

**NITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION FOUR**

PHILLY GARDENS REALTY CORPORATION

Employer¹

and

Case 4-RC-20736

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 57, AFL-CIO

Petitioner²

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

The Employer, Philly Gardens Realty Corporation, is engaged in the management and operation of 14 apartment buildings in Philadelphia, Pennsylvania. The Petitioner, Laborers' Local 57, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent the Employer's Superintendents,³ Porters, and Floaters for all of the buildings in a single bargaining unit. There are about 22 employees in the Petitioner's proposed unit. The Employer contends that the Superintendents and Porters should be divided into 11 separate bargaining units, corresponding with the Employer's apartment buildings,⁴ and that the Floaters should be in a separate unit.⁵ A hearing officer of the Board held a hearing, and the parties filed briefs with me.⁶

I have considered the evidence and the arguments presented by the parties concerning the appropriate scope of the unit. As discussed below, I have concluded that the petitioned-for unit is appropriate for collective bargaining purposes. Accordingly, I have directed an election in a single unit comprised of the Superintendents, Porters, and Floaters who work at all of the Employer's buildings.

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

² The Petitioner's name appears as amended at hearing.

³ The record uses the terms "Superintendent" and "Maintenance Technician" interchangeably to refer to the same employee classification. This Decision will only use the term "Superintendent" to refer to this classification.

⁴ Specifically, the Employer contends that employees working at each building(s) should constitute a separate unit. As noted below, since one Superintendent handles two buildings himself, and in two other situations, a Superintendent and a Porter jointly handle two buildings, the Employer contends there should be 11 units comprised of Superintendents and Porters.

⁵ The parties stipulated that none of the employees sought are supervisors within the meaning of Section 2(11) of the Act.

⁶ The Employer's brief was not received at the Regional Office by the due date because it included an erroneous zip code. Since it was mailed prior to the due date, it has been accepted and considered.

To provide a context for my discussion concerning the appropriate scope of the unit, I will first present a brief overview of the Employer's operations. Then, I will review the factors that must be evaluated in determining whether a petitioned-for multi-location unit is appropriate for collective bargaining purposes. Finally, I will present in detail the facts and reasoning that support my conclusion.

I. OVERVIEW OF OPERATIONS

The Employer has two offices in Philadelphia, its main office on 48th Street and a second office on West Grange Street. The West Grange Street office also has a warehouse for the storage of equipment and supplies.

The Employer's apartment buildings are called Allegheny, Commodore, Florence, Frankford Gardens, Glademore, Grange, Green Leaf, Johnson Arms, Larchmont, Qu Wayne, Ritz, Royal Pines, Winfield, and Wyngate. The buildings contain as few as eight and as many as 110 apartment units.

The Property Manager, Pallathu Mathew, and the Maintenance Manager, John Samuels, administer the Employer's operations. Matthew works at the main office, and Samuels works at the other office. Currently, the Employer employs 11 Superintendents and six Porters.

Four of the buildings are staffed by one Superintendent each, without a Porter (Allegheny, Glademore, Green Leaf, and Wynfield). In four other buildings, a Superintendent works with a Porter (Frankford Gardens, Johnson Arms, Qu Wayne, and Wyngate). Two other buildings are staffed jointly by a single Superintendent (Larchmont and Royal Pines). Finally, in two situations, a Superintendent and Porter handle two buildings that are located near each other and divide their time between them (Commodore/Florence, Grange/Ritz).

The Employer also employs five Floaters. The Floaters are assigned to perform specialized maintenance and repair tasks at all of the apartment buildings as needed. Each of the Floaters has a particular skill, i.e., carpentry, electrical, work, plumbing, tub glazing, and carpet laying, and primarily performs that type of work.

