Wheeling Island Gaming, Inc. *and* United Food and Commercial Workers International Union, Local 23, Petitioner. Case 6–RC–12664

August 27, 2010

DECISION ON REVIEW AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER AND BECKER

On April 6, 2009, the Acting Regional Director for Region 6 issued a Decision and Direction of Election (pertinent portions of which are attached as an appendix), in which he found that the petitioned-for unit of poker dealers was not appropriate because poker dealers did not have a community of interest separate and distinct from that of craps, roulette, and blackjack dealers. The Acting Regional Director directed an election among all the Employer's dealers. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Petitioner filed a timely request for review. The Employer filed an opposition. On July 30, 2009, the Board granted the Employer's request for review.[1] The Employer filed a brief on review.

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

Having carefully considered the entire record, we affirm the Acting Regional Director's finding that a unit limited only to poker dealers is not an appropriate unit for collective-bargaining purposes.[2]

ORDER

The Acting Regional Director's Decision and Direction of Election is affirmed. This proceeding is remanded to the Regional Director for further appropriate action consistent with this Decision on Review and Order.

MEMBER BECKER, dissenting.

The petitioned-for unit contains all the employees who do the same job at the same location. From the perspective of employees, this is one of the most logical and appropriate units within which to organize for the purpose of engaging in collective bargaining. I would find that the proposed unit is an appropriate unit and I therefore dissent.

In this case, the approximately 60 poker dealers employed by the Employer at the casino sought to organize together. The poker dealers all performed the same duties, and their common job description was different from the job descriptions of the other dealers. While other dealers performed some functions similar to those performed by the poker dealers, only the poker dealers had an identical set of job duties. The poker dealers all worked together within the casino, physically separated from, in fact on a different floor than, the other dealers. The poker dealers all shared common supervision distinct at both the first and second levels from the other dealers. The poker dealers punched one timeclock while other dealers used another. When they were not working, the poker dealers used their own break room. The poker dealers were also accorded a longer break than that enjoyed by the other dealers. The poker dealers received tips directly from customers; other dealers received their tips from a pool. The poker dealers all had the same training, different from the other dealers, leading to a different certification and different state license.

Each of the characteristics shared by the poker dealers and each of the distinctions between the poker dealers' and the other dealers' terms and conditions of employment was created by the Employer (or, in the case of the licensing and certification requirements, by the State of West Virginia). In other words, the employees here have chosen to organize within a unit defined by their Employer's own policies and practices.

[1] Having carefully considered the matter, the panel reaffirms the earlier decision to grant review.

[2] We agree with our colleague that in making unit determinations, the Board's task is not to determine the most appropriate unit, but simply to determine *an* appropriate unit. See *P. J. Dick Contracting*, 290 NLRB 150, 151 (1988), and *Overnite Transportation Co.*, 322 NLRB 723 (1996). In so doing, the Board looks first to the unit sought by the petitioner, and if it is an appropriate unit, the Board's inquiry ends. See *Boeing Co*., 337 NLRB 152, 153 (2001). However, the Board's inquiry "never addresses, solely and in isolation, the question whether the employees in the unit sought have interests in common with one another. Numerous groups of employees fairly can be said to possess employment conditions or interests 'in common.' Our inquiry—though perhaps not articulated in every case—necessarily proceeds to a further determination whether the interests of the group sought are *sufficiently distinct* from those of other employees to warrant the establishment of a separate unit." *Newton-Wellesley Hospital*, 250 NLRB 409, 411–412 (1980) (emphasis added). The Board has a long history of applying this standard in initial unit determinations. See, e.g., *Monsanto Co.*, 183 NLRB 415 (1970) (maintenance unit sought is not composed of a distinct and homogeneous group of employees with interests separate from those of other employees), and *Harrah's Illinois Corp.,* 319 NLRB 749, 750 (1995) (same).

The dissent also questions cases in which the Board has disapproved a petitioned-for unit as "too narrow" in scope because there is no statutory basis for determining appropriate units on "size alone." The issue, however, is not whether there are too few or too many employees in the unit, but rather whether the unit "is *too narrow in scope* in that it excludes employees who share a substantial community of interest with employees in the unit sought." *Colorado National Bank of Denver*, 204 NLRB 243 (1973) (emphasis added).

