

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

In the Matter of

LE FORT ENTERPRISES, INC. d/b/a  
MERRY MAIDS OF BOSTON

Employer<sup>1</sup>

and

INTERNATIONAL ASSOCIATION OF  
BRIDGE, STRUCTURAL,  
ORNAMENTAL AND REINFORCING  
IRON WORKERS LOCAL 7, AFL-CIO

Petitioner

Case 01-RC-097257

**DECISION AND DIRECTION OF ELECTION**

Petitioner (the Union) seeks to represent a unit of maids and housecleaners employed by Merry Maids of Boston (Merry Maids) in South Boston, Massachusetts. Merry Maids asserts that the petition should be dismissed for lack of statutory jurisdiction. The parties also dispute the unit placement of Johanna Corona and Yeriseli Melo. Merry Maids asserts that Corona and Melo should be included in the unit as plant clericals and/or as dual function employees. The Union asserts that Corona and Melo should be excluded from the unit as office clericals, statutory supervisors or managers.<sup>2</sup>

For the reasons set forth below, I find that it is appropriate to assert the Board's jurisdiction in this case. With regard to the unit placement issues, I find that Corona is an office clerical employee and that she does not perform unit work for sufficient periods of time to be included in the unit as a dual function employee. Finally, I find that the record is insufficient to make a determination

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

<sup>2</sup> The parties stipulated that office clerical employees are excluded from the unit.

concerning the unit placement of Melo, and I shall permit her to vote in the election subject to challenge.

**I. Jurisdiction**

**A. Facts**

Merry Maids is engaged in the business of providing cleaning services, primarily to residential customers in and around the Boston area. There is no evidence that it provides any services outside the State of Massachusetts. Merry Maids is a franchisee of a parent company, ServiceMaster, which is located in Tennessee. Pursuant to the franchise agreement, Merry Maids pays \$70,000 per year to ServiceMaster, which entitles it to use the trademark "Merry Maids." Service Master also provides certain training materials to Merry Maids as well as the shirts for the Merry Maids' uniforms.

Merry Maids submitted to the Board a "Questionnaire on Commerce Information" in which its majority owner and president, George Le Fort, admitted that Merry Maids receives gross revenues of \$1 million or more from the performance of sales or services. At the hearing, Merry Maids admitted that it annually purchases goods and services totalling \$34,000, which includes such items as chemical cleaners, uniforms, and hats. Although not entirely clear, Merry Maids appears to claim that it's business operations should be based upon the Board's non-retail standard, but has provided no evidence in support of this claim.

**B. Analysis and Conclusion**

I find that Merry Maids, which sells its services directly to residential customers, operates a retail business. See *Bussey-Williams Tire Co., Inc.*, 122 NLRB 1146, 1147 (1959)(retail sales include sales to a purchaser who desires "to satisfy his own personal wants or those of his family or friends."). Thus, the Board's retail standard applies in this case. The Board asserts jurisdiction over retail enterprises that do a gross volume of business of at least \$500,000 and fall within the Board's statutory jurisdiction. See *Jason Lopez Planet Earth Landscape, Inc.*, 358 NLRB No. 46 (2012). I find that Merry Maids' gross revenues of \$1 million, coupled with the \$70,000 in franchise fees it pays annually to an entity outside the state, satisfies the Board's retail standard and statutory jurisdiction. See *Dollar Rent-A-Car Systems, Inc.*, 267 NLRB No. 103 (1983)(jurisdiction established where employer derives gross annual revenues in excess of \$1 million, of which in excess of \$50,000 represented franchise fees and payments received from franchise holders located outside the state). Accordingly, it is appropriate for the Board to assert jurisdiction over Merry Maids in this case.

## **II. Unit Placement of Johanna Corona and Yeriseli Melo**

### **A. Background**

George Le Fort and his wife, Mindy Le Fort, jointly own Merry Maids.<sup>3</sup> The number of maids employed fluctuates “in the thirties.” The maids report to the owners. The petitioned-for maids spend 99 percent of their time cleaning houses. Mindy Le Fort schedules the maids, who are assigned to do from one to six jobs per day. The maids arrive at the Merry Maids office at staggered times between 7 a.m. and 8:30 a.m. They get their assignments, load up their equipment and supplies, and head off to clean houses. There are some solo assignments, but the maids often work in teams of two or three, depending on the size of the job. They complete a customer service report for each job, documenting the work performed and the amount of time spent at each job, which they return to the office at the end of the day.

### **B. Johanna Corona**

#### **1. Facts**

Johanna Corona reports directly to the owners. She works in the Merry Maids office from 7 or 8 a.m. to 4 or 5 p.m. In the morning, she makes sure the teams of maids have the addresses and directions for their assigned customers, as well as correct instructions for how to enter each home. She helps the maids carry equipment out to their cars. When the maids return at the end of the day, Corona logs in that the customers’ keys have been returned and reviews the maids’ customer service reports. During the day, Corona answers the phone, taking calls from customers and maids, and makes courtesy calls to customers scheduled for the following day.

Corona also spends part of her time working as a maid, filling in for maids who call in sick or are out on vacation. George Le Fort testified that Corona substitutes for maids about once a week, for about four and a half to five hours per week. Merry Maids submitted into evidence 23 customer service reports each documenting that Corona cleaned a house, working as a team with another maid. The forms submitted include all jobs performed by Corona for the months of December 2012 and January 2013, as well as all jobs she did on February 1, 2013. These forms show that Corona worked as a maid on four days in December 2012, cleaning ten houses, and two days in January 2013, cleaning seven houses. On February 1, 2013, she cleaned six houses. For the 13 reports that indicate the amount of time spent on such jobs, two jobs took 35 minutes

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<sup>3</sup> The parties have stipulated, and I find, that George and Mindy Le Fort are statutory supervisors who should be excluded from any unit found appropriate. The parties have further stipulated, and I find, that the Le Forts’ daughters, Alessandra Le Fort and Kara Le Fort, shall be excluded from the unit as relatives of the owners.

and one job took four hours, with the rest of the jobs taking from one to two hours.

