

Hilton Hotel Corporation; Sun Cal Investments No. 1, Ltd., d/b/a Los Angeles Airport Hilton and Towers and International Union of Operating Engineers, Local 501, AFL-CIO, Petitioner. Case 31-RC-5720

16 December 1987

## DECISION ON REVIEW AND ORDER REMANDING

BY CHAIRMAN DOTSON AND MEMBERS  
STEPHENS AND CRACRAFT

On 10 December 1984 the Regional Director for Region 31 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, locksmiths, and locksmith helpers. 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 24 December 1984, 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 and the ballots were impounded pending the Board's decision on review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case and concludes, substantially for the reasons set forth by the Regional Director in his decision, that the petitioned-for unit comprised of all engineering department employees, locksmiths, and locksmith helpers is an appropriate unit for bargaining.<sup>1</sup> In agreement with the Regional Director, we find that the approximately 25 engineering department employees, locksmiths, and locksmith helpers share a community of interest among themselves that is sufficient to constitute an appropriate bargaining unit and that, contrary to the Employer, one overall unit comprised of approximately 1000 employees, while perhaps also appropriate, is not the only appropriate unit.

We have recently decided two cases raising the issue of the appropriateness of a petitioned-for engineering/maintenance unit. In *Omni International Hotel*, 283 NLRB 475 (1987), the Board found such a unit appropriate whereas in *Westin Hotel*, 277 NLRB 1506 (1986), the Board found the peti-

tioned-for unit appropriate. As we emphasized in *Omni*, the Board makes unit determinations in the hotel industry on a case-by-case basis utilizing traditional community-of-interest criteria, in contrast to the long-rejected rule of *Arlington Hotel Co.*, 126 NLRB 400 (1960), which formerly applied a rigid rule mandating that an overall unit of hotel employees was presumptively appropriate. See 77 *Operating Co.*, 160 NLRB 927 (1966), enf'd. 387 F.2d 646 (4th Cir. 1967). Accordingly, because each case turns on the facts revealed in the record, it is likely that a petitioned-for unit may be found appropriate in some instances but not in others.

Based on the record developed in this case, we find that the facts and circumstances pertinent to the petitioned-for unit of engineering department employees are closer to those in *Omni* and *Sheraton-Anaheim Hotel*, 252 NLRB 959 (1980), relied on by the Regional Director, than to those in *Westin Hotel*, and that the unit otherwise is appropriate.<sup>2</sup> At the outset, we note that in *Westin Hotel* the Board found *Sheraton-Anaheim Hotel* to be distinguishable because in the latter case the area bargaining pattern regarding maintenance units was mixed and no other labor organization was seeking to represent the hotel employees in a broader unit. In contrast, the local bargaining pattern in *Westin Hotel* favored overall hotelwide units and an intervenor union specifically sought to represent an overall unit of hotel employees including maintenance employees. In the instant case, as in *Sheraton-Anaheim Hotel*, there exists a mixed pattern of bargaining concerning maintenance units in the local area and no other labor organization seeks to represent the hotel employees in an overall unit. Accordingly, the instant case is factually identical to *Sheraton-Anaheim Hotel* in two of the critical respects distinguished in *Westin Hotel*.

Further, we find that other factors relied on by the Regional Director amply justify his conclusion that the petitioned-for unit is appropriate. First, as in *Omni*, the engineering department employees earn the highest hourly wage among the hotel's nonsupervisory employees. Indeed, the degree of wage disparity is considerably greater here. In *Omni*, the engineering department employees earned at least \$1 per hour more than the next highest rate; in the instant case, several engineering department employees earn a wage rate approximately double the wage rate paid by the hotel to the next highest nonmaintenance level.<sup>3</sup> Second, al-

<sup>2</sup> For the reasons set forth by the Regional Director, inclusion of the locksmiths and locksmith helpers in the unit is appropriate.

<sup>3</sup> In *Westin Hotel*, the average pay for engineering employees fell within the median level for all hotel service employees and thus, unlike the instant case, they shared comparable wages with other employees.

<sup>1</sup> The Petitioner's motion to permit oral argument is denied as the record and briefs adequately present the issues and the positions of the parties

though the engineering department employees may not all be highly skilled employees, the record reveals that a number of engineering department employees, particularly those at the upper end of the wage scale, perform work requiring considerable technical expertise unique to their classification, and they are required to have several years of relevant experience in their trade. Finally, the engineering department employees have separate immediate supervision, possess special skills and training, and have a separate work area and budget. Because of these factors, and because local area practice is not inconsistent with the petitioned-for unit<sup>4</sup> and no other labor organization seeks a broader unit, we agree with the Regional Director that the petitioned-for unit is appropriate.

We have carefully considered the Employer's contentions that the petitioned-for unit is inappropriate because of instances of employee interchange and an overlapping of work performance. We find that these factors do not, on balance, outweigh those factors permitting a separate unit.<sup>5</sup> We recognize that the engineering department includes six employees who permanently transferred into that department from other departments. This degree of transfer incidence, however, is no greater than that in *Sheraton-Anaheim Hotel*, in which the permanent transfer of two outside employees into the engineering department, comprised of approximately six employees, did not require a finding that only an overall unit was appropriate. The record, however, does not show any transfers out of the engineering department. This is not surprising, given the large wage disparity between the highly paid engineering department employees and the other hotel employees. Employees would have an incentive to seek permanent transfers into the engineering department simply as a matter of upward mobility. Such transfers, however, are not the type of periodic temporary transfers or lateral, two-way transfers between departments that may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills.

<sup>4</sup> The record reveals that the Petitioner has numerous collective-bargaining agreements in the local area covering bargaining units limited to engineering/maintenance units. The parties stipulated that there is a local bargaining pattern that includes separate unit representation of engineering/maintenance employees at hotels similar to that operated by the Employer. They further stipulated that this local bargaining pattern, which consists of both overall units and smaller units of employees employed at full service hotels, such as that operated by the Employer, reflect the "industrial reality" of Southern California and Southern Nevada. Because of these area bargaining practices, this case is factually distinguishable from *Ramada Inns v. NLRB*, 487 F.2d 1334 (9th Cir. 1973), *Westward Ho Hotel Co. v. NLRB*, 437 F.2d 1110 (9th Cir. 1971), in which separate units of housekeeping and kitchen employees, respectively, were found inappropriate by the court of appeals.

