

El Conquistador Hotel, Inc. and Union de Tronquistas de Puerto Rico, Local 901, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner .

Sheraton Puerto Rico Corporation d/b/a Puerto Rico Sheraton Hotel; Hilton International Co. d/b/a Caribe Hilton Hotel; Hilton of San Juan, Inc. d/b/a San Jeronimo Hilton Hotel; Executive House Inc. d/b/a Condado Beach Hotel; Hilton Hotel International, Inc. d/b/a Mayaguez Hilton Hotel and Asociacion de Empleados de Casinos de Puerto Rico, Petitioner. Cases 24-RC-3968, 24-RC-3965, 24-RC-3969, 24-RC-3970, 24-RC-3971, and 24-RC-4070

October 27, 1970

DECISION AND DIRECTION OF ELECTIONS

BY CHAIRMAN MILLER AND MEMBERS
FANNING, BROWN, AND JENKINS

Upon separate petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, hearings were held before Hearing Officer Joseph M. Chandri. Following the hearings, these cases were transferred to the National Labor Relations Board in Washington, D.C., pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended. Thereafter, the Petitioners and Employers filed briefs.

The Hearing Officer's rulings made at the hearings are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, including the briefs, the Board finds:

1. The Employers are engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organizations involved claim to represent certain employees of the Employers.

3. Questions affecting commerce exist concerning the representation of certain employees of the Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The Petitioners' primary requests are for separate units of casino cashiers or, in the alternative, that

the casino cashiers be given self-determination elections to determine whether they wish to be included in the same units with the croupiers presently represented by the Petitioners.

Each of the Employers operates a hotel in Puerto Rico in which there is a gambling casino. Pursuant to Board certifications, each of the Employers, with the exception of the Mayaguez Hilton Hotel, has recognized and bargained with various unions for (1) units of service and maintenance employees of the hotel, restaurant, and bar operations,¹ with casino employees being specifically excluded, and (2) units of croupiers² with casino cashiers being specifically excluded.³

However, there are many employees employed in each of the Employer's hotel operations who are presently unrepresented. For example, at the Caribe Hilton, the night auditors and the security employees are unrepresented; at the El Conquistador Hotel, credit department employees, receiving employees, storeroom employees, payroll employees, cost accounting employees, timekeepers, accounts receivable and payable employees, income auditing employees, and secretarial and clerical employees are unrepresented; at the San Jeronimo Hilton, the timekeepers and the night auditors are unrepresented; at the Sheraton Hotel, all accounting department employees, office clerical, and secretaries are unrepresented; and at the Mayaguez Hilton, the auditor, night auditor, general cashier, lifeguards, timekeepers, cost accountants, reservation clerks, city ledger clerk, and secretaries to the general manager are unrepresented. However, it is not entirely clear from the record exactly which employees who work in the casino, in addition to the casino cashiers, are unrepresented. It appears that the doormen at the El Conquistador Hotel and Puerto Rico Sheraton, the relief doormen at the Mayaguez Hilton Hotel, and the casino waiters at the Caribe Hilton are the only other unrepresented casino employees at these hotels. The doormen at the San Jeronimo Hilton voted against representation with the croupiers in a self-determination election.

Facts

In general, the facts of each of the cases are quite similar except for the Condado Beach Hotel case which is discussed below. Therefore, the El Conquistador Hotel operations are described below and,

¹ The San Jeronimo Hilton, the Condado Beach Hotel, and the Caribe Hilton (together with the El San Juan Hotel which is not involved in these proceedings) are members of a multiemployer association which has recognized and bargained with a hotel and restaurant employees' union not involved in this proceeding for a unit of service and maintenance employees employed in the Employers' hotel, restaurant and bar operations, with casino employees being specifically excluded.

² In general, casino waiters and casino doormen have also been included in the croupier unit. However, in some units either the casino

waiters or the casino doormen have been specifically excluded. At the San Jeronimo Hilton and the Condado Beach Hotel, where the casino doormen were originally specifically excluded, pursuant to a later Decision and Direction of Election by the Regional Director, self-determination elections were directed among the doormen to determine if they wished to be included in the unit of croupiers.

³ The Mayaguez Hilton has recognized and bargained for such units as a result of voluntary recognition.

except for the minor differences noted, will be used to describe the operations of the other Employers also, and the role played by their casino cashiers in such operations.

The casino is a separate department of the hotel and is headed by a casino manager who has the authority and responsibility for its operation. Dealers or croupiers, casino cashiers,⁴ doormen, housemen, pantrymen, and waiters work in the casino. The casino is arranged with gambling tables surrounding a pit area which is the casino cashiers' work area.

The four to six casino cashiers are part of the accounting section of the administrative and accounting department, and are hired, disciplined, fired, and have their working conditions controlled by the comptroller.⁵ The casino cashier supervisor, Mr. Aponte, is the immediate supervisor of the casino cashiers and reports directly to the comptroller. However, the casino manager has the ultimate say over such things as dress, grooming, and behavior.

