

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**CAESARS ENTERTAINMENT, INC.<sup>1</sup>**

**Employer**

**and**

**Case 28-RC-069491**

**INTERNATIONAL UNION, SECURITY, POLICE  
AND FIRE PROFESSIONALS OF AMERICA (SPFPA)<sup>2</sup>**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

International Union, Security, Police and Fire Professionals of America (the Petitioner) seeks to represent all full-time and regular part-time security officers performing guard duties, as defined in Section 9(b)(3) of the National Labor Relations Act (the Act), employed by Caesars Entertainment, Inc. (the Employer) at its Flamingo, O'Sheas, and Bill's Gambling Hall (Bill's) facilities in Las Vegas, Nevada. The unit sought by the Petitioner would exclude the Employer's other employees, office clerical employees, professional employees, and supervisors as defined by the Act, including those individuals who serve as Field Training Officer Golds (FTO Golds), lead assistant supervisors, or assistant supervisors<sup>3</sup> whom the Petitioner asserts are supervisors within the meaning of Section 2(11) of the Act. The Employer takes the position that FTO Golds are not statutory supervisors and should be included in the unit found appropriate. In addition, the Employer urges that the only appropriate unit is one comprised of all full-time and regular part-time security officers performing guard duties at all five properties, including the Flamingo, O'Sheas, and Bill's, as well as Harrah's and Imperial Palace. Based on the estimates and ranges set forth in the record, the units proposed by the Petitioner and the Employer would include approximately 130 and 297 employees, respectively.

Based on the record as a whole and for the reasons more fully described below, I find that the petitioned-for unit is an appropriate unit for purposes of collective-bargaining and that FTO Golds are supervisors within the meaning of Section 2(11) of the Act and should be excluded from the unit found appropriate herein.

**DECISION**

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<sup>1</sup> The name of the Employer appears as corrected at the hearing.

<sup>2</sup> The name of the Petitioner appears as corrected at the hearing.

<sup>3</sup> The record shows that the classification at issue is sometimes referred to as assistant supervisor, lead assistant supervisor, or FTO Gold. These terms will be used interchangeably in this Decision.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

**1. Hearing and Procedures:** The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.

**2. Jurisdiction:** The parties stipulated, and I find, that the Employer, a Delaware corporation, is engaged in the operation of hotels and casinos in Las Vegas, Nevada. During the past twelve months, the Employer, in conducting its business operations described above, derived gross revenues in excess of \$500,000 and purchased and received at the Employer's facilities goods valued in excess of \$50,000 directly from points outside the State of Nevada. I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Board's asserting jurisdiction in this matter will accomplish the purposes of the Act.

**3. Labor Organization Status:** The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

**4. Statutory Question:** A 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.

**5. Unit Finding:** While the parties disagree as to whether the unit should include employees from three or five of the Employer's facilities, they agree that a unit comprised of full-time and regular part-time security officers performing guard duties as defined in Section 9(b)(3) of the Act, including field training officers, would be appropriate. The parties also agree that all other employees, office clerical employees, professional employees, and supervisors as defined in the Act, should be excluded from the unit. The parties stipulated, and I find, that the Employer's Security Director, who oversees the five facilities, as well as the Investigations Managers, Security Managers, Security Shift Supervisors, and the Security Investigators, should be excluded from any unit found appropriate because they are supervisors within the meaning of the Act.

This case presents two issues: (1) whether a unit of security officers working at the Employer's Flamingo, O'Sheas, and Bill's facilities is an appropriate unit under the Act; and (2) whether those working as FTO Golds should be excluded from the unit because they are supervisors within the meaning of Section 2(11) of the Act. As discussed more fully below, I conclude that the petitioned-for unit is an appropriate unit under the Act and that FTO Golds are statutory supervisors who should be excluded from the unit found appropriate herein. In setting forth the reasons for my decisions, I shall discuss the Employer's operations, the FTO position, the FTO Gold position, and the basis for my conclusion.