Member Schaumber notes that the Board's long-established standard for determining whether a petitioned-for unit is appropriate, which his dissenting colleague seeks to change, gives effect to the statutory prohibition against defining a unit based on the extent of a union's organizing. See Sec. 9(c)(5). Thus, he disagrees that Member Becker's dissenting views are consistent with the Act.

The poker dealers clearly share a community of interest, as they have virtually identical terms and conditions of employment. They share a stronger community of interest than that shared by the employees who would comprise the unit their Employer argues is the *only* appropriate unit—the unit of all dealers. To be sure, the poker dealers may also share a community of interest with the other dealers, but that is not the relevant statutory standard. The statute makes clear, and the Board has repeatedly held, that the only question before us is whether the proposed unit is *an* appropriate unit, not whether it is the most appropriate unit. It bears repeating here that "[t]here is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act requires only that the unit be 'appropriate.'" *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950) (emphasis original).

The Board has held that it will not approve "fractured units, i.e., combinations of employees that are too narrow in scope or that have no rational basis." *Seaboard Marine, Ltd.,* 327 NLRB 556, 556 (1999). Here, however, the proposed unit has a rational basis, as explained above. Indeed, it should be emphasized that from the perspective of employees seeking to exercise their rights under the Act, one clearly rational and appropriate unit is all employees doing the same job and working in the same facility. Absent compelling evidence that such a unit is inappropriate, the Board should hold that it is an appropriate unit.

As to whether the proposed unit is "too narrow," the Board has no statutory authority to judge units based on their size alone. If the proposed unit has a rational basis rooted in the employer's policies and practices so that employees in the unit share a community of interest, it is neither "too narrow" nor "too broad." An inappropriate "fractured unit" in this case might include only some of the poker dealers or some of the poker dealers and some of the other dealers. Such gerrymandered units are inappropriate. In contrast, a unit of all poker dealers is appropriate. Moreover, if employees choose to be represented in an appropriate unit and, thereafter, the parties' experience with collective bargaining suggests to them that bargaining would be more productive in a larger or differently contoured unit, the parties are free to change the unit to better suit their mutual interests. For example, they may add additional employees to the initial unit so long as a majority of the added employees demonstrate their support for representation in the expanded, existing unit. Collective bargaining is a dynamic and evolving process and that evolution may include adjustment of the shape of the unit. The parties are free, based on their experience in bargaining, to seek to reshape the unit into *the most* appropriate unit. But the Board's task is more limited—simply to decide if the proposed unit is *an* appropriate unit.

American Cyanamid Co., 131 NLRB 909 (1961), should control here. In that case, the Board, after granting a motion for reconsideration and hearing oral argument, reversed its earlier decision that had found a separate unit of maintenance employees to be inappropriate. In reversing its own prior decision, the Board found:

> The record in this case fails to establish that the Employer's operation is so integrated, as alleged herein, that maintenance has lost its identity as a function separate from production, and that maintenance employees are not separately identifiable.

Id. at 910. After this statement, the Board cited what it considered to be the factors to be considered in determining if the employees were "separately identifiable," including placement within the employer's organizational structure, supervision, duties, and skills. The Board concluded, based on an analysis of those factors, that the maintenance employees were "readily identifiable as a group whose similarity of function and skills create a community of interest such as would warrant separate representation." Id. Here, for each of the reasons stated above, the poker dealers are clearly "separately identifiable" and "readily identifiable as a group."

In *American Cyanamid*, supra, the Board did not require a showing that the terms and conditions of employment of the maintenance employees substantially differed from all other employees of their employer. The Board has occasionally suggested, however, that there is a requirement of an "affirmative showing" that a petitioned-for unit possess "special and distinct interests as would outweight [sic] and override the community of interest shared with other plant employees." *Kalamazoo Paper Box Corp*., 136 NLRB 134, 137 (1962); see also *Boeing Co.*, 337 NLRB 152 (2001) (finding a unit of recovery and modification employees at an air base inappropriate because the petitioned-for group did not share a community of interest sufficiently distinct from all production and maintenance employees at the base); *Transerv Systems,* 311 NLRB 766 (1993) (finding a petitioned-for unit of bicycle messengers inappropriate because they did not share "a sufficiently distinct community of interest" from driver messengers). But *Kalamazoo Paper Box* was a severance case. Requiring a heightened showing of distinctiveness might be appropriate to justify severing a group of employees from an existing unit, but it is not appropriate in determining

whether a proposed unit of unorganized employees is an appropriate unit.

