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Aztar Indiana Gaming Company, LLC d/b/a Casino Aztar *and* International Brotherhood of Teamsters, Local No. 215, a/w International Brotherhood of Teamsters. Case 25–RC–10335

March 23, 2007

DECISION ON REVIEW AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On May 15, 2006, the Acting Regional Director for Region 25 issued her Decision and Direction of Election, in which she found that a unit of the Employer's beverage subdepartment employees constituted an appropriate unit and ordered an election.[1] In making this determination, the Acting Regional Director relied on the beverage employees' separate supervision, their shared method of pay, benefits, hours of work, work rules, and licensing requirements, and the lack of contact, interchange, and transfers between the beverage subdepartment and the rest of the food and beverage department.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review contending that the beverage subdepartment did not constitute an appropriate unit. The Employer asserted that the only appropriate unit, based on the facts presented, is a unit of all employees in its food and beverage department.[2]

By Order dated June 7, 2006, the Board granted the Employer's request for review. Thereafter, 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, including the Employer's brief on review, we find, contrary to the Acting Regional Director, that the beverage employees do not constitute a separate appropriate unit. Rather, we find that the smallest appropriate unit must include all employees in the Employer's beverage, catering, and restaurant subdepartments.

[1] The petitioned-for unit included the approximately 4 barbacks, 17 bartenders, and 27 cocktail servers in the beverage subdepartment, excluding the inventory clerk. The Acting Regional Director included the inventory clerk in the unit and the Petitioner did not request review.

[2] The Employer also suggested, in the alternative, that a unit consisting of beverage and catering personnel would also be appropriate.

Facts

The Employer operates a riverboat casino and associated guest facilities in Evansville, Indiana. The casino sits dockside on a boat, which also houses several lounges and a deli. On land, connected to the boat by walkways, is a pavilion with three restaurants (Corky's, Max & Erma's, and Cavanaugh's), a lounge (Hoosier's), and a Starbucks. Across the street from the pavilion, but also connected to it by walkways, the Employer operates a hotel, buffet restaurant (Temptations), conference center, and parking garage.

The Employer's food and beverage department is responsible for all food and drink service in the Employer's establishments, listed above. That department is divided into four subdepartments: beverage, restaurant, catering, and chef.

The first subdepartment in the food and beverage department is beverage. The beverage subdepartment has approximately 48 bartenders, barbacks, and cocktail servers and 1 inventory control clerk. The inventory control clerk stocks alcohol for the casino lounges and Hoosier's, as well as for catering and restaurant operations. About a third of the beverage bartenders, barbacks, and cocktail servers are regularly scheduled to work in Hoosier's, the lounge in the pavilion. The remaining beverage employees rotate through the lounge areas on the boat. In Hoosier's and in most lounge areas on the boat, the beverage employees' primary function is to serve drinks. However, the cocktail servers who work on the boat regularly rotate through the poker room, where they are required to serve food from the deli as well as drinks.

All beverage subdepartment employees hold Indiana Gaming Commission licenses and state Alcoholic Beverage Commission (ABC) licenses. As a matter of State law, all employees who work on the casino boat in any capacity are required to have a gaming license. Thus, the Employer requires all beverage subdepartment employees (including those normally assigned to Hoosier's, which is not on the boat) to hold gaming licenses so they can be assigned to work on the boat as the need arises. Similarly, as a matter of State law, all employees who serve alcohol must be licensed by the state ABC. Thus, the Employer also requires all beverage employees to hold ABC licenses.

The second subdepartment is the restaurant subdepartment, which has approximately 120 employees in various "front of house" positions (such as servers, cashiers, hosts, and bartenders). Restaurant employees work in the food and beverage service areas at Corky's, Max & Erma's, Cavanaugh's, and Starbucks in the pavilion, at Temptations buffet in the hotel, and in the deli on the

boat. Starbucks employees and deli employees go back and forth between those two locations depending on need; accordingly, all Starbucks and deli employees are required to have gaming licenses in order to work on the boat. Moreover, all restaurant bartenders hold gaming licenses, so that they may work on the boat when necessary, as well as state ABC licenses.

