

Omni-Dunfey Hotels, Inc. d/b/a Omni International Hotel of Detroit and Local 557, International Union of Operating Engineers, AFL-CIO, Petitioner. Case 7-RC-17825

31 March 1987

DECISION ON REVIEW AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
JOHANSEN, BABSON, STEPHENS, AND
CRACRAFT

On 20 December 1985 the Regional Director for Region 7 issued the attached Decision and Direction of Election in this proceeding, in which he found appropriate for collective bargaining the Petitioner's requested unit of engineering department employees. In accordance with Section 102.67 of the Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision, contending that the only appropriate unit was an overall unit of all hotel employees. By mailgram dated 15 January 1986 the Board granted the Employer's request for review. The Employer's request for a stay of the election was denied; accordingly, the election was conducted as scheduled on 16 January 1986 and the ballots were impounded pending the Board's decision on review.

The Board has considered the entire record in this case and concludes, for the reasons stated by the Regional Director in his decision, that the petitioned-for unit of engineering department employees is an appropriate unit for bargaining. In so concluding, we specifically find that the record contains no compelling facts which would mandate a finding that the smallest appropriate unit must include all employees of the hotel.

It is beyond peradventure that the Act allows a union to petition for an appropriate unit, and does not require it to seek the *most* appropriate unit, even when a different unit than that petitioned-for might be more appropriate than the one it seeks. In the hotel and motel industry, the Board at one time applied a rigid rule that only an overall unit consisting of all hotel/motel employees would be found appropriate for bargaining. See *Arlington Hotel Co.*, 126 NLRB 400 (1960). Six years after deciding *Arlington*, the Board reversed that decision, finding that the inflexible rule of that case was based on the false premise that all employees in the various facilities of hotels and motels shared such a high degree of integration of function and mutuality of interests that only an overall unit could be appropriate, and announced that henceforth it would consider each case on its facts. *77 Operating Co.*, 160 NLRB 927 (1966), *enfd.* 387 F.2d 646 (4th

Cir. 1967). Since that decision, the Board has made unit determinations in the hotel/motel industry on a case-by-case basis, utilizing the same traditional community-of-interest criteria used in other industries. *Westin Hotel*, 277 NLRB 1506 (1986); *Atlanta Hilton & Towers*, 273 NLRB 87, 90 (1984); *Sheraton Motor Inn*, 210 NLRB 790 (1974); *Regency Hyatt House*, 171 NLRB 1347 (1968).

In the instant case, the dissent represents essentially a desire to return to the rigid rule of *Arlington* which, as indicated above, is not required by the statute. Here, the engineering department employees are separately supervised by the chief engineer, who interviews all engineering department applicants and makes the final hiring decisions for his department;¹ they employ skills unique to their classification, as indicated by the fact that the Employer requires them to have a minimum of 1 year of prior experience in their classification (the painter/carpenter is required to have 3 years); and they earn the highest hourly wage among the hotel's nonsupervisory employees (at least \$1 per hour more than the next highest rate).² In addition, there have been no instances of transfer of employees into or out of the engineering department, whether on a permanent or temporary basis. Although the dissent correctly notes that on several occasions engineering department employees have assisted employees from other departments with various tasks such as construction of shelving and construction of a kitchen bulletin board, the record reveals that these incidents are sporadic and do not reflect an actual overlap of job functions, but are more in the nature of showing a spirit of cooperation or civility (such as a cook having handed an engineering department employee a shelf to be installed in the kitchen).³

¹ Our dissenting colleagues concede the existence of separate immediate supervision, but point to the existence of common *procedures* for interviewing and hiring new employees. To the extent that our colleagues may suggest that hiring procedures are of equal weight with the identity of day-to-day supervision, we believe they have lost sight of the question before us—determining employees' community of interest as to the terms and conditions of their employment. Surely the fact that the engineering department employees work under the direction of, and would likely address their immediate grievances to, someone different from those under whom other employees immediately work has greater bearing on collective-bargaining interests than the procedures by which the employees were interviewed for entry into the work force in the first place.

² Our dissenting colleagues seek to minimize the significance of the wage disparity by pointing to the fact that some of the employees outside the engineering department have their wages supplemented by tips from guests. If anything, however, this differentiating factor provides additional support for our conclusion that the engineering department employees have a separate community of interest. In making this observation, we do not, contrary to our colleagues' implication, intend to make this factor determinative.