Finally, the statutory goal of promptly resolving disputes concerning representation counsels against expanding the grounds upon which the unit designated in the petition can be challenged beyond those intended by Congress. The Board has repeatedly recognized "the Act's policy of expeditiously resolving questions concerning representation." *Northeastern University*, 261 NLRB 1001, 2001 (1982). The fact that, unlike in elections for public office, districting must occur before every election among previously unrepresented employees poses a challenge for the Board in the administration of Federal labor policy. The fact that today, 75 years after the Act's passage, litigation, often protracted litigation, over the scope of the unit occurs prior to almost every contested election suggests the Board could do better.[1] Too often, parties dispute the scope or shape of the proposed unit as a means of delaying an election or obtaining other strategic advantages. Rather than assuring "to employees the fullest freedom in exercising the rights guaranteed by this Act," as Congress commanded, the Board's unit determinations have accumulated into a complex and uncertain jurisprudence that threatens to thwart employees' efforts to exercise their right to choose a representative. A standard more consistent with the statutory commands would sharply limit opportunities to use litigation over the appropriateness of the unit for collateral purposes and thereby better accomplish the purposes of the Act.[2]

APPENDIX

ACTING REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Wheeling Island Gaming, Inc., operates a hotel, racetrack, and casino in Wheeling, West Virginia, where it employs about 240 table games dealers. The Petitioner, United Food and Commercial Workers International Union, Local 23, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time poker dealers. A hearing officer of the Board held a hearing and the parties filed timely briefs with me.

As evidenced at the hearing and in the briefs, the parties disagree on the following issue: whether a unit limited to the poker dealers constitutes an appropriate unit. Contrary to the Petitioner, the Employer asserts that the poker dealers do not share a community of interest separate and distinct from the other table games dealers.

The Employer contends that the smallest appropriate unit consists of all table games dealers, while the Petitioner contends that the petitioned-for poker dealers constitute an appropriate unit. The Petitioner has indicated a willingness to proceed to an election in any unit found appropriate. The unit sought by the Petitioner has approximately 60 employees, while the unit the Employer seeks would include about 240 employees. There is no history of collective bargaining for any of the employees involved herein.

I have considered the evidence and the arguments presented by the parties on the issue presented. As discussed below, I have concluded that the poker dealers do not have a community of interest separate and distinct from the other table games dealers, and therefore do not constitute a separate appropriate unit. Rather, I have concluded that the smallest appropriate unit must include all table games dealers. Accordingly, I have directed an election in a unit that consists of approximately 240 employees.

To provide a context for my discussion of the issue presented, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports my conclusions on the issue raised herein.

I. OVERVIEW OF OPERATIONS

As noted, the Employer is engaged in the operation of a hotel, dog-racing track, and casino at its Wheeling, West Virginia facility. Solely involved in these proceedings is the Employer's gaming casino. At its gaming casino, the Employer offers slot machines as well as poker and other table (or pit) games; the other table games are craps, roulette, and blackjack.

The Employer's racing, table games, including poker, and slots operations are under the direction of Vice President of Gaming Operations Michael Maestle. The table games, including poker, are under the direction of Director of Table Games Michael Tusken. Reporting directly to Tusken are shift managers, who have overall responsibility for the operation of poker and the other

[1] But see 29 CFR Secs. 103.30, et seq. (establishing appropriate units in acute care hospitals), and *American Hospital Assn. v. NLRB,* 499 U.S. 606 (1991) (upholding the rules).

[2] Nothing in Sec. 9(c)(5) of the Act precludes this approach. That provision of the Act prevents the Board from making "the extent to which employees have organized . . . controlling" in its determination of whether a proposed unit is appropriate. As construed by the Supreme Court in *NLRB v. Metropolitan Life Insurance Co.*, 380 U.S. 438, 441 (1965), the provision was "intended to overrule Board decisions where the unit determined could only be supported on the basis of the extent of organization." Here, as shown, the unit is consistent with the Employer's policies and practices and the employees in the unit clearly share a community of interest. Finding the proposed unit to be an appropriate unit is fully consistent with the commands of Sec. 9 and the purposes of the Act as a whole.

table games on their respective shifts.[2] Reporting to the shift managers are a poker manager and table games managers. Further, reporting to the poker manager are poker supervisors and reporting to the table games managers are table games supervisors. There are four supervisors who are certified and/or licensed to supervise both poker dealers and the other table games dealers.[3]

The Employer employs approximately 240 dealers, consisting of approximately 40 full-time and 20 part-time poker dealers, and approximately 145 full-time and 35 part-time other table game dealers.