The third subdepartment is catering, which has approximately 30 employees who work as banquet servers, bartenders, banquet captains, housemen, catering coordinator, and catering secretary. Catering events are held in all areas of the Employer's operation, including in the hotel, in the conference center, outside the pavilion, on the boat, and in the restaurants. There are about 30–40 catering events on the property per week. On any given Saturday or holiday, there may be 10 catered events at various times and in various places throughout the facility. They range from small gatherings for a couple dozen people to huge extravaganzas for several thousand people. Most events involve alcohol and food service. Consequently, all catering employees (except housemen) are required to hold gaming and state ABC licenses so they can staff catering events on the boat and serve alcohol.

The nature of the Employer's operation requires considerable cooperation among the beverage, restaurant, and catering subdepartments. Because the business of the catering subdepartment fluctuates widely from day-to-day, the Employer intentionally maintains a small catering crew on its payroll. The catering department has about 5 full-time, 13 part-time, and 10 casual employees. It employs only six bartenders, all part-time. According to the general manager of catering, this roster is sufficient to staff events in times of "average" demand.

During times of greater than "average" demand, the Employer supplements its core catering staff with employees from other departments. To meet these needs, the catering manager sends a weekly e-mail request to its employees seeking volunteers from outside catering to work upcoming events. Generally, the manager will receive enough volunteers to fill the catering schedule. On rare occasions, however, the Employer will require employees outside the catering subdepartment to work catering events if not enough volunteer. Although employees from housekeeping and other departments outside of food and beverage can work catering events, the catering manager testified that she first seeks volunteers from the restaurant and beverage operations because they are familiar with the work and have the necessary licenses to serve alcohol and work on the boat. Thus, most of the noncatering employees brought in to work catering events are beverage and restaurant employees.

The fourth and final subdepartment in the food and beverage department is the chef subdepartment, which consists of approximately 50 kitchen staff. The cooks and other kitchen employees in this subdepartment prepare food in the kitchens of Temptations buffet, Cavanaugh's, and Max & Erma's/Corky's (which share a kitchen). There is no indication that any chef subdepartment employees hold state ABC or gaming licenses. Nor is there evidence that they interchange with employees in the other three food and beverage subdepartments.

Analysis

Based on the foregoing facts, we find, contrary to the Acting Regional Director, that a unit limited to the beverage employees is inappropriate because those employees do not possess a community of interest separate and distinct from the restaurant and catering employees.

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, and shared supervision. See generally *Publix Super Markets*, 343 NLRB 1023 (2004); *Hotel Services Group, Inc.*, 328 NLRB 116 (1999); *Transerv Systems*, 311 NLRB 766 (1993); *The Phoenician*, 308 NLRB 826 (1992). Applying these factors, we find that Board precedent does not support a separate beverage services unit apart from restaurant and catering servers in the circumstances of this case.

1. Job function, duties, and skills

The beverage employees cannot be distinguished from the restaurant and catering employees on the basis of their job functions, duties, or skills. Most beverage, catering, and restaurant employees perform the same basic function: serving food and drink to customers, a fact that the Acting Regional Director neglected to consider.[3]

Moreover, many of the beverage employees have the same duties as many of the excluded catering and restaurant employees. The approximately 80 excluded catering and restaurant servers have essentially the same duties as the included cocktail servers. The approximately 15 excluded catering and restaurant bartenders perform the exact same duties as the 17 included bartenders.

The overlap in job function and duties is underscored by the fact that many beverage, catering, and restaurant

[3] The only beverage, catering, or restaurant employees who are not involved in serving food and drink are the catering housemen, who set up equipment for events (e.g., chairs, tables, decorations, etc.), the catering secretary, the catering coordinator, and the restaurant hosts and cashiers.

employees hold the same licenses. Although the Acting Regional Director relied in part on the fact that all beverage employees hold gaming and ABC licenses, many of the excluded catering and restaurant employees also hold those licenses. All catering employees (except for the three housemen) have both gaming and ABC licenses. All restaurant bartenders also hold both licenses. Restaurant subdepartment deli attendants and Starbucks baristas also have gaming licenses.

Finally, there is no distinction between the included and excluded employees in terms of skill or training. None of the beverage, catering, or restaurant jobs are highly skilled. Applicants for beverage positions are required to have a high school diploma or 1 to 3 months experience in the position; while the record is silent on the requirements for restaurant or catering positions, the work is so similar that one can presume that the job requirements are likewise similar. All bartenders throughout the facility are trained by beverage subdepartment staff. All employees with ABC licenses take the same training in upholding local liquor laws. All employees receive the same orientation.