II. FACTORS RELEVANT TO DETERMINING WHETHER THE PETITIONED-FOR UNIT IS APPROPRIATE FOR COLLECTIVE BARGAINING

The Act does not require that a unit for bargaining be the only appropriate unit or even the most appropriate unit. Rather, the Act requires only that the unit be *an* appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988); *Morand Bros. Beverage*, 91 NLRB 409, 418 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951). Thus, the Board's procedure for determining an appropriate unit under Section 9(b) is

first to examine the petitioned-for unit. If that unit is appropriate, then the inquiry ends there. *Bartlett Collins Co.*, 334 NLRB 484 (2001). See *Dezcon, Inc.*, 295 NLRB 109, 111 (1989).

Ordinarily when considering a multi-facility operation, the Board holds that a single location unit is presumptively appropriate for collective bargaining. *Trane, an Operating Union of American Standard Companies*, 339 NLRB No. 106 (2003); *J&L Plate, Inc.* 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988). However, that presumption is inapplicable where the petitioning union seeks to represent a multi-facility unit. *Hazard Express, Inc.*, 324 NLRB 989 (1997); *Capital Coors Co.*, 309 NLRB 322, n. 1 (1992). In a multi-facility context, absent the presumption of appropriateness, the Board evaluates whether the employees at the respective facilities possess a sufficient community of interest to warrant their inclusion in a single bargaining unit by considering the following criteria: (a) similarity in employee skills, duties, and working conditions; (b) functional integration; (c) employee contact and interchange; (d) centralized control of management and supervision; (e) geographical separation of facilities; and (f) bargaining history. *Bashas', Inc.*, 337 NLRB 710 (2002); *Alamo Rent-A-Car*, 330 NLRB 897 (2000); *Macy's West Inc.*, 327 NLRB 1222, 1223 (1999).

III. FACTS

A. Employees' Skills, Job Duties, and Working Conditions

Superintendents and Porters

The Superintendents and Porters at all 14 buildings have similar skills, use similar equipment, and perform similar tasks. They do not require any specialized training, certificates, or licenses. The tasks performed by Superintendents and Porters include sweeping the grounds, emptying the trash, cleaning and maintaining the common areas and stairs, cleaning out vacant apartments, replacing light bulbs, readying apartments for new tenants, and painting apartments or other areas of the buildings as needed. Superintendents are generally responsible for keeping their buildings clean, ensuring that all emergency lights and exit lights are operating properly, taking care of building code violations, and observing the Porters' work. Porters are assigned to perform cleaning tasks and to assist the Superintendents as needed in various maintenance tasks. Porters do not usually substitute for Superintendents, and Superintendents do not substitute for Porters. In addition to their regular assignments, Superintendents and Porters also handle minor repairs such as unclogging drains, changing tub diverters, or repairing sewer stacks.

Superintendents and Porters report directly to their respective buildings and do not go to the office before reporting to work. In most cases Superintendents reside in the buildings where they work. Normally, tenants call the Employer's office with complaints or requests for maintenance, and the office then asks the Superintendent to perform the requested work. Superintendents file requisitions for supplies to the Maintenance Manager. They have the equipment at their respective buildings needed to perform their normal tasks, but if more specialized equipment is needed, the Superintendent may call the office and the item will be delivered by a driver not employed by the Employer.

Floaters

The Property Manager or Maintenance Manager assigns Floaters after tenants call the office needing specialized work or after Superintendents call the office to request them. Floaters are called by the office at home in the morning and can be assigned to work in any building. Usually, they will be assigned to jobs at several buildings within a given day. The Employer tries to use the Floaters to handle repairs rather than hiring outside contractors. Typically, depending on their specialties, Floaters will perform such tasks as changing faucet washers, replacing showerhead diverters, glazing tubs, or laying carpets. They also may be used to handle more extensive problems using relatively sophisticated equipment. Floaters may be assigned duties outside of their specialties if necessary to address building needs and to fill the workday if no work in their specialty is available. For instance, a plumbing specialist may be assigned to paint a vacant building or to assist in handling an emergency such as repairing an apartment ceiling. When hiring Floaters, the Employer seeks individuals capable of doing other kinds of maintenance work in addition to their specialties. Floaters have their own tools for performing their specialties. Although they handle specialized repairs or jobs, based on their particular skills, they are not required to have any specialized certifications or licenses.