³ Chairman Dotson suggests that our resolution of this issue should turn, among other things, on the potential "vulnerability" of the majority of the hotel's employees to a work stoppage by the petitioned-for unit. We are aware of no authority outside of the health care industry to support this novel view.

The remaining facts cited in the dissent, such as that all employees receive the same fringe benefits, punch the same timeclock, and share common overall supervision, in our opinion fail to establish that the requested unit is not *an* appropriate unit for bargaining—though such facts undoubtedly would show that an overall unit, if sought, also would be *an* appropriate unit. Further, in view of the above evidence supporting the petitioned-for unit, we reject the Chairman's contention in the dissent that the extent of organization is the "only logical explanation" for the result reached herein.

Westin Hotel, cited in the dissent, is distinguishable. That case, which was before the Board on remand from the United States Court of Appeals for the Sixth Circuit,⁴ involved circumstances which substantially differed from those of the instant case. Although both cases involve petitioned-for units of hotel maintenance and engineering employees otherwise similar to the engineering department unit found appropriate in *Sheraton-Anaheim Hotel*, 252 NLRB 959 (1980), the Board in *Westin* concluded that the unit sought was not appropriate because, unlike *Sheraton-Anaheim*, the prevailing areawide pattern of bargaining favored overall hotel units and a competing labor organization was seeking to represent an overall unit of hotel employees, including the petitioned-for maintenance workers. Neither of these factors is present in the instant case; indeed, the Regional Director specifically found, and the Employer does not dispute, that there are separate engineering department bargaining units at "virtually all" major Detroit metropolitan area hotels.

Based on all the foregoing, we conclude, in agreement with the Regional Director, that the petitioned-for unit of engineering department employees is *an* appropriate unit for bargaining. Accordingly, the Regional Director's Decision and Direction of Election is affirmed, and the case is remanded to the Regional Director for further appropriate action, including the opening and counting of the impounded ballots.

ORDER

This proceeding is remanded to the Regional Director for further appropriate action.

CHAIRMAN DOTSON AND MEMBER JOHANSEN, dissenting.

Contrary to our colleagues, we would find that the petitioned-for unit of maintenance employees does not constitute a separate appropriate bargaining unit, and we would dismiss the petition. The Employer operates a luxury hotel in Detroit,

Michigan. The Union requested, and the Regional Director found appropriate, a unit limited to the maintenance employees at the hotel. The Employer requested review of this finding, contending that the only appropriate unit would include all the hotel employees. We agree with the Employer.

All the hotel employees are paid on an hourly basis, enjoy the same fringe benefits, use the same employee entrance, punch the same timeclock, are required to wear uniforms, share common cafeteria facilities, and are subject to the same work rules and personnel policies. Although the maintenance employees have separate immediate supervision, they are jointly supervised at a higher level with employees in six other job classifications by Denise Barker, rooms division head and resident manager. Management for the entire hotel is centralized in General Manager Andrew Swinney, who has the final authority over all personnel matters.

In addition, there is frequent day-to-day contact between maintenance employees and employees in other departments. Maintenance employees spend a significant amount of their time in areas of the hotel where other employees work. They usually receive their work orders from employees in housekeeping or at the front desk, and have assisted nonmaintenance employees in performing their job duties on several occasions. This is particularly true during occasions such as the hotel's opening, when the distinctions between job classifications all but disappear. Significantly, there are at least six more of these functions planned throughout the next year.

Further, it is clear that these employees do not constitute a craft unit. No engineering or craft license is required of them by the Employer, and no maintenance employee currently holds one. Although the Employer does require at least 1 year's prior maintenance experience for general maintenance employees and 3 years' prior experience for the carpenter/painter position, there are at least five other job classifications at the hotel which also require prior experience.

In reaching the conclusion that the petitioned-for unit is appropriate, the majority notes that the maintenance employees are separately supervised by the chief engineer, who interviews and hires new employees. The majority neglects to mention, however, that the interviewing and hiring procedures are the same for each department at the hotel. As mentioned above, although the maintenance employees have separate immediate supervision, they share higher supervision with six other departments, and authority for personnel matters affecting all employees rests with the general manager.