## **A. The Employer's Operations**

The Employer owns and operates a number of casinos in Las Vegas, Nevada, which have been divided into a number of groups called pods. The relevant "pod" at issue was formed in 2008, and includes Harrah's, Imperial Palace, Flamingo, O'Sheas, and Bill's. The five properties in this pod occupy a 700-yard long section of Las Vegas Boulevard and run from North to South in the following order: Harrah's, Imperial Palace, O'Sheas, Flamingo, and Bill's, with each operating a separate facility. Each property is separately licensed by the gaming authority of the State of Nevada with the exception of O'Sheas, which currently operates under the Flamingo's license. Each of these properties, with the exception of O'Sheas, also operates a hotel.

The Employer's security department is responsible for safeguarding customers and Employer assets at this pod. The pod's security department consists of a security director, an investigations manager, 3 investigators, 7 security shift managers, and 11 security shift supervisors. The security officers work for the shift supervisors.

Each security officer has a designated base facility and generally reports to the facility's shift supervisor, who in turn reports to the facility's shift manager. Shift managers report to an investigations manager, who in turn reports to the security director. There are no shift managers for Bill's and that the record is silent as to whether there is a shift manager for O'Sheas. The record shows that the shift manager for Flamingo oversees O'Sheas and Bill's, though not Harrah's or the Imperial Palace. Each security officer is paid through the payroll associated with his or her assigned facility and clocks in and out of work at that particular facility. The assigned or base facility provides the security officers with resources and tracks their costs. However, security officers based out of O'Sheas clock in and out using the Flamingo's time clock. The record shows that O'Sheas' security operations are subsumed within Flamingo's and Bill's operations, with part of the security officers' shifts split among the three properties.

In terms of supervision, security managers at each facility initiate all discipline issued to security officers and may issue written reprimands and suspensions. Security managers also initiate terminations at each facility, but do so with approval from the security director. Each facility's security manager determines the need for and authorizes overtime, notifying the security director only after such decisions are made. The facilities' security managers also determine where a security officer may take a break. Security officers at Flamingo, O'Sheas and Bill's may take their break in any of those three properties, but must obtain permission to use the break facilities at Harrah's or Imperial Palace.

As to operational control, a facility's security manager may initiate a sweep of his or her facility without the prior involvement or approval of the security director. A sweep involves a group of security officers moving in mass through a facility or the sidewalk in front of its facility to move along those who are not patrons of the facility. Security managers do not direct employees from other facilities to participate in operations such as sweeps. Instead, a facility security manager may contact another facility's security manager to ask for assistance and does so without advance approval from the security director.

In terms of the uniformity of work rules among the properties, the Employer issues a standard employee handbook to all of its employees. The handbook applies to not only the employees of the five properties involved here, but also covers employees at numerous of the Employer's other facilities. The handbook introduced into evidence at the hearing predates the existence of the relevant pod at issue. There is no bargaining history for security officers among any of the Employer's properties. Although each property has some bargaining history related to other units, the records fails to show a pattern among units of any two properties. For example, there are no collective-bargaining agreements covering any two properties, even where both properties have collective-bargaining agreements in units comprised of the same types of employees. There is no pattern of collective-bargaining which exists as to all five properties for any unit or craft.

### **B. The Employer's Security Officers**

Security officers are responsible for protecting the Employer's customers, property, and facility. They wear uniforms which have elements that are common to all five properties, and elements distinguishing the properties. For example, all security officers wear a uniform consisting of a yellow shirt, black cargo pants, a baton, and an identification card which lists the security officer's name and all five pod properties.

Other aspects of security officers' work reflect more of a property-based operation. For example, the Employer issues its security officers radios tuned to the dispatch frequency for the assigned property and do not receive calls from other properties. That being said, the record reflects a significant amount of security integration among Flamingo, O'Sheas, and Bill's that is not shared by Harrah's and Imperial Palace. Some examples include the fact that security officers at Flamingo, O'Sheas, and Bill's wear patches with Flamingo, O'Sheas, and Bill's logos, while security officers at Harrah's and Imperial Palace wear patches with Harrah's and Imperial Palace logos. Harrah's and Imperial Palace have their own uniform rooms which supply their security officers. Security officers at O'Sheas use the uniform room at the Flamingo.