Thus, beverage employees have no separate community of interest with regard to their job function, duties, or skills.

2. Interchange and integration

We additionally find significant functional integration and interchange among the beverage, catering, and restaurant employees. All three subdepartments are integral elements of the Employer's business of serving food and drink to patrons. For instance, the beverage subdepartment inventory clerk provides alcohol for the catering and restaurant operations as well as for the casino lounges and Hoosier's.

The functional integration between these three subdepartments is most clear with regard to the Employer's catering operation, which relies on restaurant and beverage employees to staff catering events on a regular basis. As discussed above, because the business of the catering subdepartment fluctuates widely from day-to-day, the Employer intentionally maintains a small crew of catering employees on the payroll which it supplements with employees from other departments, primarily beverage and restaurant employees, to staff its events during times of greatest demand.

Most larger catering events require additional staffing by beverage and restaurant employees, including the annual Peabody and American General corporate holiday parties, large annual Independence Day and New Year's Eve parties, and parties for VIP players. The Employer also relies on restaurant and beverage employees to help staff various weekly in-house catering events. Beverage employees are regularly assigned to work at least three weekly in-house catering events: "Ribs on the River," the Club 55 social hour, and sunset parties. "Ribs on the River" is a seasonal weekly party held on the boat in conjunction with restaurant food servers and cooks from Corky's. The Club 55 social hour is held every Sunday at Hoosier's and lasts about 3 hours, including set-up and tear-down. At Club 55 events, beverage employees serve drinks and catering employees serve food. Sunset parties are held every Thursday from May until September and last about 6 hours, including set-up and tear-down. As at the Club 55 social hour, beverage employees serve drinks and catering employees serve food at the sunset parties.

Fully staffing catering events requires frequent and regular interchange among the beverage, catering, and restaurant subdepartments. The general manager of catering testified that for her larger events she usually uses 10 to 15 beverage employees. Presented with a list of current beverage employees, she testified that at least 40 of them had worked for her on a catering event of some kind. From January 2005, through January 2006, there were 53 instances of beverage employees working catering events involving 29 different employees working a total of 297.31 hours.[4] During the warmer months, staffing the weekly in-house events is a regular and significant part of the beverage subdepartment's work schedule. For instance, in June and July of 2006, one out of the five Hoosier's cocktail servers worked the Club 55 social hour each week, and three out of the five took at least one turn working the event. During the same 2 months, at least one barback from beverage worked the Club 55 social hour and the sunset deck party each week and one barback worked Ribs on the River three times.

When working catering events, no distinction is made between beverage, catering, and restaurant employees. Employees from different subdepartments work side-by-side, wear the same uniform or costume, and answer to catering supervisors.[5] Usually, they are all paid the same rate through catering and share tips equally.

Thus, contrary to the Acting Regional Director, we find significant functional integration and temporary in-

[4] While the record does not include the same level of detail regarding restaurant employees' work on catering events, it is clear that it occurs regularly and that beverage, catering, and restaurant employees frequently work side-by-side on catering events. Employees from outside the food and beverage department also work catering events, but not as frequently as restaurant and beverage employees.

[5] The testimony indicated that the catering supervisors have the authority to discipline, assign, and direct beverage employees while working catering events; however, the general manager of catering testified that she has never given a written reprimand to anyone outside of catering.

terchange among the beverage, catering, and restaurant subdepartments.

3. Contact

The beverage employees cannot be distinguished from the catering and restaurant employees on the basis of their contact with one another. Beverage, catering, and restaurant employees often work side-by-side. Indeed, there appears to be as much contact between the beverage employees and the restaurant and catering employees as there is between many of the beverage employees, such as those who work at Hoosier's and those who work in the casino. Moreover, the beverage, catering, and restaurant employees all have many opportunities to come into contact with one another while they are off-duty.

The cocktail servers have contact with restaurant employees when they rotate through the poker room. Each cocktail server does a shift in the poker room about three to five times a month. During these shifts, whenever a patron in the poker room wants food, the cocktail server will transmit the order to the deli via computer and then pick up the food at the deli and bring it back to the poker room. This food service is a substantial part of the cocktail servers' shifts in the poker room, and half the deli's revenues come from food ordered from cocktail servers in the poker room.