⁴ The court's opinion is reported at 738 F.2d 765 (6th Cir 1984).

The majority also relies on the fact that maintenance employees possess unique job skills, as evidenced by the requirement that they have prior job-related experience when hired and that they are paid the highest hourly wage. We note, however, that several other job classifications require prior experience, including those of the seamstress/tailor, fitness center attendant, servers, cooks, and cash manager. In addition, although maintenance employees receive the highest *hourly* wage, they are not necessarily the highest paid job classification because they do not receive tips from guests, as do employees in some other classifications. With respect to the majority's reliance on the lack of transfers or overlap of job functions between departments, we note that the record is replete with evidence of the constant contact among the employees and the assistance rendered by one classification to another whenever necessary. We further note that all employees, including those in the maintenance department, are specifically instructed to perform whatever tasks are necessary to accommodate the guests, even if those tasks are outside their job descriptions.

The majority avers that we have lost sight of our task of determining the extent of the employees' community of interest by equating hiring procedures with the identity of day-to-day supervision. Nowhere in our dissent have we made such a statement. Clearly, separate immediate supervision is *an* element that tends to support distinct bargaining units, just as a common hiring procedure, common overall supervision, and common labor relations policies support a finding of a single appropriate unit. None of these factors exist in a vacuum, however, and each must be evaluated in the context of all the relevant facts. Rather than attempting to equate one factor with any other factor, or identifying one fact as the decisive element in the case, we have weighed *all* the evidence which establishes a significant community of interest among the employees against *all* the evidence which supports a finding of separate units. On balance, we have determined that a single unit is appropriate.

Our colleagues also dispute the significance of our reliance on the fact that the maintenance employees are not necessarily the highest paid employees in the hotel because certain of the other employees receive tips from the hotel guests. The majority asserts that this is actually evidence of a disparity of interest. What our colleagues fail to realize is that the maintenance employees' receipt of the highest hourly wage is not particularly significant when other employees in the hotel are also paid in a manner which differs from their fellow employees. Not all nonmaintenance employees re-

ceive tips, just as not all are paid the same hourly wage. Surely the majority does not mean to suggest that we should establish separate units for all employees receiving tips and for each classification of employee that receives a different hourly wage any more than they are suggesting that every employee classification with separate supervision be granted a separate unit. These factors are merely elements to be evaluated when assessing all the evidence establishing a community of interest or lack thereof. No one factor should be elevated to the position of a determinative element. It is our understanding that this is still the test by which the question of whether a community of interest exists is resolved.

Thus, in light of the entire record, we cannot agree that the facts relied on by the majority support a finding that the petitioned-for unit is appropriate. *Westin Hotel*, 277 NLRB 1506 (1986).¹ Accordingly, we would dismiss the petition.

¹ Chairman Dotson notes that although it is true, as the majority states, that the Act allows a union to petition for *an* appropriate unit and does not require it to seek the unit which would be *most* appropriate, the Act, in Sec. 9(c)(5), also requires that the extent of union organization shall not be controlling in determining unit appropriateness. Yet given the sparsity of evidence supporting a separate unit herein, that very factor appears to the Chairman to be the only logical explanation for the conclusion reached by the majority. The Chairman also finds it significant that, given the nature of the maintenance employees' jobs and the extent of their involvement in all aspects of the hotel, finding that a separate unit is appropriate here could result in making the majority of the Employer's employees vulnerable to a shutdown of the entire hotel if this small group of employees engaged in a work stoppage or slowdown. Where, as here, the work of all the employees is so closely related and interdependent, it is inappropriate to give such a small, critically placed unit of 6 employees the power to potentially take work away from the other approximately 174 employees working at the hotel. In the Chairman's view, this factor, along with the strong community of interest the maintenance employees share with the other hotel employees, and the explicit statutory mandate against allowing the extent of organization to be controlling, requires the conclusion that a separate unit for the Employer's maintenance employees is inappropriate.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.¹

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, I find:²

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ The names of the parties appear as amended at the hearing.

² The parties have filed briefs, which have been carefully considered.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Petitioner seeks an election among all maintenance employees employed by the Employer at its Detroit, Michigan hotel, but would exclude all other employees, guards, and supervisors as defined in the Act. The Employer contends that the only appropriate unit is hotel-wide. There is no history of collective bargaining and no evidence that any other labor organization is currently attempting to represent the Employer's employees in a broader unit.

