

**Hotel Westward Ho and Hotel and Restaurant Employees and Bartenders' Local Union 631, AFL-CIO, Petitioner. Case 28-RC-1699**

June 13, 1968

**DECISION ON REVIEW**

**BY CHAIRMAN MCCULLOCH AND MEMBERS FANNING AND BOWN**

On October 26, 1967, the Regional Director for Region 28, issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate a unit of the Employer's hotel kitchen employees. Thereafter the Employer, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, filed with the National Labor Relations Board a timely request for review of such Decision and Direction of Election, contending, *inter alia*, that the only appropriate unit should include all its unrepresented hotel operating employees.

The Board, by telegraphic order dated December 5, 1967, granted the Employer's request for review of the Regional Director's unit determination and stayed the election.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review<sup>1</sup> and makes the following findings:

The Westward Ho is a hotel located in Phoenix, Arizona. Petitioner seeks a unit limited to the hotel's kitchen employees.<sup>2</sup> The Employer contends that the only appropriate unit should include—in addition to its kitchen personnel—all of its other unrepresented operating employees. The Regional Director, upholding the Petitioner, found the requested kitchen unit to be appropriate. The Employer argues on review that a kitchen unit is inappropriate because the kitchen is functionally integrated with other hotel operations and, in any event, that a unit of hotel kitchen employees is contrary to Board precedent. We reject these contentions and uphold the unit determination of the Regional Director.

At least 60 percent of the Employer's business is derived from conventions held at the hotel and almost 80 percent of its dining room customers are hotel guests attending conventions there. The activities of all departments of the hotel including food service are carefully coordinated for each convention.

Food is served at the hotel in the main dining room, a fountain, and three private clubs.<sup>3</sup> The food for all of these service locations is essentially prepared in the main kitchen. Additional "touches" may also be added to food served in the private clubs by cooks detailed from the main kitchen who perform this work in a small auxiliary kitchen adjacent to each club.

All food facilities of the hotel come under the jurisdiction of the Employer's Food Service Department which is supervised by the catering office supervisor. The latter discusses problems with, and makes suggestion to, the kitchen chef with a view towards improving service. The chef also attends meetings of dining room personnel at which food service is discussed. The chef does not, however, report to the catering office supervisor but is instead directly responsible to the Employer's president or hotel general manager.

All 27 employees of the kitchen are under the overall supervision of the chef, although the dishwashers and porters are immediately supervised by the kitchen steward. The chef has authority to hire or discharge kitchen personnel subject only to clearance by the central office. He determines the kitchen's hours of work, schedules overtime and vacations, disposes of grievances, and recommends wage increases within the framework of the hotel's wage scales.

The Employer contends that there is an overlap in the functions and skills of the kitchen help and of the employees working in other work areas of the hotel such as the storeroom, linen room, and dining room. It further argues that the employees in the kitchen interchange with personnel assigned to other operating departments and that kitchen employees have regular contacts with the public. The record, however, lends little support to those contentions.

Thus, it does not appear that any employees except those assigned to the kitchen are engaged in the preparation of food. Interchange of employees between the kitchen and other departments is

<sup>1</sup> The Employer's request for oral argument is hereby denied because the record, including the request for review and briefs, adequately presents the issues and positions of the parties.

<sup>2</sup> The unit found appropriate by the Regional Director includes all cooks, cooks' helpers, pantry workers, butchers, bakers, kitchen helpers, dish-

washers, and kitchen porters. Inasmuch as the record was insufficient to determine the status of the cafeteria employee or employees, the Regional Director decided to permit him or them to vote subject to challenge.

<sup>3</sup> The hotel cafeteria is used exclusively by hotel employees.

minimal, and its dearth is explained by the hotel's policy not to assign employees to duties at which they have had no experience. On the occasions when kitchen employees have been asked to wait on tables in the dining room, only those with prior experience as waiters have been so assigned. Dishwashers have been detailed, infrequently, to scrub floors when the hotel was short handed. There is no indication that other hotel employees have ever been assigned to work in the kitchen.

A general rule kitchen employees have no contact with the public. Exceptions occur when a buffet is put on and a cook is sent to carve roast beef or, to a more limited degree, when cooks work in an auxiliary kitchen next to one of the three private clubs putting finishing touches on food to be served there.

None of the Employer's employees are presently represented with the exception of steamroom employees,<sup>4</sup> who are represented by Local 428, International Union of Operating Engineers, AFL-CIO. Petitioner had represented a hotelwide unit of the Employer's employees from 1943 to 1947, but there has been no bargaining for nonsteamroom personnel for more than 20 years. Petitioner also presently represents hotelwide units of the Adams Hotel and the Samoan, two other hotels which are similar to the Wstward Ho and which are located in Phoenix, Arizona. No labor organization at this time seeks a broader unit of the Employer's employees than that described by the petition.