Similarly, the Employer issues keys to security officers which provide access to certain properties. Security officers assigned to the Flamingo, O'Sheas, and Bill's properties receive keys which are programmed for those three properties, but not Harrah's or the Imperial Palace. Keys issued to security officers at Harrah's and the Imperial Palace work at those properties, not the others.

In terms of dispatching, security officers rotate through dispatch positions. Dispatchers send security officers to various locations. Radios monitor only one channel at a time. There are dispatchers at Harrah's, Imperial Palace, and the Flamingo. Security officers at the Flamingo use a radio which receives dispatches from the dispatcher for the Flamingo and Bill's. In addition, O'Sheas' operations are part of the Flamingo's dispatch. Such security officers would not receive dispatches from Harrah's or Imperial Palace.

Security officers use a wand check-in procedure as they move about some of the properties. Those security officers assigned to the Flamingo, O'Sheas, and Bill's are required to use wands to check in at the Flamingo, O'Sheas, and Bill's, but not at Harrah's or the Imperial Palace. Similarly, security officers for Harrah's and the Imperial Palace use the wands to check in at those properties but not when they cross over to the Flamingo, O'Sheas, or Bill's. Some security officers perform bike patrols for the three properties which are operated out of the Flamingo.

The record establishes other aspects of the Employer's security operations that honor what appear to be strict lines of control. For example, security officers transport sick guests among the different properties within the pod by escorting the guest by wheelchair to the property dividing line between the Imperial Palace and O'Sheas. At the property line, the guest is transferred to the other property's security personnel. Neither the wheelchair nor the initiating security officer accompanies the guest across the property line which is south of Harrah's and the Imperial Palace, and north of O'Sheas, the Flamingo, and Bill's.

In terms of wages and benefits, there are no differences in wages and benefits among the security officers at the five properties as the wage scale is implemented across many of the Employer's properties, both inside and apart from the pod.

The hiring procedure is a mix between Employer-wide and facility-specific processes. New security guard jobs posted for outside hiring are published by the Employer in a property-specific manner, not based on a group of properties. Non-employees applying for security officer positions at one of the five properties apply for that specific job online or at the Employer's employment center at the Bally's Las Vegas Hotel and Casino. A recruiter contacts the applicant based on resume and qualifications, and schedules a first interview between the recruiter and the applicant. The recruiter then schedules a second interview, which is with a panel of managers from various Employer properties, including properties outside the relevant pod. The applicant is then sent to one of the pod properties to meet with the security shift manager, the security director, or shift manager. Successful applicants receive an offer for a specific property, not for a group of properties. This property becomes the base property for the security officer. The base facility is the only facility listed on the Employer-issued identification card. The base facility pays the security officer, and the name of the base property is included on the security officer's paycheck.

Each of the security officers must complete an orientation offered to employees across the Employer's properties, including properties outside of the relevant pod. Each security officer must complete three weeks of on-the-job training at his or her assigned facility, at which time the officer is assigned to a field training officer (FTO). Before completing his or her 90-day probationary period, each security guard must also complete security academy training common to all the range of the Employer's properties, including those outside the relevant pod. Security managers, security shift supervisors and FTOs provide refresher training for security officers at monthly and periodic pre-shift meetings. The security officers at Harrah's and the Imperial Palace attend pre-shift meetings at Harrah's. The security officers at the Flamingo, O'Sheas, and Bill's attend pre-shift meetings at the Flamingo.

The work rotation, schedule, vacation, and call-in procedures vary depending on the security officer's base property. Security officers assigned to the Flamingo, O'Sheas, and Bill's rotate among those facilities during a given shift, but not with Harrah's or the Imperial Palace. Security officers operate and rotate based upon two different schedules according to his or her base property. An individual assigned to Harrah's makes the schedules for the Harrah's and Imperial Palace properties. A security shift supervisor at Bill's makes the schedules for the other three pod properties. Vacations are arranged through the security manager or security shift supervisor of the particular base facility.

