

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

**CORTINA LAMPLIGHTER PARTNERSHIP, D/B/A
HOLIDAY INN EXPRESS--DELMONT¹**

Employer

and

Case 6-RC-126798

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF
AMERICA, LOCAL UNION NO. 30**

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Cortina Lamplighter Partnership, d/b/a Holiday Inn Express—Delmont (herein the Employer or Holiday Inn), operates a hotel in Delmont, Pennsylvania, where it employs 29 employees. The Petitioner, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 30 (herein the Union), filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of maintenance, laundry and housekeeping employees. A hearing officer of the Board held a hearing and the Employer filed a timely brief which has been duly considered.²

As evidenced at the hearing and in the brief, the parties disagree on whether the unit sought by Petitioner is appropriate, as well as the supervisory status of both housekeeping employee Robert DelBene and Assistant Executive Housekeeper Rita Copley.

¹ The name of the Employer was amended at the hearing.

² The Petitioner orally argued its position at the hearing.

The maintenance, laundry and housekeeping unit sought by the Petitioner consists of approximately fifteen employees. The Petitioner, contrary to the Employer, would exclude housekeeping employee DelBene on the basis that he is a supervisor within the meaning of the Act. The Employer contends that the petitioned-for unit is too limited in scope and that it must also include four breakfast bar employees and six front desk personnel. Thus, the unit advocated by the Employer would include about twenty six employees, including DelBene. The Petitioner has indicated a willingness to proceed to an election in any unit found appropriate. There is no history of collective bargaining for any of the employees involved herein.

At the hearing, the status of Assistant Executive Housekeeper Copley was raised for the first time. The Petitioner sought to include Rita Copley in the unit petitioned-for whereas the Employer would exclude her as a supervisor.³

I have considered the evidence and the arguments presented by the parties on each of the issues. As discussed below, I find that the unit sought by the Petitioner is an appropriate unit, and that the Employer has not sustained its burden of showing an overwhelming community of interest such that the front desk employees and the breakfast bar employees must necessarily be included in any unit found appropriate herein. See *Specialty Healthcare*, 357 NLRB No. 83 (2011). I also find that the Petitioner has not sustained its burden of proof with respect to establishing the supervisory status of Robert DelBene and I shall therefore include him in the unit found appropriate herein. As noted, the parties did not fully litigate Copley's supervisory status and thus, I find that she should be permitted to vote subject to challenge. Accordingly, I am directing an election in a unit that consists of approximately seventeen employees.

³ After the supervisory status of Assistant Executive Housekeeper Copley was raised at the hearing and she was not present to testify, the parties stipulated that Copley would be placed on the election eligibility list and be permitted to vote subject to challenge. While the Employer introduced some evidence that Copley might possess supervisory authority, because the parties entered into the stipulation, the issue was not fully litigated and the Petitioner did not have the opportunity to rebut the evidence. In its brief the Employer apparently seeks to retract its participation in that stipulation and argues that I determine whether Copley is a supervisor. The Employer's request for recommendation is denied.

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that support each of my conclusions on the issues.

I. OVERVIEW OF OPERATIONS

The Employer operates a Holiday Inn Express hotel in Delmont, Pennsylvania under a franchise agreement with Intercontinental Hotels Group. The facility has 71 guest rooms, a breakfast bar area, one meeting room that comfortably holds approximately 25 people, a small fitness center and a small business center. There is a lobby area, two public restrooms, one employee restroom, and one employee break room. In addition, the hotel has a laundry located near the front desk, which is not for guest use, and a small area outside with picnic tables and chairs. In these operations, the Employer employs a total of twenty-nine employees.

The Employer's overall operations are the responsibility of its General Manager Krysta Rigney. Reporting directly to the General Manager are Guest Services Manager Tiffany Smith and Executive Housekeeper Bobbie Devitt.⁴ Smith supervises the breakfast bar and front desk employees, and reports directly to Rigney. Devitt supervises the maintenance, laundry and housekeeping employees.

II. SCOPE OF THE UNIT

A. Policies and Procedures

All employees are subject to the Employer's standard operating procedures and call-off policy. There is no employee handbook. All employees use the same employment application, and are later evaluated using the same employee performance review forms. All employees use the same time clock at the facility. The Employer conducts staff meetings for all hotel employees once per month. Every employee receives general training and franchise-required

⁴ During the hearing the parties stipulated, and I find, that Rigney, Smith and Devitt are statutory supervisors within the meaning of Section 2(11) of the Act, inasmuch as they possess and exercise on the Employer's behalf, the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or responsibly to direct them or to adjust their grievances or to effectively recommend such action and that they utilize their judgment in exercising such authority.

training. These trainings appear to be in the nature of general guest-services and brand loyalty topics.