On these facts the Regional Director found a kitchen unit to be appropriate primarily relying upon, *John Hammonds and Roy Winegardner, Partners, d/b/a 77 Operating Company, d/b/a Holiday Inn Restaurant*, 160 NLRB 927, in which the Board found appropriate a less than overall unit of motel employees, and also relying upon *Toffenetti Restaurant Company, Inc.*, 133 NLRB 640, in which the Board found appropriate a unit of kitchen employees at a restaurant.

The Employer's principal argument on review is that these precedents are inapplicable to this case. Thus, it points out that, unlike *Holiday Inn*, the facilities of the Wstward Ho are highly integrated and that the kitchen and dining room are operated merely as a part of its service to its guests. The Employer likewise contends that *Toffenetti* does not

apply because there, unlike the Regional Director's finding here, an essential basis for the Board's unit determination was a unique local pattern of bargaining for kitchen units. We reject these contentions.

The Board's decision in *Holiday Inn* applies to this as well as other unit determinations in the hotel/motel industry. In *Holiday Inn* the Board specifically overruled its longstanding policy of favoring overall units of hotel employees.<sup>5</sup> Noting that its experience in dealing with hotel unit issues over a period of years had shown that a high degree of integration coupled with a close community of interest among all employees does not necessarily exist in every hotel operation, the Board further stated that in future hotel cases it would "[t]hereafter consider each case on the facts peculiar to it in order to decide wherein lies the true community of interest among particular employees"<sup>6</sup> at a hotel; i.e., follow the Board's general criteria as they have developed from the Board's practice for dealing with unit questions in all industries. And in finding a less than overall unit to be appropriate in *Holiday Inn*, viz, a unit of restaurant employees, the Board applied certain restaurant unit precedents involving analogous, but nonhotel, enterprises which provided food service.<sup>7</sup>

Therefore, in determining an appropriate unit based on the community of interest "among particular employees" at a hotel in accordance with the rule of *Holiday Inn*, we shall follow our general practice for all industries—of weighing all relevant factors, such as distinction of skills and functions, lines of supervision, employee interchange, the enterprise's organizational structure, integration of operations, etc. This is precisely what the Regional Director did here. While it is true that the operations of the Employer are somewhat more integrated than those of the employer in *Holiday Inn*, this<sup>8</sup> integration of the Employer's various guest service activities standing alone does not establish the inappropriateness of the unit sought by the Petitioner.<sup>9</sup> In agreeing with the Regional Director's unit finding, we note in particular the following considerations: Effective supervision of the kitchen employees is vested in the chef, including the effective power to hire and discharge employees, dispose of grievances, schedule overtime and vacations,

<sup>4</sup> Steamroom employees, stationary engineers, and additional maintenance personnel.

<sup>5</sup> A policy originally enunciated in *Arlington Hotel Company, Inc.*, 126 NLRB 400

<sup>6</sup> *Holiday Inn*, supra, 930 (Emphasis supplied)

<sup>7</sup> *Allied Stores of Ohio, d/b/a A Polsky Company*, 90 NLRB 1868 (a restaurant unit at a retail department store), and *F. W. Woolworth*, 144 NLRB 307, 309 (a departmental unit of lunch counter, snackbar, baking

counter, and kitchen employees at a retail chain variety store).

<sup>8</sup> In *Holiday Inn* the motel and the restaurant were operated in separate buildings

<sup>9</sup> The Board has held, subsequent to *Holiday Inn*—as the Regional Director also pointed out in his decision—that integration of operations is merely one factor to be considered in arriving at an appropriate unit determination but this factor is not necessarily controlling. See *E. I. DuPont de Nemours and Company*, 162 NLRB 413.

establish working hours, and recommend wage increases. The kitchen employees enjoy a separate functional identity centered around their special skills in the preparation of basic foods. We further note the kitchen employees' infrequent contact with the hotel's clientele (hotel guests or diners); the absence of substantial interchange between the kitchen and other employee groupings at the hotel; the remoteness of a bargaining history on a broader basis; the circumstance that no other labor organization is seeking to represent the Employer's employees in a broader unit; and, finally, the fact that the bargaining history for the Employer's steamroom employees demonstrates the feasibility at this hotel of less than an overall unit. The Regional Director's determination was therefore in accord with the underlying principle of *Holiday Inn*.