There is no history of collective bargaining for any of the poker or other table games dealers. However, other groups of employees of the Employer are represented by either the Petitioner or by other labor organizations. Specifically, the Petitioner presently represents approximately 300 employees covered under a current collective-bargaining agreement. These employees are valets, facilities cleaning and maintenance employees, cage associates, and slots associates.[4] In addition, UNITE HERE represents approximately 300 to 350 food service employees who are covered by a contract.[5] UNITE HERE also represents about 70 hotel employees who are covered by a separate contract. Further, UNITE HERE represents about 50 security guards covered by a separate contract. Finally, IATSE represents about 10 to 15 stagehands who are covered by a contract.

The poker room is located on the lower level of the Employer's casino; the other table games are located on the upper level. This particular layout is in place solely as a result of the Employer's expansion of its facility because of the addition of games.

II. THE DEALERS

The duties and functions of all of the dealers are substantially similar, with individual variations depending on the particular game for which they are responsible. Each dealer is responsible for ensuring that the particular game is played according to set procedures, for handling the "tools" of the particular game—cards, dice, roulette wheel, for collecting wagers, and for paying winnings. The dealers are not active participants in the games and do not exercise discretion either in the manner in which the games are played or in the manner by which the winnings are determined.

The record discloses that the differences in duties and functions of the dealers are relatively minor. Specifically, the poker dealers do not actively play hands, while the blackjack dealers play hands. Also, the poker dealers do not handle cash transactions at the table, while craps and blackjack dealers handle cash at the table.[6]

The job qualifications for all of the dealers is similar, with variations depending solely on the particular game involved. All applicants go through the same hiring process. Applicants for dealer positions must either possess a certificate from a school verifying completion of a training program in a specific game, or have equivalent experience.[7] All applicants must audition for the particular game involved to demonstrate that they meet the Employer's standards. All applicants must pass a drug test and background check. Upon satisfaction of these requirements, the applicant is issued a license from the State of West Virginia. Although the dealers are licensed for either poker or for other table games collectively, the dealers actually deal only the specific games for which they are certified or have otherwise successfully auditioned.[8] There are approximately four dealers who are certified and/or licensed in both poker and another table game.

[2] One poker dealer testified that the shift manager is in the poker room for a couple minutes a day and at that time, speaks to the poker supervision.

[3] However, the record does not indicate whether these supervisors actually supervise both groups of dealers.

[4] The hearing officer properly rejected the Petitioner's attempt to introduce testimony regarding the circumstances by which it came to represent a diverse group of employees under one contract. The Petitioner made an offer of proof to the effect that in the early 1990s, an independent union representing the parimutuel employees approached the Petitioner to merge with it; a year later, a unit of maintenance department employees was certified and then joined the existing unit; after that, other departments were voluntarily recognized or certified following an election, and then joined the existing unit.

While the parties' past collective-bargaining history is a factor given consideration in community-of-interest determinations, in the present case, there is no collective-bargaining history for any of the petitioned-for poker dealers or for the other table games dealers whose inclusion is urged, and the sole collective-bargaining history involves unrelated groups of employees.

Further, the Employer's past willingness to agree to the merger of small groups of employees into an existing unit does not compel the Employer to take the same position in the present case. Stated otherwise, the fact that the Employer in the past may have agreed to recognize under one contract a unit which may not have been an appropriate unit under Board precedent, does not preclude the Employer from contesting the appropriateness of the petitioned-for unit in this case or the Board from determining that the petitioned-for unit is inappropriate. See, e.g., *Alley Drywall, Inc.,* 333 NLRB 1005 (2001) [Narrow unit in 8(f) agreement does not preclude broader petitioned-for 9(a) unit].

[5] Food service employees work in the poker room and other table game areas as well as in other areas of the Employer's operations.