There is some interchange of security officers among all five facilities, including, for example, the use of officers from all of the facilities for sweeps, for special occasions such as summer pool parties, seasonal events such as St. Patrick's Day, or emergencies. Additionally, the Employer occasionally assigns security officers for cross-training at another facility. Many special events are handled on a voluntary overtime basis.

The procedure used to call in to work varies depending on the facility. Call ins for the Flamingo, Harrah's, and the Imperial Palace go to the on-duty security manager (security officers at O'Sheas call in to the Flamingo security manager). The record is silent as to the call-in procedure in place at Bill's, though officers there may call the Bill's dispatcher when there is no Bill's supervisor on duty.

The record shows that shift bids at the Flamingo, O'Sheas, and Bill's facilities are awarded first to the most senior security officer at the facility, then to the most senior security officer within the Flamingo, O'Sheas, and Bill's who bid on the position. If no security officer from those properties bids, then the position is made available to security officers from the Harrah's or Imperial Palace before being opened to others. An analogous system is used at the Harrah's and the Imperial Palace locations, where bids are awarded based on: (1) high seniority bidder from the base facility; (2) high seniority bidder from Harrah's or the Imperial Palace; then (3) the high seniority bidder from Flamingo, O'Sheas, and Bill's, before considering other options to fill the position.

### **C. FTO Golds**

FTO Golds are those FTOs engaged in training to fill supervisor or management positions. They serve the same function and role as a lead assistant supervisor or assistant supervisor. Lead assistant supervisors at Bill's, at times, have the authority to direct work, but need a security shift supervisor or security manager to approve issuing discipline. There are three full-time FTO Golds at Harrah's, one at the Imperial Palace, three at the Flamingo, and none at O'Sheas or Bill's. There are three full-time lead assistant supervisors at Bill's, a property at which the title FTO Gold has yet to be used.

FTO Golds are used to temporarily fill supervisor positions when supervisors are absent and to perform limited supervisory tasks or assignments. They adjust schedules, approve arrests for trespass, approve a day's payroll, can approve an assignment to a different facility, and can move people from post to post, all subject to the approval of their manager or supervisor. They use independent judgment during emergencies without direction from a

supervisor or manager. At times, the FTO Golds' uniforms differ from the FTOs' uniforms, including the wearing of business attire as opposed to uniforms. Business attire may be worn from once every couple of months to continuously, depending on the assignment of their supervisor or manager. When there is no supervisor or manager on the property, the FTO Gold monitors the property as acting manager or supervisor with no managerial or supervisory oversight.

FTO Golds and FTOs attend some supervisor meetings. FTO Golds are included on communications sent to other supervisors and managers regardless of whether they are serving as a manager or supervisor at the time of the communication.

FTO Golds use independent judgment to write performance appraisals, which are given to managers for review before the FTO Gold presents it to the employee. The record disclosed no known instance where an FTO Gold's recommendation has ever been changed by a reviewing supervisor or manager. The appraisals are to give employees feedback on their job performance and to determine step pay increases and potential for promotion.

#### **D. Legal Analysis and Determination**

##### **1. Appropriate Bargaining Unit**

In resolving the issues related to the scope of the unit in this matter, which involves a unit consisting of guard employees as defined in Section 9(b)(3) of the Act, I am mindful of two competing principles: (1) that a single-facility unit is presumptively appropriate. *Beaumont Forging Co.*, 110 NLRB 2200, 2201 (1954); and (2) it is the Board's policy to include all of an employer's guards in a single unit unless "there is a subgroup with a separate community of interest that warrants separate representation." *University of Tulsa*, 304 NLRB 773, 774 (1991), citing *Broadway*, 215 NLRB 46 (1974). Neither principle squarely applies to this case. First, inasmuch as neither the Petitioner nor the Employer seeks a single-facility unit in this case, a single-facility presumption does not attach. *Capital Coors Co.*, 309 NLRB 322, 322 fn. 1 (1992). Second, neither the Petitioner nor the Employer seeks to include *all* of the Employer's guards in a single unit, as neither seeks to include the guards from the Employer's premises outside of the pod's five properties.