In further accord with *Holiday Inn*, the Regional Director drew from the Board's experience in determining units of food service employees by applying *Toffenetti*—a restaurant industry decision—as the direct authority for his kitchen unit finding. For, as previously mentioned, the Board in *Holiday Inn* specifically held that restaurant unit principles may be applied in determining a unit of hotel food service employees.<sup>10</sup>

While there is a factual distinction between the present case and *Toffenetti*, in that the record in *Toffenetti* showed a widespread pattern of bargaining for kitchen units in the local area which is not

present in this case,<sup>11</sup> the fact remains that the Board's decision in that case is also based on a finding that the kitchen employees possess a separate community of interest, and the local pattern of bargaining in that case serves, moreover, to support the fundamental proposition that a unit of kitchen employees is practicable. Further, the other factors with respect to the kitchen employees in *Toffenetti* i.e., their limited contacts and interchange and the distinct nature of their work, are virtually the same in the present case.

In view of all the foregoing, but particularly the separate identity and functions of kitchen employees, their separate immediate supervision, the minimal interchange with other employees, their infrequent contact with the public, the remoteness of a bargaining history on a broader basis, and the fact that no other labor organization seeks a broader unit at this time, and the fact that a less than overall unit of this Employer's employees is clearly feasible (because of the bargaining history in the steamroom unit), we find, in agreement with the Regional Director, that a unit of kitchen employees<sup>12</sup> is appropriate.<sup>13</sup>

Accordingly, the case is remanded to the Regional Director for Region 28 for the purpose of conducting an election pursuant to his Decision and Direction of Election in the unit found appropriate except that the payroll period for determining eligibility shall be that immediately preceding the date below.<sup>14</sup>

<sup>10</sup> The limitation in *Toffenetti*—where the Board stated that its kitchen unit finding there was not intended to change its then existing overall unit rules for the hotel industry—has been withdrawn by the force of the Board's decision in *Holiday Inn*.

<sup>11</sup> The record herein indicated that kitchen employees are included in broader units at the only other two hotels in the Phoenix, Arizona, area which appear to have kitchen employees which are organized. However, we do not believe that the local history is sufficient to constitute a pattern of any significance. Moreover, it also appears that there are, at other hotels in the local area, units less than hotel wide in scope. For, as has been mentioned, the Employer's hotel has a steamroom unit. And the Employer concedes in its request for review that this unit "was the product of a long standing area bargaining history which exists to this day"—thus indicating the existence of separate steamroom units at still other local hotels. Since the local pattern of bargaining is therefore mixed—some overall units and some smaller units—the only meaning we can attach to this background is that both overall or smaller units of hotel employees are a matter of industrial reality in the Phoenix area.

<sup>12</sup> *Holiday Inn, supra; Toffenetti Restaurant Company, Inc., supra.*

<sup>13</sup> Pointing to some testimony that Petitioner was unsuccessful in organizing any of the hotel's unrepresented employees except in the kitchen, the Employer also argues that the Regional Director's unit determination is based upon Petitioner's extent of organization and is contrary to the proscription of Sec. 9(c)(5) of the Act. However, the Regional Director did not rely upon this factor in making his unit findings. And even if he had, his determination would not violate Sec. 9(c)(5). For, as the Supreme Court held in *N.L.R.B. v Metropolitan Life Insurance Company*, 380 U.S. 438, 441-442, "both the language and the legislative history of §9(c)(5) demonstrate that the provision was not intended to prohibit the Board from

considering the extent of organization as one factor, though not the controlling factor, in its unit determination." See also *Western and Southern Life Insurance Company*, 163 NLRB 138, enfd. 391 F.2d 119 (C.A. 3).

The Employer also urges that we should find that either an overall unit excluding the steamroom employees is appropriate or, in the alternative, that a unit of all the food department employees including the kitchen is appropriate. In upholding the finding of the Regional Director that the requested kitchen employees constitutes an appropriate unit we do not suggest that either alternative unit proposed by the Employer is inappropriate. We do not need to reach the latter questions. For there is nothing in the Act which requires that the unit for bargaining be the only appropriate unit. The Act requires simply that the unit be "appropriate" to insure to employees in each case the fullest freedom in the exercise of their rights guaranteed by the Act. *Western and Southern Life Insurance Company, supra*, and cases cited at fn. 19 therein. And it is not the Board's function to compel all employees to be represented or unrepresented at the same time nor to compel a labor organization to represent employees it does not wish to represent unless an appropriate unit does not otherwise exist. *McMoran Trucking Co., Inc.*, 166 NLRB 700, and cases cited in fn. 6 therein.

<sup>14</sup> An amended election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 28 within 7 days after the date of this Decision on Review. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list 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. *Excelsior Underwear Inc.*, 156 NLRB 1236