<sup>5</sup> Further, we conclude that a different result is not required because here, unlike *Omni* and *Sheraton-Anaheim*, final hiring decisions are made centrally by the Employer's personnel department.

We also recognize that the record sets forth a number of instances in which engineering department employees have worked alongside nonengineering department employees and that it reveals that some nonengineering department employees on occasion have performed maintenance type work. Again, these factors are not substantially different from those present in *Sheraton-Anaheim Hotel*, in which engineering department employees "often work[ed] alongside" other employees. We agree with the Regional Director that certain common endeavors which occur between engineering department employees and employees in the kitchen, housekeeping, security, and other departments do not obliterate the clear functional distinction between the essentially maintenance and repair duties of the engineering department employees and the duties required of, and performed by, non-engineering department employees.<sup>6</sup>

Based on the foregoing factors, we conclude, in agreement with the Regional Director, that the petitioned-for unit of engineering department employees, locksmiths, and locksmith helpers is an appropriate unit for bargaining.<sup>7</sup> 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.

<sup>6</sup> Thus, for example, the Employer places great emphasis on contacts between engineering department employees and employees in departments such as housekeeping. It details record evidence that employees in these two departments interact in the cleaning of major water leaks and other cleanup and maintenance operations. Although it is clear that such incidents of cooperation occur, we are not persuaded that they establish a blurring of the functional distinction between the duties of engineering and the duties of housekeeping. Indeed, this difference in job duties to a large extent explains why the Employer pays housekeeping employees in the range of \$4.25 to \$4.75 per hour and pays engineering/maintenance employees up to \$15.50 per hour. Apart from other factors, this wage disparity tends to undermine any claim that there is a substantial overlap of job functions.

<sup>7</sup> Our dissenting colleague concludes that anything less than a single unit (numbering approximately 1000 employees) cannot be appropriate in this case, and he asserts that our analysis would necessarily lead to the "ludicrous" result of countenancing 30 separate units in this hotel. We see no evidence that the many different factors distinguishing the engineering department employees from other employees would necessarily be a basis for distinguishing all the other departments from each other, and thus we see no reason for such an all-or-nothing approach. We would also note that in characterizing the Employer's operations as "typical of the industry," and further concluding that such operations require a finding that nothing less than a single unit is appropriate, the dissent comes perilously close to the rigid one-unit rule of *Arlington Hotel Co.*, supra. For the reasons stated in *Omni*, supra, and precedent cited therein, we have rejected that rigid approach in favor of case-by-case determinations. In our view we have given appropriate consideration to all the factors relevant to the unit determination in this particular case.

CHAIRMAN DOTSON, dissenting.

Contrary to my colleagues, I would find that the petitioned-for unit of engineering department employees, locksmiths, and locksmith helpers does not constitute an appropriate unit for bargaining, and that only an overall unit is appropriate in this case.<sup>1</sup>

The hotel, as is typical of the industry, is a highly integrated operation with the various departments working in close concert and employees being cross-trained to perform jobs in other departments. Each department is closely coordinated with the others in order to serve the hotel's convention business. The employees in all job classifications share common terms and conditions of employment. They receive the same benefits, enjoy the same health and welfare coverage, are subject to the same wage policy, and have the same personnel policies and seniority system. All employees eat and take breaks in the same cafeteria and receive free meals and park in the same parking lot. Uniforms are provided to all 80 or 90 percent of the employees who wear them. All employees also punch a timeclock. Although engineering department employees have separate immediate supervision, every department head is supervised by the resident manager. Management for the entire hotel is centralized in the general manager. Further, the personnel department is responsible for final personnel actions involving all employees, including hiring and firing, interviewing of job applicants, counseling, disciplinary actions, grievance handling, training, and employee relations.

In addition, there is frequent day-to-day contact between engineering department employees and employees in other departments. The engineering department employees act as delivery persons for supplies and materials throughout the hotel. Also, as the Regional Director stated:

In this regard, on occasion, engineers work in the presence of housekeeping employees while performing work in guest rooms; for example, repairing plumbing during water spills and floods while housekeeping employees may be clearing the water away. Further, an engineer may ask a housekeeping employee, or an employee in any other department, for clarification or the location of a work request once the engineer gets to the general area where the work is to be performed. Engineers also have contact with security guards who often stand nearby the area [sic] where engineers are working when safety or other security concerns exist. Engineers often need to obtain

keys from a front desk employee in order to get into an area where work needs to be performed. On finishing a work request relayed by a PBX operator, an engineer customarily reports to the operator that the job has been completed. Both engineers and security guards respond to hotel emergency alarms. Engineers also occasionally train or explain to employees in the various departments the proper procedures for operating the equipment in the various departments which the engineers are responsible for maintaining. When engineers hang flags, they must obtain them from the bellmen. A doorman may direct traffic around the working engineer.

Furthermore, with respect to the interchangeability of employees, as my colleagues note, six employees have been permanently transferred from other departments to the engineering department. Therefore, inasmuch as there are 23 engineering department employees, in 1 year of operation over 25 percent of the engineering department jobs have been filled by permanent transfers. Moreover, even though the record is unclear whether there have been temporary transfers into the engineering department, nonengineering employees occasionally perform engineering department work.

In reaching the conclusion that the petitioned-for unit is appropriate, the majority relies on the fact that the engineering department employees possess special skills, have separate immediate supervision, and separate work areas. However, as the Regional Director found, none of the engineering employees are highly skilled. Nor is an engineering or a craft license required of them by the Employer. As mentioned above, though the engineering department employees have separate immediate supervision, they share higher supervision with the other departments, and authority for personnel matters affecting all employees rests with the personnel department. Further, the factors relied on by the majority are common to most if not all the hotel's 30 departments. Each department has a specific function, specific responsibilities, and separate immediate supervision. Also, employees in many of the departments are as highly skilled as the engineering employees. For example, kitchen employees work under separate immediate supervision, have special skills, and work in a confined area. Therefore, although I assume not even my colleagues would agree with a finding that all the Employer's departments constitute appropriate units, that is the ludicrous result that analysis leads to.