Even for guard units, the Board does not require that an election be directed in only the most appropriate bargaining unit. Rather, the standard is that the unit found appropriate be "an appropriate" unit. *American Security Corp.*, 321 NLRB 1145, 1146 (1996). As discussed below, based on the record before me, I find the petitioned-for unit is an appropriate unit. The record shows that there exists a separate community of interest among the security officers employed at the Flamingo, O'Sheas, and Bill's properties which makes such a unit appropriate. While some factors gravitate toward a finding that a broader unit would also be appropriate, the record shows that the petitioned-for unit is appropriate.

More specifically, though there is some interchange among the employees at the five facilities, such as the occasional deployment of security officers from all five facilities, this is limited primarily to special events or emergencies. Many special events are staffed on a

voluntary, overtime basis which does not affect the normal shifts or duties of the security officers at their base properties. Such a voluntary system provides minimal weight in determining the amount of interchange. Cf. *New Britain Transp. Co.*, 330 NLRB 397, 398 (1999). The events themselves result in a minimal interchange of employees. Other opportunities for interchanges, such as orientation and security academy training, result in employee interchange, though on a much broader and Employer-wide basis, including properties outside of the pod. As a whole, the record shows that the level of interchange among security officers at the petitioned-for properties with those working at Harrah's or Imperial Palace is limited.

While corporate involvement in hiring may be a factor favoring a larger unit, the record shows that the corporate involvement in the hiring process encompasses more than the pod's five properties. More significant, though, is the fact that individual facilities play a substantial role in the hiring process, in particular in terms of the final interviews of applicants. The degree of centralized labor relations is diminished by the record evidence showing the individual property's significant control of day-to-day discipline, scheduling, and direction. Taken as a whole, while the evidence of centralized labor relations may be a factor which would support an Employer-wide bargaining unit, its weight in terms of distinguishing between the three-property as opposed to the five-property unit is minimal. More specifically, certain conditions of employment, such as the equivalent pay scale, benefits, and other terms and conditions of employment, tend to show a shared community of interest in an Employer-wide unit. These factors would weigh more in favor of an Employer-wide unit than a unit composed of employees at either three or five properties.

Geographic proximity does not tend to show that a five-facility unit is the only appropriate unit. The close geographic proximity of the five pod properties would tend to show that a unit covering security officers at the five properties would be appropriate, though the record also shows that several other Employer-owned properties are located within immediate geographic proximity of the pod properties as well, including Caesars Palace or Bally's, which are across the street from the Flamingo and Bill's, respectively. As a result, the issue of geographic proximity in this case is not determinative, especially in light of the evidence of a distinct community of interest among the employees at the three properties covered by the petitioned-for unit.

More specifically, there are several reasons why the petitioned-for unit is appropriate. The record establishes that the security officers at the petitioned-for facilities strongly identify with the Flamingo, O'Sheas, and Bill's properties both individually and as a collective group, but not with Harrah's, the Imperial Palace, or any of the other Employer facilities. The local supervision at the Flamingo, O'Sheas, and Bill's, while limited, makes critical day-to-day workplace decisions on issues such as work assignment, schedules, evaluations, vacations, discipline less than discharge and recommendation for discharge.

Other factors show a shared community of interest at the Flamingo, O'Sheas, and Bill's which is separate from employees at Harrah's and the Imperial Palace including: the work rotation among the three properties; scheduling at the three properties; oversight by Flamingo's facility manager; a distinctive uniform patch which identifies the three properties;

a uniform room common to the three properties; breaks which are restricted to the three properties; dispatch calls shared among the three properties; keys operable at only the three properties; wand check-in procedures limited to the three properties; call-in procedures to the Flamingo manager for security officers of at least two of the three properties; and the importance of the security officers' base property in obtaining a position pursuant to a shift bid at one of the three properties. Additionally, employees at these three properties share use of time clocks and attend the same pre-shift meetings.