In addition, the bartenders, cocktail servers, and barbacks have contact with catering and restaurant employees when they work catering events. For instance, the Club 55 social hour is always staffed by two employees from beverage and two from catering. The sunset parties are always staffed by two beverage employees and at least one catering employee. As noted above, the general manager of catering testified that for her larger events she usually uses 10 to 15 beverage employees to supplement her catering staff, as well as employees from the restaurants and other parts of the facility.[6]

Finally, the beverage inventory control clerk provides alcohol for the entire food and beverage department, bringing her into regular contact with restaurant and catering employees in the course of her duties.

In comparison, many of the beverage employees rarely see each other during their shifts. For instance, a cocktail server from the casino testified that she rarely sees Hoosier's employees during her shift. She cited one instance in which her area was understaffed and someone from Hoosier's was sent to relieve her so she could take her break. Although such temporary reassignments within the beverage subdepartment are not uncommon, it appears to be more common for a beverage employee to work a catering event.

Indeed, beverage, catering, and restaurant employees *all* have similar opportunities to come into contact with one another. In addition to the work-related contact discussed above, all employees are invited to the same employee events. All employees can park on certain levels of the parking garage. All employees get discounts in the restaurants and buffet and can eat there on their breaks. All employees who do not have direct deposit can pick up their check every other Wednesday after noon in the break room of the hotel.

Therefore, we disagree with the Acting Regional Director that the beverage employees can be distinguished from the restaurant and catering employees on the basis of their contact with one another.

4. Hours of work and pay

Likewise, we disagree with the Acting Regional Director that the included beverage employees can be distinguished from the restaurant and catering employees based on their method of pay or hours of work.

With regard to their pay, most beverage, catering, and restaurant employees are hourly employees, who are paid less than minimum wage and depend on tips for the bulk of their income.[7] The range of wage rates for positions in the subdepartments is similar. All employees receive the same benefits, depending on whether they work full or part time.

With regard to their hours of work, beverage, catering, and restaurant employees work roughly similar shifts. There are no regular shifts in the food and beverage department.[8] The beverage employees stationed in Hoosier's work shifts comparable to the majority of catering and restaurant employees. The casino is open all night on weekends and some holidays.[9] However, the beverage employees are not the only employees who are sometimes scheduled to work around the clock. Many restaurant employees also work swing shifts that extend nearly around the clock. The deli is open most of the time that the casino is open, except that it closes from

[6] The Employer emphasizes evidence indicating that employees throughout its operations volunteered to sell gift certificates for the casino at a kiosk in a local mall during the 2005 holiday shopping season. The kiosk was manned in pairs of two; however, there is no evidence that beverage employees actually worked alongside other food and beverage employees. Moreover, the testimony indicated that the Employer has no plans to repeat this promotion in the future.

[7] While most restaurant and beverage employees receive tips in the traditional manner, catering employees (and other employees working catering events) generally split gratuities paid by the catering client.

[8] In other words, one employee may be scheduled to work from 7 a.m. to 3 p.m. while another employee working in the same restaurant or lounge on the same day may be scheduled to work from 8 a.m. to 4 p.m.

[9] During the week it is open until the early hours of the morning and only closes for a few hours.

approximately 5:30 to 8:30 a.m. even when the casino is open all night. Temptations buffet is open until 5:30 a.m., and "night owl" servers work in the buffet during the evening and early morning hours.

Thus, beverage employees have no separate community of interest with regard to their hours of work and pay.

5. Transfers

In the past 5 years, there have been a number of transfers between the subdepartments at issue. For instance, Cathy Prow transferred from the deli to cocktail server on the casino boat, then transferred from cocktail server in beverage to dual rate catering server/cocktail server (meaning that she held both positions simultaneously), and finally transferred back to being solely a cocktail server. Corey Chandley was promoted from beverage barback to restaurant bartender. Erica Schwartz was promoted from Hoosier's cocktail server to restaurant bartender. Todd Fahrenbacher went from being a beverage barback to adding a dual rate in the deli. David Hogan transferred from the deli to beverage barback. Dawn King went from working as a cocktail server at Hoosier's to dual rate cocktail server/Cavanaugh's server, and then became exclusively a Cavanaugh's server. Moreover, every full-time bartender working in Cavanaugh's since it opened in 2002 was promoted to that position from the beverage subdepartment.