The casino cashiers work an 8-hour day, 40-hour week, while the croupiers work a 7-hour day, 35-hour week. However, both casino cashiers and croupiers are paid twice a month by check and receive the same bonus and per diem. Other accounting department employees are paid weekly and do not receive a bonus or per diem. The salaries of the casino cashiers are charged to the casino department rather than to the accounting section. For every 40 minutes the croupiers work, they receive 20 minutes off, while casino cashiers work a straight 8 or 9 hour shift without even a lunch break.⁶ Croupiers and casino cashiers share tips and both wear tuxedos which are furnished by the hotel.

The casino cashiers prepare reports for the comptroller who promulgates the accounting procedures and controls to be exercised by the casino cashiers in the performance of their work. Each has his own vault, but the combination of such vaults is known only by the head cashier and the senior assistant cashier. However, a key, which is also necessary to open the vault, is kept by the casino manager.

The casino cashiers perform substantially all their work on the casino floor. They interview guests who apply for credit and "gather data with respect to credit and make as much data as possible, either what

is obtained from [the casino cashier's] files or what he can obtain from calling other casinos on the telephone or what he can obtain directly from the client, and to pass all of this data on to the casino manager, who actually makes this decision." Each extension of credit has to be approved by the casino manager.

Upon reporting for work each night, one casino cashier, usually the head casino cashier, receives a "bank" for which he must account. After credit has been approved for a customer, the cashier who is responsible for the bank gives the money to another casino cashier who takes the money and payout slips to the croupier who hands it over to the customer who buys chips from the croupier. The payout slip must be signed by the casino cashier who is responsible for the bank, the cashier who actually takes the money to the croupier, and the casino manager who must approve the credit.⁷

The croupiers, casino cashiers, doormen, and casino management personnel must be licensed under Puerto Rico law. Each position requires a different license and the qualifications for each license are different. Croupiers must attend a government sponsored course, while casino cashiers receive on-the-job training.

In recruiting cashiers, the accounting department surveys the other cashiers in the hotel to determine if they have the requisite qualifications. Any such cashier selected must make application for a license, and, upon receipt thereof, he reports to the casino for duty.

Both the croupiers and the casino cashiers fill out their own timecards. The casino manager initials these cards, and the casino cashiers' cards are sent to the comptroller for approval of overtime while the cards of the croupiers are sent directly to the payroll department.

The Condado Beach Hotel

The cashiers at the Condado Beach Hotel⁸ work in a cage outside of but near the pit area. Accordingly, customers go to the cage to get credit and receive money — the cashier does not take the money to the customer. The Condado Beach Hotel contends that the casino cashier is authorized to issue credit up to

benefits are established solely by the Employer

⁷ The El Conquistador, the San Jeronimo Hilton, and the Caribe Hilton also utilize computers in their casino operations. All transactions of the casino are maintained in the computer. At each table is a set of keys for all the transactions made at that table which the croupier is responsible for operating and which has a read-out at the cashier's desk. The computer is also used for the extension of credit and requires the cooperation of the cashiers and croupiers.

⁸ The Condado Beach Hotel has only one regular cashier and one relief cashier. The relief cashier works 2 days a week as a casino cashier (the days the regular cashier is off) and works 3 days a week collecting bad debts under the direct supervision of the Credit Manager.

⁴ The Employer also employs food and beverage cashiers who work in the bars and restaurants, front office cashiers who work in the front office of the hotel, and cashiers who work in the front office at night (called night auditors). There has been one transfer in the last year from a food and beverage cashier to a casino cashier.

⁵ At the San Jeronimo, the casino manager authorizes cashiers to take time off, at the Puerto Rico Sheraton the casino manager authorizes time off, sick leave, and vacations for cashiers, and, in one instance, recommended that a cashier be given a wage increase.

⁶ It should be pointed out, however, that these differences and the differences in health benefits, pensions, etc., may be due to the fact that the croupiers' working conditions and benefits are established by a collective-bargaining agreement while the casino cashiers' working conditions and

\$5,000. However, Condado's Casino Manager Bird testified:

[The casino cashier] must distinguish between two kinds of credit. One, that is a credit already established probably for years, and in that, according to the card of that person, and by personal knowledge the cashier already knows what amount of credit that person wants. If he is a known customer and he is good and his credit has not been cancelled and has an original request for \$5,000, the cashier, without calling anyone will grant that man \$5,000 credit. [However,] originally the casino manager and the credit department [authorize cashiers to extend such credit.]

With respect to a new customer, Casino Manager Bird testified:

A new customer, as I said before, makes his request for credit, it is cleared through the credit office, if it cannot be cleared during that night, and then when that approval come from the credit department, then the cashier has the discretion.

[To determine whether credit can be granted on the same night it is requested], [y]ou go by many factors. In other words, by the person's credentials, his appearance and we grant him partial credit for the amount he requests. Say the amount requested is \$1,000. We say we will accomodate you for tonight for \$200 until we clear your credit.

I may [clear] it, or the cashier may [clear] it, so it is cleared through the credit department. Banks are closed at night. If he gives a casino reference, a local casino reference, the duty of the cashier is to call that casino and ask for the man's status.