The Employer had its "soft" opening on August 28, 1985. At that time, it opened its dining room, bar, and ballroom facilities and 50 of its 240 guest rooms. On October 20, 1985, the Employer had its grand opening, by which time all except three to five of its guest rooms and suites had become available. On November 1, 1985, the Employer opened its fitness center.

The hotel's structure consists of 20 stories. On the first floor are the lobby, front desk, lobby bar, restaurant, kitchen, and a ballroom area that can be sub-divided into two to four rooms, and various offices. On the next level, designated as 2.5, are the housekeeping and laundry departments, employee cafeteria and locker room and extensive retail space. The next level, designated as four, houses the executive offices, reservationists, and the catering, food, and beverage, sales and engineering departments. Floors five through seven are a parking garage, and the guest rooms are to be found on floors eight through twenty. The Employer employs approximately 180 employees in various classifications. All but two work at least 20 hours per week and are thereby classified as full-time by the Employer.

The engineering department consists of Donald Ruzyski, the chief engineer, and six employees. Five are classified as general maintenance and the sixth is classified as painter/carpenter. There is a third departmental classification, heat, light, power maintenance, but this position has not as yet been filled. The parties stipulated, and I find, that Ruzyski is a supervisor within the meaning of the Act. Thus, he interviews all engineering department applicants and, as with all department heads, makes the final decisions on hiring in his department. The engineering employees report to Ruzyski and he assigns the department's work to them. Under the Employer's yearly wage review policy, Ruzyski will also make recommendations on their merit increases.

³ The Employer is a New Hampshire corporation engaged in the operation of a hotel at 333 E. Jefferson Avenue, Detroit, Michigan. The Employer opened for business on August 28, 1985. Based on business projections, during the 12 month period ending November 30, 1986, the Employer will have gross revenues in excess of \$500,000 and will purchase goods and materials valued in excess of \$50,000 which will be shipped to its facility directly from outside the State of Michigan

The engineering department is primarily engaged in the maintenance and repair of the Employer's equipment. Departmental personnel are on duty 24 hours per day, seven days a week. The chief engineer and three employees work day shifts, one employee works afternoons, another works midnights and the sixth works a "floating" schedule, two afternoon shifts and three midnight shifts. The only other of the hotel's employee classifications who are on duty round-the-clock are room service, front desk and lobby, telephone operators and utility workers who clean the kitchen. Unlike the schedules of most other employee classifications, the schedules of, and number of hours worked by, engineering employees are not dependent on the Employer's occupancy rate.

Departmental tools and supplies for engineering are kept in that department. Those tools include a tilting arbor saw, electric drill, band saw, drill press, hammer drill, Hilti gun, various testing equipment, and diverse hand tools, such as pipe wrenches, pliers, channel locks, screw drivers, hammers, hand saws, and hammer punch. The engineering employees carry tools and a beeper with them during working hours. Each engineering employee has a locker in the department area. All other employees' lockers are in the locker room on the 2.5 level.

Most work assignments for the engineering department are generated by work orders, called maintenance request forms, submitted by the various other departments, mostly housekeeping and the front desk. There is no evidence that any other employees receive their assignments through work orders. These assignments include the maintenance of all equipment in the hotel except for the elevators. That equipment includes the emergency generator, fire pump, turbine pump, hot water heaters, refrigeration equipment, and all kitchen equipment. At present, because of the recent commencement of operations, all of this equipment is still under a one year warranty. Thus, major repairs are performed by the manufacturers. The department also maintains the hotel's swimming pool. It is also responsible for routine preventive maintenance functions, such as checking belt tensions, oil levels, operating temperatures, and general wear and tear, as well as checking for leaks or broken parts. The department also performs a wide variety of repair and maintenance work throughout the hotel, such as repairing radios, television sets, tape players, microphones, lamps, faucets, tub stoppers, dead bolts, doors, and ice machines, unplugging toilets and garbage disposals, installing shower curtain rods, changing light bulbs and nitrogen tanks in the bar, moving furniture, and performing various carpentry tasks. While the record discloses that certain other employee occasionally perform minor maintenance tasks, such as unplugging a garbage disposal, no other employees regularly perform maintenance work. In addition, no other employee has substituted for an engineering employee. Absences of engineering employees have been covered by other engineering employees. Likewise, while engineering employees have occasionally assisted other departments, such as setting up a meeting room for the banquet department in an emergency, none has been assigned to any other departments. Further, there have been no employee transfers into or out of the

engineering department. The one engineering employee hired since the grand opening was hired from the outside.