Accordingly, I conclude that because of the highly integrated and mutual interests of the Em-

<sup>1</sup> See my dissent in *Omnis International Hotel*, 283 NLRB 475 (1987)

ployer's employees, the common wage policies and fringe benefits shared by all employees, the centralized formulation of personnel policies, the daily contact and interchange among employees in different departments, and the transfers among employees in the various departments, including engineering, the only appropriate unit in this case in an overall unit of hotel employees.

## APPENDIX

### DECISION AND DIRECTION OF ELECTION<sup>1</sup>

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.

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

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>2</sup>

<sup>1</sup> Although at the outset of hearing the parties stipulated that the Employer's name is Los Angeles Airport Hilton And Towers, later in the hearing confusion surfaced regarding the Employer's true name. During hearing, the Employer promised to produce evidence to resolve the issue, however, no such evidence was submitted prior to close of hearing. The Employer has not addressed this issue in its post-hearing brief. Petitioner did not submit a post-hearing brief. However at hearing, the parties stipulated that the owner of the facility involved in this proceeding, where all of the employees in the petitioned-for unit are employed, is Sun Cal Investments No 1 Ltd d/b/a Los Angeles Airport Hilton And Towers, herein called the Owner. The Owner, acting through its counsel at hearing, took the position that it is also the Employer in these proceedings. The Petitioner refused to concede that the Owner is the Employer, notwithstanding that Petitioner designated the Los Angeles Hilton [And] Towers as the Employer in its petition. Further, Petitioner failed to amend its petition to designate a different employer. Nor did the Petitioner contend that the Owner was not the Employer in this proceeding, or offer any evidence which would support the finding of a different employer.

The record establishes that all of the employees permanently employed at the facility, except for the general manager and the comptroller, are on the payroll of the Owner. The general manager and the comptroller are on the payroll of the Hilton Hotel Corporation. The Hilton Hotel Corporation is the managing agent for the Owner. In its capacity as managing agent for the Owner, the Hilton Hotel Corporation has total responsibility for the labor relations policy in effect at the Owner's hotel facility which is the subject of this proceeding.

Based on the foregoing, and the record as a whole, I find that the Owner and the Hilton Hotel Corporation are joint employers in the operation of the Los Angeles Airport Hilton And Towers Cf., *Moderate Income Management Company, Inc.*, and *Marineview Housing Company, No 1*, 256 NLRB 1193 (1981). Having found that the Owner and the Hilton Hotel Corporation are joint employers, I will refer to them collectively hereinafter as the Employer.

<sup>2</sup> Prior to close of hearing, the Employer moved that this proceeding be transferred to the Board in Washington, DC for decision, requesting that the Regional Director take administrative notice of the Board's grant of review of Regional Director decisions in similar cases. In support of its position, the Employer cites *The President and Fellows of Harvard College*, 269 NLRB No 151 (1984), *Albanese Development Corp d/b/a Holiday Inn Alton*, 270 NLRB No 199 (1984), *Ramada Inns, Inc d/b/a Ramada Beverly Hills*, Cases 31-RC-5631 and 31-RC-5650, *Knott Hotel Corp., d/b/a Viscount Hotel*, Case 31-RC-6493, and *ACL Corp d/b/a Atlanta Hilton and Towers*, Case 10-RC-12727, and *NLRB v Westin Hotel*, 116 LRRM 3288 (July 24, 1984). The hearing officer referred the

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.<sup>3</sup>

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.

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.<sup>4</sup>

Included: All engineering department employees, locksmiths, and locksmith helpers employed by the Employer.

Excluded: Office clerical employees, professional employees, guards, all other employees, and supervisors as defined in the Act.

[Direction of Election omitted from publication.]

### 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, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570. This request must be received by the Board in Washington by December 10, 1984.

motion to the Regional Director for ruling. Inasmuch as the above-referenced cases cited by the Employer involve employers different from the Employer in this proceeding, and the issues involved are similar to those issues which are routinely resolved at the Regional level of the Board, the Employer's motion is hereby denied.

<sup>3</sup> The Employer, Sun Cal Investments No 1, Ltd., d/b/a Los Angeles Airport Hilton And Towers (herein called Sun Cal), a limited partnership, and the Hilton Hotel Corporation, a Delaware corporation, is engaged in the operation of a full-service hotel located in Los Angeles California known as the Los Angeles Airport Hilton And Towers, herein called the hotel. Based on a projection of the operations of the hotel since on or about August 28, 1984, the date on which Sun Cal became the owner of the hotel and its ongoing business operation, the Employer, in the course and conduct of the operations of the hotel, will annually derive gross revenues in excess of \$500,000. In addition, during this same projected period, Sun Cal will purchase and receive goods valued in excess of \$50,000 from sources located outside the State of California for use in operating the hotel. Thus, the Employer satisfies the statutory jurisdictional requirements as well as the Board's discretionary standard for asserting jurisdiction over hotels. *Penn-Keystone Realty Corp*, 191 NLRB 800 (1971).

<sup>4</sup> The Petitioner seeks to represent all employees in the Employer's maintenance and engineering shop as a separate unit. The Employer contends that the petitioned-for unit is not appropriate, and that the only appropriate unit consists of an overall wall-to-wall unit which includes all of the Employer's non-supervisory, non-clerical, operational employees.

The Petitioner stated that it is unwilling to go to an election if the smallest appropriate unit is determined to be a wall-to-wall unit. The Petitioner is willing to go to an election if the unit found appropriate consists of the petitioned-for unit, plus the locksmiths and "some other modest increase." There has been no history of collective bargaining concerning any of the employees employed by the Employer.

The Employer operates a 1,284 room convention hotel, which includes three restaurants and numerous banquet rooms, ballrooms, and meeting rooms, all in a single multi-level building. The main entrance to the hotel, the registration lobby, the restaurants, and two ballrooms are located on the street or lobby level of the hotel. Located on the level above the lobby level are numerous meeting rooms (suites), a ballroom, a theater,

and an information center. Located just below the lobby level is the plaza level, where the administration, sales and catering offices, and a family fitness center are located. Two basement levels lie below the plaza level. The guest rooms start at the second level above the lobby level.

