

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10**

**TOOTSIE'S ENTERTAINMENT LLC**

**Employer**

**and**

**Case 10-RC-365430**

**TENNESSEE SECURITY UNION**

**Petitioner**

**DECISION AND ORDER**

Tennessee Security Union (Petitioner) seeks to represent a unit of security officers and security leads employed by Tootsie's Entertainment LLC (the Employer) in Nashville, Tennessee.

While several issues were raised in the hearing, the threshold issue concerns whether Security Lead Frank Whitfield, who filed the Petition on behalf of Petitioner, is a supervisor for the Employer. Other issues concern whether Petitioner is a labor organization; the supervisory status and voting eligibility of three other security leads and one guard who performs scheduling; and whether an eligibility formula, such as *Davison-Paxon*, is appropriate.

A hearing officer of the Board held a hearing in this matter, and both parties were provided the opportunity to submit post-hearing briefs.<sup>1</sup> As explained below, based on the record and relevant Board law, I find that Whitfield is a supervisor within the meaning of Section 2(11) of the Act. I am therefore dismissing the petition.

**I. Facts**

**A. The Employer's Operations**

The Employer is a multi-level bar and restaurant with live entertainment. It is open seven days a week from about 9:30 a.m. until about 3:00 a.m. The Employer employs a total of approximately 31 armed and unarmed security officers, four security leads, one security manager, and one director of security.

The Employer also employs bartenders, barbacks, kitchen staff, food runners, servers, and a cleaning crew. None of these employees are included in the petitioned-for unit.

**B. Security Officers**

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<sup>1</sup> Petitioner did not file a post-hearing brief.

Security officers employed by the Employer are either armed or unarmed. Of the approximately 31 security officers in the unit, 19 are armed security officers. Armed security officers are current, reserve, or retired law enforcement officers.

There are two shifts of security officers: (1) approximately 9:30 or 10:00 a.m. until 6:30 p.m. and (2) approximately 6:00 p.m. until 3:00 a.m. On a typical night shift in the summer, there are about 7 to 11 unarmed security officers and 1 to 2 armed security officers working. When security officers arrive for work, they attend a pre-shift meeting, led by either Security Manager John Sanchez or a security lead. At these meetings, security officers are given their assigned posts for the shift, discuss meal breaks, are assigned radios for their shift, and do things like help plan how to control access to a particular floor if that floor were reserved for a VIP.

Security officers' posts include the front door, the side door, the back door, at the top of the first set of stairs, and on the third floor. Once a security officer is assigned to a post, the security officer is meant to physically stay in that area during the shift unless there is some urgent need to go somewhere else.

At Director of Security Mark Byrne's direction, armed security officers always work at the front door. At that post, and at other entrance/exit posts, security officers greet customers, check IDs, check bags, make sure customers are not bringing in outside beverages or leaving with beverages, and enforce the dress code at applicable times.

Unarmed security officers and security leads wear the same uniform: a purple button-down shirt with "Tootsie's" and "Security" written on the left breast and a black tie. Armed security guards generally wear something very similar to the uniform they wear at their law enforcement agencies. Security Manager Sanchez either wears the purple button-down shirt or a purple polo shirt with the same "Tootsie's" and "Security" logo that the unarmed security officers wear.

Unarmed security officers make about \$23.00 or \$24.00 per hour. The record is unclear as to the rate of pay for armed security officers, but it is more than \$34.00 per hour.

### **C. Security Leads**

The four security leads were hand-selected by Security Manager Sanchez. Two security leads, Lonnie Ledbetter and Matt Mosley, work the day shift; the other two security leads, Will Moores and Whitfield work the night shift.

Unlike security officers, security leads generally are not assigned a post, leaving them free to roam, to respond to incidents, and to make sure security officers receive meal and bathroom breaks. They walk around observing what is going on inside the building and outside the building and at the front door. They also monitor the performance of security officers, making sure the security officers are not allowing people to enter with outside beverages, not allowing people to enter who are not adhering to the dress code, not taking naps, are not just leaning up against the building, and are not on their phones.

Security leads are sometimes the highest person on duty in the security hierarchy. This happens when Security Manager Sanchez is not present. For about two or three of Whitfield's shifts per week, Security Manager Sanchez is not present. Even if Security Manager Sanchez is at work, the security leads still work as security leads with duties distinct from those of security officers.

If a security officer cannot make it to his or her shift, the security officer would contact the security lead working that shift.<sup>2</sup> The security lead could then call other security officers to seek volunteers to cover the shift. Neither security leads nor anyone else can force a security officer to go into work during a time when he or she is not scheduled.

Security leads make about \$25.00 per hour. Whitfield was given a raise in about March 2025 to about \$27.00 per hour. The record was unclear as to Security Manager Sanchez's rate of pay, but it is less than \$39.00 per hour.

Director of Security Byrne testified that it is considered a promotion to be a security lead. Several incident reports completed by security officers in March and April 2025 show that security officers view security leads as their supervisors.