[6] The Employer's method of generating revenue on the games is also different: in poker, the Employer gets a percentage of each pot, and at the other table games, the Employer takes the losing bets of customers. The dealers must take this difference into consideration when paying winners, but it does not otherwise affect the dealers' terms and conditions of employment.

[7] Separate 6-week training courses are offered for poker, craps, roulette, and blackjack through the local community college.

[8] The similarity in the duties, functions, and skills of the poker dealers and the other table games dealers is reflected in their nearly identical job descriptions.

The work hours of all of the dealers are similar. The Employer's table games, including poker, operate around the clock every day of the year. The Employer operates three shifts for all of the dealers, with staggered starting times.[9] The record reveals one relatively minor difference in the hours of the dealers: the poker dealers have a 30-minute break, and the other table games dealers have a 20-minute break. Further, although all of the dealers punch timeclocks, because of the different break periods, the poker dealers and the other table games dealers are required to use separate timeclocks.

The manner of pay for all of the dealers is based on hourly wages and tips.[10] All dealers start at the same pay rate and are eligible for increases based on their performance appraisals.[11] While the poker dealers receive their tips directly from the players, and the other table games dealers share equally in the pooled tips, the record does not disclose whether there is a variation in the actual amount of tips received by poker dealers and other table games dealers. The benefit package available for all of the dealers is the same.[12]

The human resources policies and procedures are the same for all of the dealers. All dealers are covered by the same associate handbook. All dealers are evaluated using the same performance appraisal, and as noted, are eligible for the same wage increases.[13] All dealers wear the same uniform and wear a name tag.[14]

As noted above, there are about four dealers who are certified and/or licensed to deal both poker and another table game. It appears that some dealers possessing dual certification/licensing in poker and one of the table games obtained the second certification/license as a result of their first jobs being eliminated, so that they could then work in the area of their second certification. Thus, it appears that there has been some movement, albeit limited, between the poker dealers and the other table games dealers.

[9] The staggered starting times apply to all dealers.

[10] Paystubs for poker dealers indicate the payee works in the "Wheeling Poker Room."

[11] The starting wage rate is $5.15 per hour and increases vary from 0 to 3.5 percent, based on the performance appraisals.

[12] This benefit package also applies to all other nonunion employees.

[13] The associate handbook is applicable to all other nonunion employees and the performance appraisal is also used to evaluate all other nonunion employees.

[14] The name tag identifies the dealer as handling poker or table games.

The dealers have informal contact with each other as a result of sharing the same locker room,[15] sharing the same smoking area, and attending periodic departmental meetings. There are two break rooms, one on each level, and they tend to be used by the dealers working on that specific level, although the dealers can use either one. However, the only smoking area is in the lower-level break room.

III. ANALYSIS

It is well established that there is nothing in the Act which requires that the unit sought be the only unit, the ultimate unit, or the most appropriate unit. The Act requires only that the unit be appropriate. *Overnite Transportation Co.,* 322 NLRB 723 (1996). In determining whether unit employees possess a separate community of interest, the Board examines factors such as common functions and duties, shared skills, functional integration, temporary interchange, frequency of contact with other employees, commonality of wages, hours, and other working conditions, permanent transfers, shared supervision, common work location, and bargaining history. See generally *Casino Aztar,* 349 NLRB 603 (2007); *Publix Super Markets,* 343 NLRB 1023 (2004); *Alley Drywall, Inc.,* 333 NLRB 1005 (2001); *Hotel Services Group,* 328 NLRB 116 (1999); *Transerv Systems,* 311 NLRB 766 (1993); *Phoenician,* 308 NLRB 826 (1992). Applying these factors, I find that Board precedent does not support a separate unit of poker dealers apart from other table games dealers in the circumstances of this case.

The poker dealers cannot be distinguished from the other table games dealers on the basis of their job functions, duties, or skills. All dealers perform the same basic function, that is, operating various wagering games for customers. Moreover, the poker dealers have the same duties as the blackjack dealers: operating a card game for customers. The similarity in job functions and duties is underscored by the fact that all of the dealers must possess certifications, or equivalent experience, and licensing to perform their jobs.