In view of the fact that a number of employees have transferred between the beverage, catering, and restaurant subdepartments in the past 5 years, and some more than once, we disagree with the Acting Regional Director that this evidence of transfers is insignificant.

6. Supervision

The beverage employees are separately supervised by the director of beverage.[10] Although this factor weighs in favor of a separate beverage unit, it does not compel a finding that such a unit is appropriate.[11] In this case, we find that this factor is outweighed by all the other factors supporting a conclusion that a separate beverage unit is not appropriate here. In view of the facts as a whole, we find that the beverage employees' separate supervision is insufficient to demonstrate that the beverage employees have a separate community of interest apart from the restaurant and catering employees.

[10] Beverage employees, however, are supervised by catering supervisors while working catering events.

[11] See, e.g., *Hotel Services Group*, supra, 328 NLRB at 117 (separate supervision does not mandate separate units).

Conclusion

In sum, we find that the beverage employees have little community of interest with each other that is not also shared with most of the catering and restaurant employees. All three subdepartments are integral elements of the Employer's business of serving food and drink to patrons; the interchange and functional integration among these three subdepartments is just as substantial as the interchange and functional integration between the beverage employees stationed in the casino and those stationed in Hoosier's lounge. There is as much contact among the beverage, restaurant, and catering employees as there is between the beverage employees in the casino and the beverage employees at Hoosier's. Beverage, catering, and restaurant employees work similar hours and are paid in a similar manner, and employees regularly transfer among these three subdepartments. The only community-of-interest factor supporting a separate beverage unit is that the Employer has organized the beverage operation as a separate subdepartment under the director of beverage. However, in view of the facts as a whole, the beverage employees' separate supervision is insufficient to demonstrate that they have a separate community of interest distinct from the restaurant and catering employees.

For these reasons, we find that the beverage subdepartment does not constitute an appropriate unit in the particular circumstances of this case. Rather, we find a unit of beverage, catering, and restaurant employees to be the smallest appropriate unit.[12]

[12] The Employer argues that the smallest appropriate unit must include the entire food and beverage department. While a food and beverage departmentwide unit would be *one* appropriate unit, we find that the smallest appropriate unit need not include the chef subdepartment. There is no evidence of shared skills, significant overlap of job functions and duties, interchange, similarity in method of pay, or transfers between the chef subdepartment and the other three subdepartments. Moreover, while there is undoubtedly some functional integration and contact between kitchen employees and "front of house" employees, there is significantly more functional integration and contact among the beverage, catering, and restaurant employees than there is between any of those three subdepartments and the chef subdepartment. Finally, Board precedent supports separate units of kitchen and "front of house" employees. See, e.g., *Washington Palm, Inc.*, 314 NLRB 1122 (1994).

Although the Employer alternatively argued that, at a minimum, the appropriate unit should include at least the beverage and catering employees, we find such a unit inappropriate for the same reasons a beverage-only unit is inappropriate. As discussed above, all *three* subdepartments share significant overlap of job functions, duties, and skills, functional integration, frequent interchange, regular contact, similar methods of pay, and a significant number of permanent transfers. Thus, with regard to the community-of-interest factors, there is little to differentiate any of these three subdepartments from one another. The Board may examine alternative units suggested by the parties if the petitioned-for unit is not appropriate, but it also has the discretion to select an appropriate unit that differs from the alternative proposals of the par-

ORDER

The Acting Regional Director's Decision and Direction of Election is reversed and the case is remanded for further appropriate action consistent with this decision.

Dated, Washington, D.C. March 23, 2007

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

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ties. See, e.g., *Bartlett Collins Co*., 334 NLRB 484 (2001) (finding that the smallest appropriate unit including the petitioned-for mold-repair employees must also include mold-cleaning employees but need not include all unrepresented production employees, as the employer contended); *NLRB v. Lake County Assn. for the Retarded*, 128 F.3d 1181 (7th Cir. 1997) (upholding unit determination even though it did not conform to either that sought by union or argued by employer, and was lesser in scope than proposed).