At the beginning of the shift, security leads lead the pre-shift meeting if Security Manager Sanchez is not working.<sup>3</sup> During meetings led by security leads, security leads assign security officers to posts. The security leads use their own criteria to make these assignments and have sole discretion on where security officers are assigned. Security leads use their knowledge of security officers' strengths and weaknesses to assign posts. Security leads also assign a radio to each security officer. Before assigning the radios, the leads ensure each radio has knobs, an antenna, and a microphone that that is in good working condition.

As stated above, security leads wear the same uniform as unarmed security guards.

Newly hired security officers shadow security leads when training to work for the Employer.

If an incident such as a fall or a fight occurs at the Employer, the nearest security officer would announce on the radio that he or she needs a security lead. The security lead would act as the incident commander, directing security officers on what needs to be done. If someone is injured, the security lead may assign security officers to get a bag of ice, call 911, and divert foot traffic. The security lead would then be the liaison with whatever emergency services personnel arrive. The security lead would ensure that each security officer who was a witness filled out an accurate incident report. The security lead would also fill out an incident report. The security lead would collect the incident reports and send them to Director of Security Byrne.

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<sup>2</sup> However, security officers report planned vacations to Security Manager Sanchez.

<sup>3</sup> They also sometimes lead the meetings even when Security Manager Sanchez is working.

If a security officer is late to or misses a shift, the security lead, in Security Manager Sanchez's absence, notates the tardy or absence in a binder used for such purposes. This tardy or absence could then be used to discipline or terminate an employee. The Employer also uses the HotSchedules app to record schedules and time and attendance-related incidents. Security Manager Sanchez uses the information in the binder to complete the information in HotSchedules. Sanchez recently trained Whitfield on entering the information into HotSchedules. Because special permissions were needed to make changes in HotSchedules, Whitfield is listed as a manager in HotSchedules. No other security lead has such a designation or such privileges in HotSchedules.

Director of Security Byrne testified that security leads cannot hire, transfer, lay off or recall, reward, give raises to, or discharge employees. The parties agreed that security leads cannot promote employees. Whitfield testified that he would not be held responsible if a security officer did not do their job properly.

As confirmed by Whitfield, security leads can send security officers home if they violate rules. In such cases, the security lead would notify Security Manager Sanchez and direct the general manager to make sure the security officer had clocked out.

Director of Security Byrne testified about an incident where Whitfield reassigned a security officer from his post at the door to another post. Whitfield texted Security Manager Sanchez at 10:42 p.m. and stated that he had pulled the security officer from his post for "[l]etting in drinks and [non-dress code compliant] shirts more than 6 times." Whitfield made this decision and took this action without asking permission from Security Manager Sanchez. He merely informed Security Manager Sanchez after the fact that he had moved the security officer.

Security leads do not have the use of an office, do not receive any special bonuses, and do not attend any meetings where security officers would not be present.

## **II. Board Law**

### **A. Supervisors**

The Act expressly excludes supervisors from its definition of employee. Section 2(11) of the Act defines a supervisor as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The three requirements to establish supervisory status are that the putative supervisor possesses one or more of the above supervisory functions; the putative supervisor uses

independent, rather than routine or clerical, judgment in exercising that authority; and the putative supervisor holds that authority in the interest of the employer. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 712-13 (2001) (citing *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-74 (1994)).

Supervisory status may be shown if the alleged supervisor has the authority either to perform a supervisory function or to effectively recommend the same. The statutory definition of a supervisor is read in the disjunctive. Possession of any one of the enumerated powers, if accompanied by independent judgment and exercised in the interest of the employer, is sufficient to confer supervisory status. *Kentucky River*, above at 713. Supervisory status may likewise be established if the individual in question has the authority to effectively recommend one of the powers, but effective recommendation requires the absence of an independent investigation by superiors and not simply that the recommendation be followed. *Children's Farm Home*, 324 NLRB 61, 65 (1997).

If such authority is used sporadically, the putative supervisor will not be deemed a statutory supervisor. *Coral Harbor Rehabilitation and Nursing Center*, 366 NLRB No. 75, slip op. at 17 (2018). The supervisor has to at least act or effectively recommend such action “without control of others and form an opinion or evaluation by discerning and comparing data.” *Oakwood Healthcare, Inc.*, 348 NLRB 686, 692-93 (2006). Judgment is not independent when the putative supervisor follows detailed instructions (e.g., policies, rules, collective-bargaining agreement requirements). *Id.* at 693. To be independent, “the judgment must involve a degree of discretion that rises above the ‘routine or clerical.’” *Id.* at 693 (citing *J.C. Brock Corp.*, 314 NLRB 157, 158 (1994)) (quoting *Bowne of Houston*, 280 NLRB 1222, 1223 (1986) (finding that “the exercise of some ‘supervisory authority’ in a routine, clerical, perfunctory, or sporadic manner does not confer supervisory status”)). If a choice is obvious, the judgment is not independent. *Oakwood Healthcare*, above at 693. The Board has an obligation not to construe the statutory language too broadly because the individual found to be a supervisor is denied the employee rights that are protected under the Act. *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006); *Oakwood Healthcare*, above at 687.

