 13 in *The Westin Hotel O'Hare*, Case 13-RC-20135, in support of its argument that a similar finding is warranted here. In that case, the petitioner sought to represent a unit consisting of all full-time and part-time door service express attendants, luggage service express attendants, and parking lot attendants. The Regional Director found inappropriate such a unit because the petitioned-for employees “do not possess a community of interest separate from the other guest services employees.”

In *Westin O'Hare*, the petitioned-for job classifications were limited to three of the ten job classifications in the hotel's guest services department, with the petitioner seeking to create an artificial unit within an established department whose employees shared a community of interest. Similarly, the Petitioner here seeks to carve out a small unit within the larger and recognizable department in the hotel. I find such a unit to be inappropriate. However, a unit consisting of all food and beverage employees is appropriate because these employees share a sufficiently distinct community of interest and belong to a separately supervised and defined department.

Although the Employer cited *Westin O'Hare*, it failed to acknowledge the Decision and Direction of Election issued by the Regional Director of Region 24 in *The Westin Rio Mar Beach Resort*, Case 24-RC-8269. In that case, the petitioner sought to represent a unit consisting of all engineering department employees, including refrigeration technicians, laundry technicians, electricians, plumbers, boiler operators, and room preventive maintenance employees. As in the instant case, the employer

argued that the only appropriate unit must include all employees. The Regional Director found appropriate the petitioned-for unit even though all hotel employees “are hourly paid and enjoy a mutuality of interest with respect to wages and benefits . . . [that] include medical insurance, life insurance, [and] 401(k).” In the instant case, as well, simply because the instant employees share the same wage and benefit package does not compel a finding that the appropriate unit must include all employees.

The Employer argues that only a wall-to-wall unit is appropriate because the record is “replete” with examples of employee interchange. It argues that interchange exists because either a banquet concierge or a service express agent may set up an additional telephone or internet line for a banquet function. It also argues that interchange exists because either a banquet house attendant or laundry attendant may transport linens to a banquet event. It further argues that interchange exists because any employee is authorized to straighten up and clean the facilities. The Employer points to an incident where a door attendant stepped in for housekeeping after he overheard a guest complain about poor room cleaning service. After he heard the guest complain, the door attendant made sure housekeeping was aware of the complaint and sent a complimentary bottle of wine to the guest’s room with a written apology. This is not evidence of employee interchange, but evidence of an outstanding employee going above and beyond the call of duty. Although the Employer’s ideal of a resort without department boundaries is laudable, the record shows that each department does perform a unique function in the overall goal of providing excellent service to its guests.

In conclusion, I find that a food and beverage unit is appropriate for the purposes of collective bargaining because food and beverage employees share a sufficient community of interest. Food and beverage employees share common supervision under

the direction of Buononcontri and his nine assistants. Food and beverage employees share similar pay rates and several food and beverage job classifications receive a service charge. Food and beverage employees work similar hours and predominantly work within the Employer's food outlets and banquet areas. Additionally, food and beverage employees work in one of the Employer's larger departments, totaling about 275 employees out of 450 in operations. Moreover, they perform distinct duties directly related to providing resort guests' with their meals. Typically, only food and beverage employees work off the BEO, and only food and beverage employees use the Employer's Micros computer program to track guests' food and beverage expenses. Moreover, the type of work food and beverage employees perform is related and similar in skill. Finally, and most significantly, food and beverage employees interchange and transfer within the food and beverage department far more than they do with other departments. Based on these factors, I conclude a food and beverage unit is appropriate. In so finding, I do not suggest that the overall unit contended for by the Employer would, under Board precedent, be inappropriate. However, I do not need to reach this question for there is nothing in the Act which requires that the unit for bargaining be the only appropriate unit. The Act requires simply that the unit be "appropriate" to ensure to employees in each case the fullest freedom in the exercise of their rights guaranteed by the Act. *Sheraton Anaheim Hotel*, 252 NLRB 959, quoting *Western and Southern Life Insurance Company*, 163 NLRB 138.

Banquet Captains and Leads' Status

My finding on the supervisory status of banquet captains and leads in this matter is unchanged from my original decision in this case, and I reject the Petitioner's contention that banquet captains and leads are supervisors and should be excluded from

the unit. The burden of establishing supervisory status rests on the party asserting that status. *NLRB v. Kentucky River Community Care*, 121 S. Ct. 1861, 1866-1867 (2001); *Benchmark Mechanical Contractors, Inc.*, 327 NLRB 829 (1999); *Alois Box Co., Inc.*, 326 NLRB 1177 (1998), and *Youville Health Care Center, Inc.*, 326 NLRB 495 (1998). Any lack of evidence is construed against the party asserting supervisory status. *Elmhurst Extended Care Facilities*, 329 NLRB 535 fn. 8 (1999).