B. Employee Contact, Interchange, and Functional Integration

About half of the Superintendents and Porters have had some experience working at buildings other than their regularly assigned buildings. The others have only worked in their own buildings. Superintendents and Porters are occasionally transferred on a permanent basis from one building to another if required by staffing needs or if they are better suited to work elsewhere. They may be transferred to another building permanently if an employee at that building leaves the Employer's employ. Superintendents and Porters have also been assigned to work at different buildings to substitute for other employees who are absent due to vacation, illness, or other reasons. In one instance, an employee was transferred, at his request, to a different building and then back to his original building. On another occasion, a Porter worked as a Superintendent at another building for a period of months and then returned to his original building as a Porter. For an unspecified period, the Employer assigned a Superintendent to perform tub glazing work normally performed by a Floater. This Superintendent had also previously performed some driving work for the Employer.

Maintenance Manager Samuels has assigned Superintendents to work in other buildings on occasion for emergencies or Saturday work. Additionally, Superintendents have been assigned to perform services in other buildings such as exterminating pests, handling roof and gutter repairs, erecting scaffolding, and escorting visitors. Several Superintendents and Porters have also been sent to other buildings to assist other Superintendents and Porters in readying vacant apartments for occupancy or handling emergencies. Floaters have also been sent to assist in tasks such as cleaning, readying apartments, and dealing with emergencies at the different buildings. Depending on the nature of the assignment, Floaters may or may not have contact with the Superintendent or Porter at the building where they are working.

Superintendents are provided with cell phones/radios for communications with the office and other Superintendents. If a Superintendent has a serious problem, the normal practice is to

call the office first for direction. Superintendents may call the office for assistance from another Superintendent in an emergency or may call another Superintendent directly to see if they have a tool, part, or piece of equipment that is needed, and they can obtain that item from the other Superintendent without ordering it through the office. These interactions between Superintendents do not occur on a daily basis, but do occur with some regularity.

The Employer holds periodic meetings of its employees at the main office about every three or six months to discuss work orders or other building needs. The Employer also provides large equipment and major tools to all employees from the West Grange Street warehouse.

C. Control Over Daily Operations and Labor Relations, Including the Extent of Local Autonomy

Maintenance Manager Samuels handles most of the daily supervision and scheduling of work, although the Property Manager is also involved in making job assignments. Employees' normal hours of work are 8:00 a.m. to 5:00 p.m., but they may work overtime, subject to Samuels' approval. As there is no on-site supervision, Superintendents and Porters are required to call into the office before work, at lunch, and at quitting time each day, and they are also required to call the Property Manager on a daily basis to confirm their attendance at work.

The Employer's daily operating procedures are based on company-wide policies governing human resources, payroll, and benefits, which are developed at the Employer's corporate office in New York City. Samuels usually handles employee discipline or discharges; there is no written disciplinary policy. Superintendents are paid \$8 to \$9 per hour, Porters are paid about \$7 per hour, and Floaters are paid \$9 to \$10 per hour. The employees' paychecks are sent to the Philadelphia office on a bi-weekly basis from the New York office, and employees come to either of the Philadelphia offices to pick them up.

The Employer normally hires Superintendents and Porters for assignments at particular buildings depending on its needs. However, these building assignments may change depending on the Employer's staffing situation. The Maintenance Manager interviews job applicants and recommends their hiring and pay rate, but final approval for hire rests with the Employer's corporate office in New York.

D. Geographic Proximity

All of the Employer's offices and apartment buildings are located within the city limits of Philadelphia. The driving time between these locations ranges between 10 and 40 minutes.

E. Bargaining History

There is no history of collective bargaining affecting any of the Employer's employees.