The maids average \$11.50 per hour, but their pay is calculated based on a formula that takes into account the amount of the fee paid by the customer, the number of maids who worked on the job, and the amount of time spent on the job.<sup>4</sup> In contrast, Corona is paid a straight hourly rate of \$11 per hour, even when working as a maid, except for Saturdays, when she is paid pursuant to the same formula used for the maids. The maid who drives to each job also receives a mileage payment. In all other respects, Corona is subject to the same hiring requirements,<sup>5</sup> receives the same benefits, and is subject to the same rules as the maids. Thus, Corona and the maids all punch in and out, use the same break room and locker room, are paid weekly and receive overtime pay, and receive the same classroom and in-home training on cleaning and customer service. Although Corona wears the same uniform as the maids when she cleans houses, her dress is different in the office

## **2. Analysis and Conclusion**

The Board's well-established test for determining whether employees are included in a production unit as "plant clericals" or excluded as "office clericals" is whether the employees' principal functions and duties relate to the production process as distinguished from general office operations. *Caesars Tahoe*, 337 NLRB 1096, 1098 (2002). I find that Corona is an office clerical whose principal duties entail working in an office, away from the work areas where the maids spend 99 percent of their time, performing office duties such as answering the telephone and reviewing customer service reports. See *DTG Operations, Inc.*, 357 NLRB No. 175, slip op. at 8, fn. 27 (2011)(excluding staff assistants as office clericals from a unit of car rental agents, where they work in an office away from customer areas and their primary duties, i.e., preparing reports, answering phones, and administering the lost-and-found, are office clerical in nature); *L.M. Berry & Co.*, 198 NLRB 217, 219 (1972)(excluding employees as office clericals from a unit of sales employees, despite evidence that they performed work related to sales campaigns and interacted with sales employees, where clerical employees worked in a separate office area preparing reports and handling incoming calls). I also note that Corona is paid on a different basis than the maids and dresses differently from the maids when she is in the office.

The Board's well-established test for determining whether a dual-function employee should be included in a unit is whether the employee performs unit work for sufficient periods of time to demonstrate a substantial interest in the

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<sup>5</sup> The maids and Corona are all required to have a driver's license and auto insurance, pass a drug test, pass a criminal background check, and be physically able to perform the cleaning work with no asthma or pet allergies.

unit's wages, hours, and conditions of employment. The Board has no bright line rule as to the amount of time required to be spent performing unit work, but rather makes this determination according to the facts of each case. See *Harold J. Becker, Co.*, 343 NLRB 51 (2004), citing *Air Liquide America Corp.*, 324 NLRB 661, 662 (1997) and *Martin Enterprises*, 325 NLRB 714, 715 (1998).<sup>6</sup>

According to the customer service reports covering the nine-week period from December 1, 2012 through February 1, 2013, Corona cleaned 23 houses. Assuming that each job took, on average, from one to two hours, Corona performed unit work for 23 to 46 hours during that nine-week period. That represents from 6 to 13 per cent of the 360 hours she would have worked as a full-time, 40-hour-per-week employee during that nine week period. The Board has found that an employee spending only 15 percent of his time performing unit work is not included in the unit as a dual-function employee. See *Arlington Masonry Supply, Inc.*, 339 NLRB 817, 817 fn. 3 (2003). Since Corona does not perform unit work for a sufficient percentage of time to be considered a dual function employee, I shall exclude her from the unit as an office clerical employee.<sup>7</sup>

### C. Yeriseli Melo

As noted above, Merry Maids seeks to include Yeriseli Melo in the unit as a plant clerical and/or dual function employee. The Union seeks to exclude Melo from the unit as an office clerical, statutory supervisor or manager.

I find that the record is insufficient to permit me to determine Melo's supervisory or dual-function employee status. Accordingly, I shall permit Melo to vote in the election subject to challenge.

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of Section 2(5) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter.

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<sup>6</sup> Contrary to Merry Maids' claim in its post-hearing brief, the Board does not apply its *Davison-Paxson* formula for determining the voting eligibility of casual employees in determining whether an employee meets the definition of a dual-function employee. See *Martin Enterprises, Inc.*, 325 NLRB 714, 715 (1998); *Syracuse University*, 325 NLRB 162, 162 (1997).

<sup>7</sup> In light of this finding, I find it unnecessary to determine whether Corona should be excluded from the unit on the additional ground that she is a statutory supervisor or managerial employee.

3. 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. 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. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time maids and housecleaners employed by the Employer at its 83 Damrell Street, South Boston, Massachusetts location, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS LOCAL 7, AFL-CIO. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### **Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before 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. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an

economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **Employer to Submit List of Eligible Voters**

To ensure 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 election should have access to a list of voters and their addresses, which 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, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining whether there is an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **March 6, 2013**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>8</sup> by mail, or by facsimile transmission at 617-565-6725. To file the eligibility list electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of

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<sup>8</sup> To file the eligibility list 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, and follow the detailed instructions.

the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### 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 March 13, 2013. The request may be filed electronically through the Agency's website, [www.nlr.gov](http://www.nlr.gov), but may not be filed by facsimile.

**DATED:** February 27, 2013

  
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