The Employer's position descriptions for the painter/carpenter and general maintenance classifications require that those employees have three years and one year of prior experience in their respective classifications. The painter/carpenter had well in excess of the required experience. All but one of the current general maintenance employees had at least one year prior experience and the one who did not had some general maintenance background and had attended a vocational school in heating, ventilation and air conditioning. The only other of the 40 employee classifications of the hotel that require any prior experience are seamstress/tailor, fitness center attendant, cash manager, servers, and cooks.

All employees are hourly rated and receive the same fringe benefits and privileges. The engineering employees, however, earn the highest hourly rate, at least \$1 per hour more than the next highest rate, although certain employees' wages are augmented by tips. All employees have a common employee entrance, time clock and cafeteria, and are subject to the same rules and policies. All employees, except reservationists and secretaries, wear a uniform and name tag. The uniforms differ among most of the departments, however, and the engineering employees' uniforms, while similar to housekeeping, are unique and their shirts have "Engineer" written on them.

As to the pattern of area bargaining, the record shows that the engineering employees at virtually all of the major Detroit metropolitan area hotels are separately represented. Thus, the Petitioner represents engineering or maintenance employees at seven major Detroit metropolitan area hotels and another labor organization represents those classifications of employees at two other major hotels. While this Region did in the past direct an election at one area hotel in a facility-wide unit, the petitioning union sought such a unit and no other union was seeking a smaller unit.

In the hotel industry, the Board determines appropriate units on the facts of each case in order to determine wherein lies the true community of interest among particular employees. *Holiday Inn Restaurant*, 160 NLRB 927 (1966), *enfd.* 387 F.2d 648 (4th Cir. 1967). In doing so, the Board applies the general criteria used for determining units in other industries, weighing all factors present, such as the distinctiveness or lack of discreteness in the skills and functions of the particular employee groupings, their supervision, whether separate or common, the employer's organizational structure, and differences or lack of differences in wages and hours. *Sheraton Motor Inn*, 210 NLRB 790, 792 (1974).

Based upon the foregoing and the record as a whole, I conclude that the engineering department employees enjoy a sufficiently distinct community of interest, apart from any broader interests they may share with other hotel employees, to warrant separate representation. I thus find that a unit limited to those employees is appropriate. In making this finding, I note in particular the unique experience and skills required by the engineering employees, the distinctiveness in function between the engineering department and other departments,⁴ the separate immediate supervision of the engineering department, the lack of interchange with other employees, the pattern of area bargaining of separate maintenance units, and that no other labor organization seeks a broader unit.⁵ *Sheraton-Anaheim Hotel*, 252 NLRB 959 (1980); Compare *NLRB v. Westin Hotel*, 738 F.2d 765 (6th Cir. 1984), denying enforcement of *Western Hotel*, 261 NLRB 1005 (1982), where there was no predominant area practice of separate engineering department units, and where another labor organization sought an overall unit. *Atlanta Hilton and Towers*, 273 NLRB 87 (1984), differs substantially from this case because of the much greater functional integration and interchange found there. Also, in that case, unlike herein, a large number of employees in the housekeeping unit performed tasks similar to those of employees in the food service unit, or outside both units, or vice-versa.

5. In view of the foregoing, I find the following employees constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time maintenance employees employed by the Employer at its facility located at 333 E. Jefferson Avenue, Detroit, Michigan, but excluding all other employees, guards and supervisors as defined in the Act.

Those eligible to vote shall vote as set forth in the attached Direction of Election.

⁴ The record does not support the Employer's contention that there is close and functional integration of the duties performed by the engineering department and those duties performed by other employees; the minimal overlapping of some minor duties does not negate the engineering employees' distinct community of interest. *Sheraton-Anaheim Hotel*, 252 NLRB 959, 961 (1980).

⁵ Based upon this finding, I need not decide whether the hotel-wide unit contended for by the Employer is also appropriate, or whether such a unit is more appropriate. The sole issue before me is whether the unit petitioned for is appropriate.