IV. ANALYSIS

The Superintendents and Porters at all of the Employer's apartment buildings perform substantially similar work and have similar skills. They are commonly supervised by the Maintenance Manager and the Property Manager and must be in contact with them several times each day. They all work in the same city, between 10 and 40 minutes away from each other. All employees are subject to the same labor relations and personnel policies, they are paid according to the same pay scale, and they receive the same vacation benefits. Although Superintendents and Porters primarily work at the buildings to which they are assigned, there is also interchange among some of the Superintendents and Porters who are based at different buildings. Thus, the Employer has required Superintendents or Porters to work temporarily at different buildings to assist other employees in handling major projects or emergencies or to fill in when other employees are ill or on vacation.⁷ The Employer has also transferred employees on a permanent basis from one building to another at the employee's request or because of existing vacancies. Some of the employees share tools and equipment with each other, all of them attend the same periodic staff meetings and report to the same office to pick up their paychecks, and all Superintendents can communicate with each other using cell phones/radios. Based on the foregoing, I conclude that Superintendents and Porters working at the Employer's 14 apartment buildings all share a community of interest and that the petitioned-for multi-location unit is appropriate. *Waste Management Northwest*, 331 NLRB 309 (2000); *Mount St. Joseph's Home For Girls*, 227 NLRB 404 (1976); *Bliss Properties, Park Road Company, Inc.*, 30 NLRB 1062 (1941).⁸

I further find that the Floaters should be included in the unit. They are commonly supervised with Superintendents and Porters and are subject to common labor relations policies. Additionally, Floaters work in the same buildings as the other employees, although they are not in any single apartment building on a regular basis, and Superintendents sometimes initiate service or maintenance work performed by the Floaters. At times, Floaters will perform the same type of work as other employees. For example, Superintendents perform minor plumbing repairs, while the Floater who specializes in plumbing performs more difficult plumbing repairs. Conversely, Floaters are sometimes called in to perform painting or repair work that Superintendents and Porters ordinarily perform. Floaters occasionally work directly with other Superintendents and Porters on projects such as ceiling repairs, and they also see the other employees at the Employer's staff meetings. Although Floaters have more specialized duties than the Superintendents and Porters and are paid slightly more than Superintendents, these differences are not enough to affect their community of interest. Accordingly, the Floaters are included in the unit.

⁷ The Petitioner does not have the burden to produce highly specific interchange information in this case because, inasmuch as the Petitioner seeks a multi-location unit, there is no single-facility unit presumption. Cf. *New Britain Transportation Co.*, 330 NLRB 396, 398 (1999).

⁸ *First Security Services Corp.*, 329 NLRB 235, 237 (1999), relied upon by the Employer, is clearly distinguishable. Unlike that case, there is common direct supervision for all of the employees in the requested unit, as well as centralized pay rates and greater employee interchange.

I further note that if the Employer's proposal for separate units of employees at each building were adopted, five employees would be denied the opportunity for representation because their units would be comprised of a single employee, and it is contrary to Board policy to certify a single employee unit. *Mount St. Joseph's Home For Girls*, 229 NLRB 251, 252 (1977).

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 of the 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 Superintendents, Porters, and Floaters employed by the Employer at its 14 apartment buildings located in Philadelphia, Pennsylvania (Allegheny, Commodore, Florence, Frankford Gardens, Glademore, Grange, Green Leaf, Johnson Arms, Larchmont, Ritz, Royal Pines, Qu Wayne, Wynfield and Wyngate), and EXCLUDING all other employees, office clerical employees, guards and supervisors as defined in the Act.

VI. 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 the purposes of collective bargaining by **Laborers' International Union of North America, Local 57, 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 employees in the unit who were employed during the payroll period immediately preceding the date of this 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 that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the

replacements of those economic strikers. 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). The list must be of sufficiently large type to be clearly legible. 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 Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **December 16, 2003**. No extension of time to file this list shall 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 (215) 597-7658. 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 Regional 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 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 non-posting of the election notice.

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, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on **December 23, 2003**.

Signed: December 9, 2003

at Philadelphia, PA

/s/

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

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