The Employer's operations are functionally divided into five divisions and approximately 30 departments. The divisions are personnel, sales and marketing, food and beverage, rooms division, and accounting. The personnel division does not have any departments under it. The department under the sales and marketing division are marketing, group services, convention services, leisure sales, tour and travel sales, and executive business sales. The departments under the food and beverage division are banquets, beverage, employee cafeteria, Cafe L.A., Alexander's Restaurant, Coconut Willie's Restaurant/Snack Bar, banquet houseperson, stewarding, and culinary (kitchen). The departments in the rooms division are the front office, guest services, housekeeping and laundry, engineering, assistant manager, reservations, tower, PBX, and security. The departments in the accounting division are purchasing, restaurant cashiers, front office cashiers, night audit, payroll, accounts payable/-receivable and administrative accounting, and receiving. Approximately 1000 employees are employed in the Employer's hotel. The Hotel opened for business on or about August 1, 1983.

The record establishes that each division has a specific function and overall responsibility. Each department within a division further has a specific function and specific responsibilities which are part of the overall function of the division it is under.

With regard to the managerial hierarchy, the general manager is chief in command at the hotel. Next in line is the resident manager. Third in command is the assistant manager on duty (MOD). Further, each department has a head person who also reports directly to the resident manager. The authority of the department head is equal to that of the MOD, except the authority of the MOD applies to the general operation of the entire hotel, whereas the authority of a department head applies to a particular department. There are further supervisory levels within the various departments under the department heads.

#### *The Engineering (Maintenance) Department*

The engineering department (interchangeably referred to as the maintenance department) is charged with responsibility for the general maintenance and repair of the entire hotel. No other department has this responsibility. Consistent with its responsibility, the engineering department has instituted a broad program of preventive maintenance for the machinery and electro-mechanical equipment in the hotel. Since the Employer's hotel is still quite new, much of the maintenance on the hotel's machinery and equipment, and structure is still performed by the original subcontractors or other outside contractors. Further, the record discloses that the engineering department has a separate budget from other hotel departments to achieve its designated function. The engineering department makes quarterly reports to the Hilton Hotel Corporation concerning the operations of the engineering department.

Department meetings are held once a month for engineering department employees to discuss matters of concern to the department. No non-engineering department employees, except for the resident manager on occasion, have attended these meetings. The engineering department is staffed with approximately 27 individuals. By classification, at the time of hearing, the engineering staff consisted of the chief engineer, the assistant chief engineer, the general maintenance supervisor, an office secretary, a purchasing person, a tool room attendant, two utility persons, eight general maintenance persons, a maintenance helper, an exhibit hall set-up person, an electrician, a painter, a carpenter, two air conditioning mechanics, a laundry mechanic, a kitchen mechanic and a boiler mechanic. The engineering department is physically located in the basement of the hotel on the parking—2 (P-2) level. The department is physically divided into a general maintenance shop, a tool room, the chief engineers office, an office shared by the office secretary, assistant chief engineer and the maintenance supervisor, a locker room and separate shops for the various mechanics.

The separate shops within the engineering department are the kitchen shop, the air-conditioning shop, the paint shop, the carpenter's shop, the electrical shop, and the laundry shop. In addition, a separate locksmith shop is located in the engineering department for use by the hotel locksmiths who are assigned to the Employer's security department. All of the shops have doors with locks. The doors of all shops, except for the general maintenance shop, are kept closed and locked unless the assigned mechanic is performing work in his assigned shop. Only the engineering

The engineering department works three shifts per day, seven days per week, seven and one-half hours per shift. The day shift is from 7 a.m. to 3 p.m. Swing shift is from 3 p.m. to 11 p.m. Midnight shift is from 11 p.m. to 7 a.m. Only two employees, who are general maintenance persons, work for the engineering department during the swing shift. Only

one employee, also a general maintenance person, works for the engineering department during the midnight shift. The work weeks and work shifts for engineering department employees are staggered and alternated to cover the entire seven-day work week. The number and length of work shifts vary by department within the Employer's hotel. Further, all non-managerial engineering department employees wear uniforms consisting of light brown shirts and dark brown pants. They also wear blue badges. No other employees in the hotel wear this kind of uniform.

The chief engineer is the department head in the engineering department. As such, he is ultimately responsible for directing all employees assigned to the engineering department, and for directing the work done by the department. The assistant chief engineer reports directly to the chief engineer. As such, he is second in command and is responsible for overall supervision of all personnel in the engineering department other than the chief engineer. The parties stipulated that the chief engineer and the assistant chief engineer, based on their responsibly directing employees under them, are supervisors within the meaning of the Act. Based on the parties' stipulation and the record as a whole, I find that the chief engineer and the assistant chief engineer are supervisors, within the meaning of Section 2(11) of the Act. Accordingly, I shall exclude them from the unit.

The supervisory status of the maintenance supervisor has been questioned. The record establishes that the maintenance supervisor is the overall supervisor of all maintenance engineers. As such, he exercises authority over the maintenance engineers by assigning their work to them, instructing them regarding the performance of their work, authorizing overtime, authorizing them to arrive for work late or to leave work early, writing performance evaluations concerning their work performance, and issuing verbal reprimands. Further, written recommendations which the maintenance supervisor is authorized to make concerning reprimands and discipline of the maintenance engineers are followed by the assistant chief engineer. Additionally, the maintenance supervisor spends approximately 90 percent of his time supervising department employees, as opposed to 10 percent of his time performing engineering duties. His duties also include attending meetings with other department heads to schedule work to be done by the engineering department. The maintenance supervisor, like the chief and the assistant chief engineer, is not required to wear the full uniform worn by the other engineers in the department. Moreover, the maintenance supervisor, like the chief and assistant chief engineer, is entrusted with one of the three master engineering keys in the department. The maintenance engineer also receives a higher rate of pay than the other engineers in the department, excluding the chief and the assistant chief engineer. Based on the foregoing, and the record as a whole, I find that the maintenance supervisor exercised some of the indicia of supervisory authority described by the Act. In this regard, I note in particular that he responsibly directs the work of other maintenance engineers and makes effective recommendations concerning discipline. I therefore find that the maintenance supervisor is a supervisor within the meaning of Section 2(11) of the Act. Accordingly, the maintenance supervisor shall be excluded from the unit.