Additionally, there is no distinction between the petitioned-for and excluded employees in terms of skill or training. All applicants for dealer positions, regardless of whether for a poker dealer or other table games dealer, undergo the same hiring process. Applicants for all dealer positions are required to have a certificate from a 6-week training program, or past experience. They must

[15] This locker room is also shared with other employees.

pass an audition, a drug test, and a background check. Thereafter, they are licensed by the State of West Virginia. While the licensing is for poker or for the other table games collectively, as a practical matter, a dealer is only assigned to deal those table games in which the dealer is certified or has otherwise demonstrated proficiency through the audition. Thus, the poker dealers do not have a separate community of interest with regard to their job function, duties, or skills.

There is also significant functional integration among all of the dealers. The poker dealers and the other table games dealers are integral elements of the Employer's gaming operations. The functional integration between these two groups of dealers is evident in the Employer's administrative hierarchy. Although the poker dealers and the other table games dealers have separate immediate supervision, all table games, including poker, are under the direction of one manager, who in turn, reports to a senior manager in charge of racing, slots, and table games.

Based on their method of pay or hours of work, the petitioned-for poker dealers cannot be distinguished from the other table games dealers. With regard to their pay, all of the dealers are hourly employees, who are paid the same starting wage and depend on tips to supplement their wages. The fact the poker dealers keep individual tips and the other table games dealers share tips appears to be a minor difference. See *Hotel Services Group,* supra (petitioned-for licensed massage therapists did not possess a separate community of interest apart from the employer's other licensed salon and spa personnel even though they all received different combinations of hourly rates, commissions, and gratuities). All dealers receive the same benefit package. With regard to their hours of work, all dealers work similar shifts. Thus, the poker dealers do not have a separate community of interest with regard to their hours of work and pay.

The poker dealers cannot be distinguished from the other table games dealers on the basis of human resources policies or procedures. All of the dealers are subject to the same associate handbook and are evaluated using the same performance appraisal.

There are about four dealers who are certified and/or licensed to deal both poker and table games. Some of the dealers possessing dual certification/licensing in poker and one of the table games apparently obtained the second certification/license after their first jobs were eliminated. These dealers were then rehired in the area of their second certification/licensing. Consequently, there has been some limited movement between the poker dealers and the other table games dealers. While there is no evidence of daily interchange between the poker dealers and other table games dealers, the absence of daily interchange does not mandate a finding that the poker dealers constitute a separate appropriate unit. See *Phoenician,* supra at 827.

In addition, all of the dealers have the opportunity to have informal contact with each other as a result of sharing the same locker room, sharing the same smoking area, and attending periodic departmental meetings. Thus, the poker dealers cannot be distinguished from the other table dealers on the basis of their casual contact with each other.

The poker dealers are separately supervised by the poker supervisors and poker manager. Although this factor weighs in favor of a separate poker dealers unit, it does not compel a finding that such a unit is appropriate. In this case, this factor is outweighed by all the other factors supporting a conclusion that a separate poker dealers unit is not appropriate here. In view of the facts as a whole, I find that the poker dealers' separate immediate supervision is insufficient to demonstrate that the poker dealers have a sufficiently separate and distinct community of interest apart from the other table games dealers. See *Casino Aztar,* supra; *Hotel Services Group,* supra.

Based on the above and the record as a whole, I find that a unit limited to the poker dealers is inappropriate because those employees do not possess a community of interest separate and distinct from the other table games dealers.[16] In sum, I find that the poker dealers have little community of interest with each other that is not also shared with all of the other dealers. Both poker and the other table games are integral elements of the Employer's business of operating a casino. All of the dealers share the same skill set, work similar hours in the same casino, are paid in a similar manner, receive the same benefits, and are subject to the same human resources policies and procedures. Thus, all dealers have substantially similar terms and conditions of employment.

While there are some factors which would support finding the petitioned-for unit appropriate, such as separate immediate supervision, absence of daily interchange and the relatively small number of employees who have moved from one group to the other, in the circumstances of this case, these factors are insufficient to demonstrate that the poker dealers have a separate community of interest distinct from the other table games dealers. For these reasons, I find that the poker dealers do not constitute an appropriate unit in the particular circumstances of this case. Rather, I find a unit of all of the dealers to be the smallest appropriate unit. See *Silver Spur Casino,* 192 NLRB 1124 (1971) (poker department shared community of interest with petitioned-for gaming operations).

[16] Given the disposition of the issue herein, I need not reach the issue of whether finding the petitioned-for unit to be an appropriate unit would contravene Sec. 9(c)(5) of the Act.