Casino cashiers are bonded while croupiers are not. Casino cashiers are paid on a weekly basis, but croupiers are paid every 15 days, except that, as mentioned above, casino cashiers and croupiers at the El Conquistador are both paid twice a month. At the Condado Beach Hotel, however, the casino manager authorizes overtime and vacations which are authorized by the Comptroller at the El Conquistador Hotel.

Discussion and Conclusions

In opposing the petitions, the Employers make the following three contentions:

- (1) The casino cashiers are managerial employees.
- (2) The casino cashiers do not constitute such a homogeneous and coherent group with skills so specialized as to warrant their separate representation.
- (3) There is not a sufficient community of interest between the cashiers and the croupiers to warrant the granting of a self-determination election to the casino cashiers to determine if they wish to be represented in the same unit with the croupiers.

The Employers ground their assertion that the casino cashiers are managerial employees and, therefore, not entitled to union representation on the following factors:

- (1) Casino cashiers are involved exclusively in the financial operations of the casino.
- (2) They have access to extremely confidential information.
- (3) They have control and custody of enormous amounts of money and are bonded employees.
- (4) They have authority to extend credit to patrons, cash checks, verify credit in situations where credit has not been previously established, and in their discretion extend credit within the limits which they feel proper and even to cancel the credit extended to a patron.

In *Eastern Camera and Photo Corp.*, 140 NLRB 569, 571, the Board stated:

The Board has defined managerial employees as those who formulate, determine, and effectuate an Employer's policies. [*American Federation of Labor, etc.*, 120 NLRB 969, 973]. . . Moreover, managerial status is not necessarily conferred upon employees because they possess some authority to determine, within established limits, prices and customer discounts. [*Eljer Co.*, 108 NLRB 1417, 1420]. In fact, the determination of an employee's "managerial" status depends upon the extent of his discretion [*Kitsap County Automobile Dealers Association*, 124 NLRB 933], although even the authority to exercise considerable discretion does not render an employee managerial where his decision must conform to the employer's established policy. [*Albert Lea Cooperative Creamery Association*, 119 NLRB 817, 822.]

In these cases, it appears that the only discretion exercised by the casino cashiers is the extension of credit. In some of these hotels, however, such extension of credit must be approved by the credit manager or the casino manager or his assistants. In the hotels in which the cashier does extend credit on his own, he does it only after following the hotel's established policy, i.e., he calls other hotels about the patron's credit rating, he checks the patron's credit cards and checks his own files for a credit rating, etc.

Thus, it appears that the casino cashiers neither formulate, determine, nor effectuate these Employers' policies and that their functions involve the exercise of limited discretion which borders on routine performance. Therefore, we find that the casino cashiers in these cases are not managerial employees.

As previously stated, the Petitioners request that if the casino cashiers in these cases do not constitute separate appropriate units, they should be given the opportunity to decide whether they wish to be added

to the existing croupiers units. We find merit in the Petitioners' latter request.

In *El San Juan Hotel Corporation, d/b/a El San Juan Hotel*, 179 NLRB No. 45, the petitioning union also sought a separate unit of casino cashiers or, in the alternative, a self-determination election to determine if the cashiers wished to be included in the same unit with the croupiers who were represented by the petitioning union. On facts very similar to those presented by these cases, the Board found that the casino cashiers, apart from the other unrepresented employees, shared a substantial community of interest with the croupiers and were entitled to a self-determination election to determine if they wished to be represented in the same unit with the croupiers.

Since the factual differences between these cases and *El San Juan Hotel, supra*, are so minor as to be of no substantive importance, we find that *El San Juan Hotel* constitutes controlling precedent for these cases and warrants the direction of self-determination elections granting the casino cashiers the opportunity

⁹ To the extent that *El Dorado Club*, 151 NLRB 597, and *105 Casino Corporation d/b/a Nevada Club*, 178 NLRB No. 15, are inconsistent with our holdings in *El San Juan Hotel Corporation, d/b/a El San Juan Hotel*, 179 NLRB No. 45, and herein, they are hereby overruled.

¹⁰ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the elections should have access to lists of voters and their addresses which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236, *NLRB V Wyman-Gordon Company*,

to determine whether they wish to be represented in the same units with the croupiers.⁹

Accordingly, we find the following groups in each of the cases appropriate for the purposes of self-determination elections.

All casino cashiers employed in each of the separate hotel gambling casinos in San Juan, Mayaguez, and Fajardo, Puerto Rico, excluding all other employees and supervisors as defined by the Act.

If a majority of the employees in each voting group votes for the Union which presently represents the same hotel's croupiers they will be taken to have indicated their desire to be included in the existing unit of croupiers currently represented by such Union at that hotel and the Regional Director will issue certifications to that effect.

[Direction of Elections¹⁰ omitted from publication.]

394 U S 759 Accordingly, it is hereby directed that election eligibility lists, containing the names and addresses of all the eligible voters must be filed by the Employers with the Regional Director for Region 24 within 7 days of the date of this Decision and Direction of Elections. The Regional Director shall make these lists available to all parties to the elections. No extension of time to file these lists shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.