There is some evidence that engineering department employees occasionally receive instruction concerning their work from management employees or department heads other than the engineering department supervisors. Such occasions occur when engineers respond to requests from various departments to effect maintenance and/or repairs in the various departments or areas of the hotel. In these situations, the occasional supervision amounts to little more than a department head (or hotel guest or lower level employee in some instances) pointing out the specific problem and/or the desired remedy or result. Such supervision or instruction for the most part is merely incidental to the nature of the engineers work. In such instances, the supervisor or individual giving these instructions to the engineer has no authority, in connection with the job in question, to compel the particular engineer to perform the requested work or to evaluate or discipline the engineer for poor work performance. Further there is no record evidence that the supervisor or department heads exercise any other supervisory authority over the engineers in these situations. In this regard, the record establishes that if a department head other than the chief engineer tells an engineer to perform a job within the scope of the engineering department's function, the engineer may elect to perform the job or request that the department head submit a work order directly to the engineering department. When the engineer does perform the work, he does so only because he has already been instructed by his engineering department supervisor that he may perform the task. Further, the record establishes that for the most part the department heads or other employees or guests in question who give instruction to the engineers concerning their work give no instructions or supervision concerning the mechanical, technical or procedural aspect of the work to be performed.

The record establishes that neither the chief or assistant chief engineer nor the maintenance supervisor are on duty at the hotel during the swing or midnight shifts. Thus, the three general maintenance persons on duty during said shifts technically report directly to the MOD at such times. As a practical matter however, these engineers function with little supervision, if any, from the MOD.

The duties and responsibilities, skill levels and abilities, education and backgrounds vary somewhat between the various employee classifications in the engineering department. In this regard, the utility person, who earns \$4.50 to \$7 per hour, is primarily responsible for cleaning the hotel's swimming pools, jacuzzis, and air filters and cares for the hotel garden areas. The record contains no evidence of concerning skills, educational or background experience requirements for the utility person. However, utility persons receive on-the-job training (OJT) and may be promoted to the general maintenance person position.

The general maintenance person, who earns \$9.50 to \$10 per hour, is primarily responsible for general maintenance repairs to the hotel, and preventive maintenance on engineering associated equipment. The general maintenance person is also responsible for responding to general trouble calls initiated by guests and other hotel employees. With regard to skills and abilities, the general maintenance person must be able to read and understand building electrical and plumbing blueprints, be able to use all basic hand power tools, repair various piping and valves and trouble shoot and correct electrical, air conditioning, refrigeration, heating, boiler and associated equipment. The general maintenance person is required to have a high school or trade school education or equivalent work experience, and two to three years of general maintenance background experience. Specific duties that the general maintenance persons have performed at the hotel include clearing clogged drains and toilets, repairing leaking plumbing, constructing rooms, trouble shooting and adjusting air conditioners, welding (both arc and gas), replacing burned-out lightbulbs, replacing and/or repairing broken electrical wall outlets and light sockets, rewiring thermostats, repairing and trouble shooting coffee urns, dishwashers, airhandlers, boilers, oil heaters and laundry equipment, and performing preventive maintenance on emergency generators.

The maintenance helper earns \$4.40 to \$5 per hour. The record does not establish the precise duties and skill, educational or experience requirements for this position.

The exhibit hall set up person (also called the exhibit electrician), who earns \$12.25 to \$15.50 per hour, is responsible for providing to exhibit customers of the hotel sufficient electrical outlets which will supply the necessary electrical power to run their exhibits. In the absence of exhibit customers, the exhibit electrician performs preventive maintenance and necessary repair on electrical motors, and assists the electrician with electrical projects. The exhibit electrician was originally hired as a general maintenance person. In addition to his engineering department duties, the exhibit electrician is one of two employees who has a class-II drivers license. In cases where the hotel expects a large number of guests to need rides to the hotel from a large carrier such as the airport, the exhibit electrician can be used to assist the guest services department by driving a shuttle bus. The record is not clear whether such duty will be performed in lieu of or in addition to his regular duties. To date, neither of the two engineering department employees has performed bus driving duties.

The electrician, who earns \$12.25 to \$15.50 per hour, is responsible for keeping electrical equipment, motors, switches, switchboards, and other electrical mechanisms, in good repair, and to replace defective ballasts, burned-out fuses, switches and motors. Further, the electrician is responsible for replacing defective wiring, making corrections to new electrical installations, performing preventive maintenance on all electrical and assorted equipment, installing fixtures, motors and other electrical equipment, assisting in training and orientation of engineering department personnel, and performing other duties as required by engineering department supervision. In performing these duties and responsibilities, the electrician must be able to read and understand electrical and building blueprints, trouble shoot and correct electrical problems, run conduit for electrical wire, and make installation or repair of motors, fixtures and other electrical equipment. Further, the electrician must be able to use electrical meters and devices and all basic hand and power tools. The electrician is required to have a high school or trade school education or equivalent work experience and three to four years of general or master electrical background.

The painter, who earns \$12.25 to \$12.75 per hour, is responsible for painting, installing drywall and hanging vinyl. The record does not establish any educational requirements for the painter, however, the painter attended a trade school. Thereafter, the painter worked in an apprenticeship program with a painting contractor. The painter works alone and uses his own tools. The painter is one of the engineering department employees who has been asked to drive the shuttle bus on an emergency standby basis.

The carpenter, who earns \$12.25 to \$15.50 per hour, is responsible for carpentry work at the hotel, including hanging doors and building and installing cabinets and shelves. In performing his work, he is never assisted by nonengineering department employees. He performs 90 percent of his work in the carpenter's shop, and uses his own tools valued at about \$2,000. The record does not establish educational or skill requirements for the carpenter. However, the record does establish that the carpenter spent two years in an apprenticeship program. Thereafter, he worked for 10 years as a finish carpenter.