Indicia other than those enumerated in Section 2(11) of the Act are secondary indicia. Although secondary indicia may be considered in determining supervisory issues, they are not dispositive. In the absence of one of the enumerated primary indicia, secondary indicia, standing alone, are insufficient to establish supervisory status. *St. Francis Medical Center-West*, 323 NLRB 1046 (1997).

Secondary indicia of supervisory status include, but are not limited to, the individual's: designation as a supervisor; attendance at supervisory meetings; receipt of management memos; responsibility for a shift or phase of the employer's operation; authority to grant time off to other employees; responsibility for inspecting the work of others; responsibility for reporting rule infractions; receipt of privileges exclusive to members of management; and compensation at a rate higher than the employees supervised. The ratio of supervisors to employees is also a secondary indicator of supervisory status. See *Sheraton Universal Hotel*, 350 NLRB 1114, 1118 (2007); *Flexi-Van Service Center*, 228 NLRB 956, 960 (1977).

Lastly, the party asserting supervisory status has the burden of proving supervisory authority and must establish it by a preponderance of the evidence. *Kentucky River*, above at 711; *Oakwood Healthcare*, above at 687. The lack of evidence is construed against the party asserting supervisory status. *Dean & DeLuca New York, Inc.*, 338 NLRB 1046, 1047-48 (2003). In addition, purely general and conclusory evidence is insufficient to establish supervisory status. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006); *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004). Similarly, supervisory status is not demonstrated when the evidence is in conflict or inconclusive. *Entergy Mississippi, Inc.*, 367 NLRB No. 109, slip op. at 2-3 (2019), affd. 973 F.3d 451 (5th Cir. 2020).

### **B. Petitions Filed by Supervisors**

In *Douglas Aircraft Co.*, 53 NLRB 486, 489 (1943), the Board held that it could not certify “an organization as representative of employees for the purposes of collective bargaining when it is apparent that the organization is incapable of bargaining at arms length with the employer.” In that case, the petitioner was conceived and organized by a supervisor. Therefore, the Board held the petitioner could not be a bona fide representative of employees of the employer for the purposes of collective bargaining.

The Board made a similar ruling in *Brunswick Pulp & Paper Co.*, 152 NLRB 973, 975 (1965), where it stated that since petitioner was controlled by either independent contractors or supervisors, neither of whom are employees under the Act, petitioner was “not qualified to serve as a collective-bargaining representative of the requested units of [] employees.”

In *Kennecott Copper Corp.*, 98 NLRB 75 (1952), a petition was filed by an individual to represent himself and two other employees. International Union of Mine, Mill and Smelter Workers, and Local 890, International Union of Mine, Mill and Smelter Workers intervened and filed a motion to dismiss the petition based on the supervisory status of the petitioner. The Board found that the petitioner was a supervisor and granted the intervenors’ motion to dismiss because supervisors “cannot act as a representative of employees to decertify a union” or “represent its employees for purposes of collective bargaining.” *Id.* at 77 (internal citations omitted).

## **III. Analysis**

### **A. Security Leads, Including Whitfield, Are Supervisory Employees**

Security leads cannot hire, transfer, lay off, recall, promote, discharge, reward, or responsibly direct employees. There was no evidence presented on whether they can adjust grievances of employees.

However, the record revealed that Whitfield and security leads are able to discipline and/or suspend employees by sending them home without pay. Security leads wield this authority independently and in the interest of the Employer. Security leads and Whitfield also make work assignments based on independent criteria and judgment. This was evidenced by Whitfield

moving an underperforming security officer from the front door without first checking with Security Manager Sanchez. Security leads wield this authority independently and in the interest of the Employer.

Accordingly, I find that security leads are supervisory employees under the Act and the petition is dismissed.

### **B. The Remaining Issues**

Because the petition is dismissed due to Whitfield's supervisory status, the remaining issues are moot.

### **IV. Conclusion**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>4</sup>
3. Petitioner claims to represent certain employees of the Employer.
4. No 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.

### **ORDER**

It is hereby ordered that the petition in this matter is dismissed.

### **RIGHT TO REQUEST REVIEW**

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<sup>4</sup> The parties stipulated, and I find, that:

The Employer, Tootsie's Entertainment LLC d/b/a Tootsies Orchid Lounge, is a Tennessee company with a place of business located at 422 Broadway, Nashville, Tennessee, the only facility involved herein, is engaged in the operation of a public restaurant and bar selling food and beverages. During the past twelve-month period, a representative period of time, the Employer derived gross revenues valued in excess of \$500,000. During that same period of time, the Employer has purchased and received at its Nashville, Tennessee facility, materials and supplies valued in excess of \$50,000 directly from points outside the State of Tennessee.

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

**Procedures for Filing Request for Review: Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site ([www.nlrb.gov](http://www.nlrb.gov)), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden.** A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#).

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business **(5 p.m. Eastern Time) on June 30, 2025**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on June 30, 2025**.

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at [www.nlrb.gov](http://www.nlrb.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.



Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Direction and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Dated: June 13, 2025



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