Inasmuch as there is no collective-bargaining history for security officers at these properties, this standard community-of-interest factor does not support a finding that the petitioned-for unit is inappropriate.

Though the Employer takes the position that the five properties comprise the only appropriate unit, this case is distinguishable from cases the Employer relies on, including *Alamo Rent-A-Car*, 330 NLRB 897, 898 (2000), where the Board reversed the Regional Director's determination that a unit comprised of two facilities was appropriate. In that case, the Regional Director excluded employees at two other facilities in the geographic vicinity.

Here, as discussed above, the factor of geographic proximity is diminished by the fact the Employer seeks to exclude employees at its other properties which share a geographic proximity with those in the pod. Moreover, unlike in *Alamo*, the three properties which comprise the petitioned-for unit are functionally integrated and distinct in many ways from the other two pod properties. In addition, unlike in *Alamo*, many labor relations issues are handled at the individual facilities, including discipline, interviewing prospective candidates, scheduling, overtime, and appraisals.

The Employer also relies on the Board's holding in *Clarian Health Partners, Inc.*, 344 NLRB 332 (2005), but I view that case also as being distinguishable from the instant case. *Clarian* involved a highly centralized operation of the employer's hospitals, including teams of supervision across all the facilities, which operated under a single health license and accreditation. Here, the Employer operates four of the five facilities under a different license, and the record shows that the Flamingo, O'Sheas, and Bill's properties operate in a significant number of ways as a functionally distinguishable group of properties. Although there is also some integration at the security director level, much of it is based on integration of operations at a level which extends far beyond the five properties at issue.

In this case, both parties have limited their respective proposed bargaining units to a fraction of the Employer's total number of facilities, though neither urges a single-facility unit. The record, as discussed above, establishes that the petitioned-for unit is an appropriate one and fails to establish that a broader unit is the only appropriate unit.

## **2. FTO Golds are Statutory Supervisors**

In determining whether FTO Golds are supervisors under Section 2(11) of the Act, I am mindful that the fact that FTOs are eligible for future promotion to supervisory positions does not, without more, warrant exclusion from a unit. *Weaver Motors*, 123 NLRB 209, 215

(1959). However, a person in supervisory training who exercises some supervisory authority is properly excluded from the unit. *Augusta Chemical Co.*, 124 NLRB 1021, 1023 (1959).

The party asserting supervisor status has the burden of establishing supervisor status. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 711-712 (2001). Supervisor status may be found under Section 2(11) of the Act based on “the possession of any one of the authorities listed in [that section which] places the employee invested with this authority in the supervisory class.” *Ohio Power Co. v. NLRB*, 176 F.2d 385, 387 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949).

The dividing line between true supervisors and employees for purposes of Section 2(11) is whether the alleged supervisor exercises “genuine management prerogatives” which are specifically identified in Section 2(11) of the Act. *Oakwood Healthcare Inc.*, 348 NLRB 686, 688 (2006). “If the individual has authority to exercise (or effectively recommend the exercise of) at least one of those functions, Section 2(11) supervisory status exists, provided that the authority is held in the interest of the employer and is exercised neither routinely nor in a clerical fashion but with independent judgment.” *Oakwood Healthcare Inc.*, 348 NLRB 686, 688 (2006). Supervisor status may be found based on “the possession of any one of the authorities listed in Sec. 2(11) places the employee invested with this authority in the supervisory class.” *Ohio Power Co. v. NLRB*, 176 F.2d 385, 387 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949); *Avante at Wilson, Inc.*, 348 NLRB 1056, 1056, 1059 (2006).