The carpenter only works with engineering department employees, except for work he performs with the locksmith in connection with hanging doors.

The air conditioning mechanics, who earn \$12.25 to \$12.75 per hour, are responsible for keeping air conditioning, refrigeration, and heating equipment, pumps, piping, valves, motors, compressors, and electrical mechanisms in good repair and operating condition. Further, they are responsible for installing or replacing compressors, switches, pumps, piping, valves, electrical components and motors, performing preventive maintenance on all air conditioning, heating, refrigeration and associated equipment, and for assisting in training and orientation of engineering department personnel. In performing these duties and responsibilities, the air conditioning mechanics must be able to read and understand building, electrical and piping blueprints, trouble shoot and correct air conditioning, refrigeration and heating problems, install or repair pumps, piping, valves, motors, switches, compressors and other air conditioning, refrigeration, and heating components, charge refrigeration systems to proper operating pressures, clean air cooled and water cooled condensers, and use all basic hand and power tools. The air conditioning mechanics are required to have a high school/trade school education or equivalent work experience and have four to five years of hermetic, centrifugal, and reciprocating compressor operator background.

The laundry mechanic, who earns \$12.25 to \$12.75 per hour, is responsible for performing preventive maintenance and repair on laundry equipment. Examples of the laundry mechanic's duties include replacing burned-out motors and repair of hydraulic systems. The record does not establish educational requirements for the laundry mechanic, however, the position requires prior experience in working on washing machines.

The kitchen and refrigeration mechanic, who earns \$12.25 to \$12.75 per hour, is responsible for maintaining and repairing the kitchen equipment, including stoves, ovens, dishwashers, disposals, exhaust fans, walk-in freezers and an ice machine, all ice machines on the various floors of the hotel, boilers, and laundry equipment. In so doing, the kitchen mechanic spends about four hours per day in the hotel kitchens and one to two hours per day in the engineering department kitchen shop. He is never assisted in the technical performance of his duties by non-engineering department employees. Although the record does not establish requirements for the kitchen mechanic in terms of precise abilities, skills, education and experience, the record disclosed that the kitchen mechanic uses a variety of electrical meters, gauges and hand tools. He attended a trade school where he received a certificate in air conditioning, refrigeration and heating. Further, the kitchen mechanic has past work experience in other hotels on air conditioning, refrigeration, heating and kitchen equipment.

The boiler mechanic, who earns \$12.25 to \$14.00 per hour, is responsible for keeping boiler equipment, pumps, motors, piping, valves, and electrical mechanisms in good repair and operating condition, installing or replacing pumps, piping, valves, motors, switches, external and internal boiler components, performing preventive maintenance on all boilers and associated equipment, and assisting in training and orientation of engineering department personnel. In performing these duties and responsibilities, the boiler mechanic must be able to read and understand building, electrical and piping blueprints, trouble shoot and correct boiler problems, make installation or repair of pumps, valves, piping, internal, and external boiler components, clean and repair watersides and firesides, pressure test boilers, and use all basic hand and power tools. The boiler mechanic is required to have a high school or trade school education or equivalent work experience, and three to four years of marine or stationary boiler operation background. The boiler mechanic spends about 50 percent of his time in the boiler room and visits the laundry room about eight times per day to make checks on the boiler located there.

With regard to the tool room person and the purchasing person, the record did not disclose any requirements for education, skills or abilities. The record does establish that the tool room person works in the engineering department tool room and is responsible for handing or checking out tools. The purchasing person is responsible for purchasing all materials, equipment and parts needed by the engineering department to fulfill its departmental responsibility. The parties stipulated that the tool room person and the purchasing person share sufficient community of interest with the other nonsupervisory engineering department employees to be

included with them in the unit. Accordingly, I find that the tool room person and purchasing person share a sufficient community of interest with the engineering department employees for the purpose of collective bargaining. I shall include them in the unit.

The record establishes that the office secretary assists the chief engineer with various activities which are necessary to maintain department records, communications and compliance with hotel and corporate policies. Further, the office secretary maintains engineering department files, prepares personnel authorization forms, department personnel records, answers the engineering office telephone, screens calls and takes messages, types memoranda, letters, and reports, and performs duplication and distribution tasks. The parties made no contentions regarding the unit placement of the office secretary. However, based on the record as a whole, I find that the office secretary is an office clerical employee. Thus, I will exclude the office secretary from the unit. See, *Hygeia Coca-Cola Bottling Company*, 192 NLRB 1127, 1129 (1971); *Westinghouse Electric Corporation*, 118 NLRB 1043 (1957).

Engineers generally receive their work assignments in the form of work tickets. No other department in the hotel uses the work ticket system. Any person in the hotel may write out a work ticket, submit it to the proper supervisor or department head and then have it transferred to the engineering department to have the work done. The engineering supervisors will then assign the work to engineers in the department. Some work requests, usually trouble calls, are made to the engineering department employees through PBX operators. The operators receive the calls directly from the person who has the problem. The call is logged by the operator and then relayed directly with the use of radios to the engineer who has been assigned to receive such calls. Other work requests are made directly to engineers by employees in the various department when the engineers are in those areas of the hotel. The engineer may at his discretion perform the work or request the person to submit a work ticket to the engineering department.

Engineering department employees work in contact with many nonengineering employees when performing their day-to-day work. In this regard, on occasion, engineers work in the presence of housekeeping employees while performing work in guest rooms, for example, repairing plumbing during water spills and floods while housekeeping employees may be clearing the water away. Further, an engineer may ask a housekeeping employee, or an employer in any other department, for clarification or the location of a work request once the engineer gets to the general area where the work is to be performed. Engineers also have contact with security guards who often stand nearby the areas where engineers are working when safety or other security concerns exist. Engineers often need to obtain keys from a front desk employee in order to get into an area where work needs to be performed. On finishing a work request relayed by a PBX operator, an engineer customarily reports to the operator that the job has been completed. Both engineers and security guards respond to hotel emergency alarms. Engineers also occasionally train or explain to employees in the various departments the proper procedures for operating the equipment in the various departments which the engineers are responsible for maintaining. When engineers hang flags, they must obtain them from the bellmen. A doorman may direct traffic around the working engineer.