Although the Petitioner contends the captains and leads are supervisors because the Employer designates them supervisors on the employee schedule, the Board has long held that the status of a supervisor under the Act is determined by an individual's duties, not by his title or job classification. *New Fern Restorium Co.* 175 NLRB 871 (1969); *Williamette Industries*, 336 NLRB No. 59 (2001). Moreover, although the record shows servers and housemen may view captains and leads as supervisors because they report to them and receive instruction from them, such a fact is not dispositive of supervisory status. *Williamette Industries*, 336 NLRB No. 59 (2001).

In the instant case, the record does not support the Petitioner's position that captains and leads are supervisors. In its brief, the Petitioner relies upon *Health Care and Retirement Corp.*, 328 NLRB 1056 (1999) as support for its position that captains and leads issue discipline to banquet employees. However, *Health Care and Retirement Corp.* is distinguishable from these facts because there, the record showed Licensed Practitioner Nurses exercised discretion to issue disciplinary warnings to Nurse Assistants. Here, the Petitioner did not show captains and leads exercise discretion to issue disciplinary warnings. At most, it showed captains and leads sign disciplinary warnings and hand them to the employees asking for their signature, but no evidence was offered to show these captains and leads are the ones who decide to issue the discipline.

On the contrary, the record shows decisions to issue discipline come from higher management, either Buononcontri, Juan Rodriguez, Assistant Banquet Manager, or Raul Saldana, Banquet House Attendant Supervisor. Additionally, although a captain or lead may recommend an employee be disciplined, higher management conducts an independent investigation, upon which its decision to discipline is based. See *Pepsi-Cola Bottling, Co.*, 154 NLRB 490, 493-494 (1965), where the Board held an individual was not a supervisor if his reports of inefficiency and complaints against other employees are investigated independently by higher management.

Although captains and leads do direct servers and housemen, this direction is based upon instructions they have received from higher management as set forth in the BEO. Indeed, the instant facts are similar to those in *Dynamic Science, Inc.*, 334 NLRB No. 57 (2001). There, the Board held test leaders were not supervisors because their role in directing other employees was limited and circumscribed by detailed orders and regulations issued by the Employer and other standard operating procedures. Similarly, in *Chrome Deposit Corp.*, 323 NLRB 961, 963 (1997), the Board found crew leaders were not supervisors. The crew leaders received the plant schedule, which was written and posted by the plant superintendent, then met with employees to determine who would work where and in what order. Such a determination was based on seniority and experience and did not establish them as supervisors. Similarly, here, the captains and leads do not independently decide how an event is to be assembled. Instead, they receive instructions from higher management and implement them through the banquet staff.

The Petitioner also contends captains and leads have the authority to issue discipline and evaluate employees. Although the record reflects one incident involving a captain scolding a server and then handing her a discipline form, this is an isolated

instance that would not convert captains into supervisors. *Williamette Industries*, 336 NLRB No. 59 (2001). Under well established Board law, persons who exercise limited supervisory indicia on an irregular or sporadic basis will not be found to be statutory supervisors. *Chrome Deposit Corp.*, 321 NLRB 961, 963 (1997). The authority to evaluate is not a supervisory indicia if the evaluation does not affect the employee status or tenure. *Williamette Industries*, 336 NLRB No. 59 (2001). In this case, there is no indication that the evaluation in question would have affected the banquet employee's status or tenure.

In conclusion, I find the Petitioner has failed to meet its burden that banquet captains and leads are supervisors. They are experienced leadpersons who operate within the parameters defined by management. *Chrome Deposit Corp.*, 321 NLRB 961, 963 (1997).

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 parties stipulated, and I find, that the Employer, a Maryland corporation, is engaged in the hotel business with a place of business in San Antonio, Texas. During the past twelve months the Employer received gross revenues in excess of \$500,000 and during that same period has performed services valued in excess of \$50,000 in states outside of Texas. Based on the foregoing, I find 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. The parties stipulated to the petitioner's status as a labor organization.
5. 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.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and part-time food and beverage employees employed by the Employer including greeters, outlet servers, outlet supervisors, bus attendants/server attendants, stewarding supervisors, stewards, bartenders, bar attendants, banquet captains, banquet servers, banquet house attendants, sous chefs, and cooks I-IV employed by Starwood Hotels & Resorts Worldwide, Inc. d/b/a The Westin La Cantera Resort.

EXCLUDED: All other employees including, professional employees, confidential employees, service employees, truck drivers, guards, watchmen, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the United Farmworkers of America, AFL-CIO.

The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees

who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

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, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. This list may initially be used by me to assist in determining an adequate

showing of interest. I shall, in turn, make the list available to all parties to the election, only after I have determined that an adequate showing of interest among employees in the unit found appropriate has been established. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the San Antonio Resident Office 711 Navarro Street Ste. 705 San Antonio, Texas 78205-1711, on or before March 28, 2003. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 713-209-4890. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Resident Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) 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).