The Board will confer supervisory status on individuals who possess the authority to “assign,” which encompasses the designation of an employee to a certain place, time or giving significant overall duties such as tasks to an employee, as long as the act of assigning is performed by the asserted supervisor using “independent judgment.” *Oakwood Healthcare Inc.*, 348 NLRB 688, 689, 695. For one or more of the supervisory indicia to be exercised using “independent judgment,” the authority must be “independent,” meaning “free of the control of others,” and it must “involve a judgment,” which requires “forming an opinion or evaluation by discerning and comparing data,” and the judgment must involve a “degree of discretion that rises above the ‘routine or clerical.’” *Id.* at 693. For example, the Board has declined to find supervisor status based on assignment because their discretion did not rise above merely the routine or clerical where the putative supervisor did not prepare the work schedule, did not assign employees to areas, shifts, or overtime periods, received specific lists of daily projects from supervision, the same work is generally done every day, and higher-level supervisors make the decision to borrow or temporarily transfer employees due to absences. *Croft Metals, Inc.*, 348 NLRB 717, 720-722 (2006).

In addition, although not dispositive of the issue of supervisory status, nonstatutory indicia can be used as background evidence on the question of supervisory status. See *Training School of Vineland*, 332 NLRB 1412 (2000); *Chrome Deposit Corps.*, 323 NLRB 961, 963 fn. 9 (1997). As the Board has explained, nonstatutory indications of supervisory status, or “secondary indicia,” such as higher pay, supervisor to non-supervisor ratios, or attendance at supervisor meetings, may bolster evidence demonstrating that individuals otherwise exercise one of the powers listed in the statute. See *Marian Manor for the Aged & Infirm*, 333 NLRB 1084 (2001); cf. *Ken-Crest Services*, 335 NLRB 777 (2001). Secondary

indicia include employee perception as a supervisor, attendance at management meetings, difference in uniforms, and ratio of employees to supervisors. *Poly-America v. NLRB*, 260 F.3d 465, 479 (5th Cir. 2001).

FTO Golds exhibit at least one, if not more, of the requisite supervisory indicia, and possess several secondary indicia of supervisory status in spite of a lack of authority to hire, fire, or discipline employees. For example, individuals in this classification prepare performance appraisals and review them with security officers. These appraisals are used not only to provide feedback, but are also relied upon to determine pay increases and potential for promotion. The appraisals are written in the interest of the Employer using independent judgment. Such appraisals are not modified by management. As a result, I find that FTO Golds, by the manner in which they evaluate employees, effectively recommend promotions of and reward security officers. See *Harbor City Volunteer Ambulance Squad, Inc.*, 318 NLRB 764 (1995) (assistant shift supervisors are supervisors under Section 2(11) based upon their significant role with respect to preparing annual evaluations of employees, which evaluations are not changed by upper management and automatically determine the wage increases for evaluated employees); *Bayou Manor Health Center*, 311 NLRB 955 (1993) (Board found that the employer's LPNs were statutory supervisors solely because the evaluations they completed affected the salaries of the employer's nurses aides, as there was a direct correlation between the evaluations and the merit increases or bonuses awarded); *First Healthcare Corp.*, 323 NLRB 1171(1997) (LPNs and RNs are statutory supervisors because of their role in preparing evaluations of CNA's that directly affect the CNA's employment status).

FTO Golds also have authority to assign. The record shows that FTO Golds assign security officers to tasks, adjust schedules, and move security officers from post to post. Although temporary, this constitutes assignment and transfer of work. Cf. *Oakwood Healthcare Inc.*, 348 NLRB 686, 689 (2006). The record also indicates that when there is no supervisor or manager on duty, the FTO Golds monitor the property in the role of acting manager or supervisor, without monitoring or review by other supervisors or managers. An FTO Gold prepares the work schedule for the three properties. See *Croft Metals, Inc.*, 348 NLRB 717, 718 (2006) (finding non-supervisor status in part because the putative supervisors did not prepare the work schedule, and relied on higher-level supervision for transfer and borrowing of employees). Additionally, no evidence was offered that while acting as supervisor and manager, that their regular tasks of assigning officers to tasks, adjusting schedules, or moving security officers between posts was subject to review. At a minimum, during these repeated occasions, they exercised supervisory authority which was not routine or clerical and which was free from the control of others. Cf. *Alstyle Apparel*, 351 NLRB 1287, 1287, 1304 (2007) (finding no supervisor status based on lack of independent judgment in assignment in part because resolution of assignment disputes did not rest on the putative supervisor, but resulted in direct management intervention). The record also establishes that FTO Golds use independent judgment in directing employees during emergencies without requiring approval of supervisors or management. In any of these situations, they exercise supervisory authority to assign regardless of their status as a supervisor trainee. See *Augusta Chemical Co.*, 124 NLRB 1021, 1023 (1959).