With regard to interchangeability between employees of the engineering department and other departments of the hotel, the record establishes that about six employees have been permanently transferred into the engineering department from other hotel departments, pursuant to the hotel's transfer policy. There is no evidence of transfers from the engineering department to other departments. There is also no evidence of temporary transfers into the engineering department within the past year. Further, there is some evidence that an engineer worked as a cook during the "Olympics" in Los Angeles, but the record is not clear that a temporary transfer was involved.

The record reflects that although the engineering department is primarily responsible for general maintenance and repair of the entire hotel, some nonengineering employees will on occasion perform maintenance and repair work. In this regard, housekeeping employees will replace a burned-out light bulb in a guest room or change a vacuum cleaner belt rather than have an engineer take the time to perform that job. Similarly, food and beverage employees will replace light bulbs in the restaurant areas. The pastry chef will lubricate and perform minor repairs on some of his cooking equipment rather than call an engineer in to do it. Additionally, some department heads or supervisors keep hand tools, such as hammers, screwdrivers, and glue, to effect minor repairs within their departments rather than to wait for engineers to perform the work.

Engineering department employees receive the same employee benefits, such as paid sick leave, jury duty, funeral leave and holiday pay, as other employees in the hotel. Health and welfare coverage is the same for all

employees. All employees are subject to the same wage policy which requires an evaluation after the first 90 days on the job and a possible salary increase at that time, and yearly salary increases thereafter. All employees have the same pay day, overtime policy, personnel policies and seniority system. All employees eat and take breaks in the same employee cafeteria and receive free meals, and park in the same parking lot. Uniforms are provided to all of the 80 to 90 percent of the hotel employees who wear them. All employees punch in on a time clock, however, the engineering department employees must also sign in at the engineering department.

#### *Functions of Specific Non-Engineering Divisions/Departments*

The personnel department is responsible for final personnel actions, including hiring and firing, interviewing of job applicants, counseling, disciplinary actions, grievance handling, benefits administration, training and employee relations.

The sales and marketing division is responsible for selling the hotel bookings, marketing the restaurants, and other services for sale by the hotel. Its employees are a combination of hourly and salaried employees.

The food and beverage division departments have a variety of functions. In this regard, the banquet department is responsible for serving the food and beverages at the banquets. Its employees earn \$3.55 to \$5.10 per hour, plus tips. The beverage department is responsible for all beverages served in the bars and restaurants. Its employees earn \$3.45 to \$6.50 per hour. The restaurants and employee cafeteria are responsible for food preparation and service to restaurant customers and employees.

Their employees earn \$3.45 to \$6.50 per hour, plus tips. The banquet housepersons department is responsible for setting up furniture and other equipment for banquet functions. Its employees earn \$5.25 per hour. The stewarding department is responsible for cleaning the kitchen and washing dishes. Its employees earn \$4.25 to \$4.75 per hour. The culinary department is responsible for cooking food for the restaurants and banquets. Its employees earn \$4.50 to \$6.75 per hour.

Within the rooms division, the front office department is responsible for checking in guests and answering their questions. Its employees earn \$6.25 to \$6.75 per hour. The guest services department is responsible for transporting guests in the hotel's courtesy vans, and helping guests with their luggage on arrival and departures. Its employees earn \$3.75 to \$4.50 per hour, plus tips. The housekeeping department is responsible for maintaining guest rooms, including cleaning, bed making, vacuuming and reporting room problems. Its employees, who wear yellow identification badges, earn \$4.25 to \$4.75 per hour. The security department is responsible for hotel safety. Its employees, who are security guards and locksmiths, earn \$6.00 to \$6.50 per hour and \$6.00 to \$10.80 per hour respectively. Security department employees wear red identification badges.

Within the accounting department, the purchasing department is responsible for hotel purchasing which is not done through the engineering department. Its employees earn \$5.50 to \$6.00 per hour. The restaurant cashier department is responsible for providing cashiers to operate all of the cash registers in the hotel restaurants. The cashier department is responsible for billing and checking guests out of the hotel and providing guests with requested information. The front office cashier earns \$6.25 to \$6.75 per hour. The night audit department is responsible for auditing all room revenue, posting of guest charges and balancing accounts. Its employees earn \$6.50 to \$7.00 per hour. Hourly employees in the payroll department and general accounting departments earn \$7.10 per hour.

#### *Area Bargaining History*

The parties stipulated that there is a local bargaining pattern and separate unit representation of engineering/maintenance employees at hotels similar to that operated by the Employer in the instant case. Further, the parties stipulated that the local bargaining pattern which consists of both overall units and smaller units of employees employed at full-service hotels such as that operated by the Employer, are a matter of industrial reality in Southern California and Southern Nevada. The record establishes that the Petitioner represents employees in approximately 80 hotels in Southern California and Southern Nevada. In the approximately 70 of these hotels where the Petitioner has contracts, all contracts cover bargaining units consisting of engineering or maintenance (where engineering and maintenance are interchangeable terms) units alone. None of the contracts covers wall-to-wall bargaining units.

#### *The Appropriate Unit*

The Board's policy for unit determination in the hotel industry is that it will consider each case on the facts peculiar to it in order to decide where the true community of interest lies among particular employees of a hotel. *John Hammonds and Roy Winegardner, Partners, d/b/a 77 Operat-*



ing Company d/b/a Holiday Inn Restaurant, 160 NLRB 927 (1966) The Board further clarified its policy in *Dunfey Family Corporation d/b/a Sheraton Motor Inn*, 210 NLRB 790 (1974), wherein it stated that "the Board's intention is to apply to the hotel industry the general criteria used for determining units in other industries and to make unit determination after weighing all the factors present in each case, such as the distinctions in skills and function of particular employee groupings, their separate supervision, the employer's organizational structure, and differences in wages and hours." The Board also finds a petitioner's unit desires to be relevant consideration to a determination of a unit's appropriateness. *Marks Oxygen Co. of Alabama*, 147 NLRB 228, 230 (1964) Additionally, the Act does not require the unit for bargaining to be the *only* appropriate unit, or the *most* appropriate unit. The Act simply requires that the unit be "appropriate" to insure the employees in each case the fullest freedom in the exercise of their rights guaranteed by the Act. *Western and Southern Life Insurance Company*, 163 NLRB 138 (1967), *Morand Brothers Beverage Co.*, 91 NLRB 409 (1950)

In the instant case, notwithstanding that none of the engineering department employees are highly skilled, I find that there is a clear difference in function between the engineering department employees and the employees employed in the various other departments. Although there is some evidence that nonengineering department employees perform work which is also done by engineers, I find there is substantial record evidence that there is a clear functional distinction between the essentially maintenance and repair duties performed by the engineering department employees in connection with the hotel's operating equipment, and the duties performed by the nonengineering department employees. Further, I find that such overlapping work performance is minimal. I also find that the transfer of non-engineering department employees into the engineering department does not constitute a significant degree of interchange.