The record shows secondary indicia of supervisor authority, as well. They wear business attire, instead of uniforms, which can be worn all the time depending on the manager or supervisor. Cf. *Metropolitan Transportation Services*, 351 NLRB 657, 678 (2007) (finding non-supervisor indicia in part because the putative supervisor did not wear supervisor shirt); *Adco Electric*, 307 NLRB 1113, 1125 (1992) (adopting without comment ALJ finding that the putative supervisor wore no distinctive clothing, hats, or insignia indicating lack of secondary indicia). The Employer holds FTO Golds out as supervisors, and they are referred to as lead assistant supervisors or assistant supervisors, depending on their base property. They conduct pre-shift meetings where they give refresher training and directives to officers on how to perform tasks. They are also included in management communications regardless of whether they are serving as a supervisor at the time. Cf. *John N Hansen Co.*, 293 NLRB 63, 64 (1989) (noting supervisory title was relevant secondary indicia).

Based on the foregoing and the record as a whole, I find that those FTOs who are working for the Employer as FTO Golds, assistant supervisors, and lead assistant supervisors, are supervisors within the meaning of Section 2(11) of the Act. As a result, I shall exclude them from the unit found appropriate herein.

Accordingly, based on the record evidence, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b)(3) of the Act:

All full-time and regular part-time security officers performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act employed by Caesars Entertainment, Inc., at its Flamingo, O'Sheas, and Bill's Gambling Hall facilities in Las Vegas, Nevada, but excluding all other employees, Field Training Officer Golds, lead assistant supervisors, assistant supervisors, and other supervisors as defined in the Act.

There are approximately 130 employees in the unit found appropriate herein.

### **DIRECTION OF ELECTION**

I direct that an election by secret ballot be conducted in the above unit at a time and place that will be set forth in the notice of election that will issue soon, subject to the Board's Rules and Regulations.<sup>4</sup> The employees who are eligible to vote are those in the unit who are

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<sup>4</sup> Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. The notices shall remain posted until the end of the election. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays. A party shall be estopped from objecting to non-posting of notices if it is responsible for the non-posting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Also eligible are those in military services of the United States Government, but only if they appear in person at the polls. Employees in the unit are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; and, if they have engaged in an economic strike which began more than 12 months before the election date and who have been permanently replaced. All eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by:

**INTERNATIONAL UNION, SECURITY, POLICE  
AND FIRE PROFESSIONALS OF AMERICA (SPFPA)**

**LIST OF VOTERS**

In order to ensure that all eligible voters have the opportunity to be informed of the issues before they vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, I am directing that within **seven (7) days** of the date of this Decision, the Employer file with the undersigned, two (2) copies of election eligibility lists containing the full names and addresses of all eligible voters. The undersigned will make this list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, the undersigned must receive the list at the National Labor Relations Board Resident Office, 600 Las Vegas Boulevard South, Suite 400, Las Vegas, NV, 89101, on or before **December 27, 2011**. No extension of time to file this list shall be granted except in extraordinary circumstances. The filing of a request for review shall not excuse the requirements to furnish this list.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001.

This request must be received by the Board in Washington by January 3, 2012. The request may be filed electronically through E-Gov on the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>5</sup> but may not be filed by facsimile.

Dated at Phoenix, Arizona, this 20<sup>th</sup> day of December 2011.

/s/Michael J. Karlson  
Michael J. Karlson, Acting Regional Director  
National Labor Relations Board  
Region 28  
2600 North Central Avenue, Suite 1400  
Phoenix, Arizona 85004

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<sup>5</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, [www.nlr.gov](http://www.nlr.gov).