Further, I find that the engineering department employees have separate supervision, special skills and training, a separate work area, and a separate budget which is sufficient to give the engineers a separate functional identity.

In view of the foregoing, and considering the record as a whole, noting in particular the separate identity and functions of the engineering department employees, separate immediate supervision, minimal interchange with employees of other departments, the absence of a bargaining history among the Employer's employees, the fact that the Petitioner is seeking to represent the engineering department employees only, the fact that no other labor organization seeks a broader unit at this time, and the fact that a less than overall unit of the Employer's employees is clearly feasible in view of the mixed pattern of bargaining in the local area, I find that a unit limited to the employees employed in the maintenance department is appropriate. See *Anaheim Operating, Inc., d/b/a Sheraton-Anaheim Hotel*, 252 NLRB 959 (1980)

In reaching this decision concerning the appropriate unit, I have fully considered the Employer's post-hearing brief and supporting case authority. However, although I do not reject the Employer's conclusion that a wall-to-wall unit of the hotel's operational employees would constitute an appropriate unit, the Employer's conclusion that such a unit is the *only* appropriate unit is not supported by the record or the Employer's supporting arguments.

#### Locksmiths

During the hearing, an issue was raised concerning the unit placement of a locksmith and a locksmith helper. The Petitioner contends that these locksmiths have a sufficient community of interest with the engineering department employees to be included in a separate bargaining unit with them. The Employer failed to express any clear contentions regarding the placement of its locksmiths.

The record establishes that the locksmiths are officially assigned to the security department, however, they work out of the locksmiths shop which is physically located in the engineering department. The locksmiths' shop is manned 70 percent of the workday by one or both of the locksmiths.

Although the head supervisor for the locksmiths is the director of security, the chief engineer assigns work to the locksmiths through engi-

neering department work tickets, just as assignments are made to engineers. When locksmiths complete their assignments, they must turn in completed work tickets either to the assistant chief engineer or to the maintenance supervisor who will officially date and mark the forms as completed, before they are returned to the issuing departments. Further, the chief engineer has the authority to inspect work done by the locksmiths. The record establishes that the director of security will direct that the locksmiths perform re-keying work on various floors of the hotel. However, the record is not clear whether these directives are issued directly to the locksmiths or whether they are in the form of work tickets and are assigned to the locksmiths by an engineering supervisor. The assistant chief engineer also has authority to discipline and issue verbal warnings to the locksmiths; however, he would also give notice of such warnings and discipline to the director of security.

The locksmith and the helper are responsible for repairing locks, making keys, installing dead bolts and new locks, rekeying old locks and installing doors, including all door hardware. However, 90 percent of the locksmith helpers time is spent in making new keys. In performing this work, the locksmith uses hand tools, special locksmith tools, and a key-making machine. The locksmith spent a year in a trade school and worked for two years in the locksmith trade before becoming employed at the hotel as a locksmith. Further, the locksmith has a permit which was issued and required by the City of Los Angeles to work as a locksmith. The locksmith currently wears the same uniform which is worn by the security guards in the security department. However, for an unspecified period, he wore the engineering department uniform which differs from the security department uniform.

The record establishes that the budget for the locksmith work is within the engineering department budget. The chief engineer has authority to approve or disapprove all purchasing requests made by the locksmith.

The locksmith and the helper work one shift which is from 7:30 a.m. to 3:30 p.m. During the swing and midnight shifts, the engineering department employees are responsible for handling locksmiths duties. For this reason, the locksmith gives weekly training to engineering department employees concerning locks and how to work with them. The locksmith has worked with the carpenter in hanging doors. He does not work with or receive work assistance from any nonengineering employees.

Although the locksmith and the helper are in the security department, they perform no security guard duties. In this regard, the record establishes that the duties of the security guards include standing guard outside of guests rooms to prevent theft and to secure guests' property when work by hotel employees is in progress in their rooms. Further, security guards respond to emergency alarms, patrol, observe and report anything of value or interest regarding safety or security problems to the director of security. Security guards report rules infractions committed by other hotel employees, and restrain individuals from going into unauthorized areas of the hotel. Further, they are authorized to use minimum force to remove individuals from the hotel to preserve their lives or the lives of others, and they may arrest individuals on hotel property.

Based on the foregoing and the record as a whole, noting in particular that the locksmith and the helper share with the engineers common supervision, a common workplace, similar skills and common work functions, I find that the locksmith and locksmith helper share a sufficient community of interest with the engineering department employees to warrant their inclusion in the same unit. Accordingly, I shall include them in the unit. In so deciding, I also note that the locksmiths could not be included in a unit with the security guards whose duties are as described above. In this regard, it is clear that the locksmiths are not guards, whereas the security guards appear to be guards within the meaning of Section 9(b)(3) of the Act since their duties clearly encompass enforcing against employees and other persons rules to protect property of the Employer or to protect the safety of persons on the Employer's premises. *Petroleum Chemicals, Inc.*, 121 NLRB 630 (1958). Further, I note the Petitioner's desire to represent the locksmiths along with the engineering department employees.

Based upon the above, and the record as a whole, I find that the unit described at paragraph 5 of this Decision is appropriate for purposes of collective bargaining within the meaning of the Act.

There are approximately 25 employees in the appropriate unit.