Further, the Employer utilizes a “reward” system by which any employee may be “nominated” to be recognized for high quality service or excellent performance. The Employer hosts several gatherings for all of its employees throughout the year, such as potluck lunches, holiday parties and “service week” activities. All employees are offered a supplemental insurance plan, but no health benefits are provided. The employees are required to wear uniforms provided by the Employer which differ by department.

All employees may eat breakfast in the breakfast bar after regular breakfast bar hours, and all employees may use outdoor picnic tables and chairs. There is an employee lounge available for all. All employees receive bi-monthly paychecks. Every employee is required to read and sign off on customer surveys which are received by the hotel.

B. Maintenance, Laundry and Housekeeping Employees

The maintenance, laundry and housekeeping employees are part of the Housekeeping and Maintenance Department (herein Housekeeping) and report directly to Executive Housekeeper Devitt. Devitt has the authority to grant days off to maintenance, laundry and housekeeping employees and to permit employees to leave early. She is responsible for the weekly work schedule and daily assignments to these employees. Devitt completes paperwork at the beginning of her shift such as the daily assignment sheets for the employees. For housekeepers, the sheet identifies which rooms are to be cleaned and the time to clean them. For laundry and maintenance employees noted are special tasks and special requests. Devitt also checks the housekeeping employees’ daily work.

Generally, the work duties of housekeepers include cleaning guest rooms and changing bedding, while maintenance employees perform small repairs. The laundry employees launder bedding, towels and other hotel items and clean public areas including the public restrooms, the lobby area and the fitness room. These employees receive a starting wage between \$7.25 and \$8.00 per hour. Female employees in Housekeeping wear a set of blue scrubs with green trim.

Men wear black work pants and a cobalt blue shirt. All employees in this department wear name tags listing only their name.

Housekeeping employees are on duty seven days per week. These employees do not work on set days but work five days per week on a rotating schedule. They begin working at 8:30 on weekdays or 9:00 a.m. on the weekends “until they are done.” The time at which their work is complete each day depends on staffing and occupancy level of the hotel. Housekeeping employees are not scheduled to work at night.

Three housekeeping employees are assigned to the laundry each day. One of the three is assigned to be “in charge.” When working in the laundry, employees complete a daily checklist indicating that they have completed specific cleaning tasks in addition to their laundry responsibilities, and provide this daily checklist to the Executive Housekeeper.

Housekeeping Department employees are also assigned to perform maintenance tasks as needed. This might include small repairs on electrical fixtures. The record indicates that several housekeepers are regularly scheduled to perform maintenance work. Housekeeping employees receive specialized training provided by Devitt. This training includes Holiday Inn’s proprietary cleaning program known as Sparkle, and training on the assembly and disassembly of cribs.

C. Front Desk and Breakfast Bar Employees

Guest Services Manager Tiffany Smith supervises employees in the Front Desk and Breakfast Bar departments. She provides departmental training to them, is responsible for their schedules, and issues discipline to front desk and breakfast bar employees.

The Employer employs approximately six front desk employees. These employees usually work one of three eight hour shifts: 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m. and 11:00 p.m. to 7:00 a.m. The Employer also utilizes mid-day shifts of 10:00 a.m. to 6:00 p.m. or 9:00 a.m. to 5:00 p.m. Front desk jobs usually have a starting wage rate of \$9.00 per hour, and a high school diploma is preferred.

The front desk employees are responsible for greeting customers, performing check-in and check-out duties, answering the telephone, making reservations, and performing business-related functions such as credit card checks, computerized systems reviews, and hospitality functions such as insuring that the newspapers have arrived. The front desk employees may request a housekeeping department employee to expedite cleaning of a room, or to perform another particular task.

The front desk employee who regularly works the 11:00 p.m. to 7:00 a.m. shift is called the night auditor. This employee is responsible for closing out the day in the computer, performing accounting type functions and recording all of the day's transactions.

Female front desk employees wear black pants, a white dress shirt, black vest and a scarf. Male front desk employees wear black pants, shirts and ties. These employees also wear name tags.

The Front Desk Department employees receive additional training in "Guest Services Training" and specialized training such as "Priority Club Rewards Program", Guaranteed smoking/non smoking policy, priority check in rapid checkout procedures, HOLIDEX (a proprietary Holiday Inn program), and Being Brandhearted (A Holiday Inn program). These employees can receive special certifications indicating successful completion of that training. Similarly, breakfast bar department employees receive training in Extra Hotel Security and Being Brandhearted Certification.

Employees are either hired directly into front desk positions, or may apply from within the hotel staff to be trained to work in front-desk positions. Training for front desk positions is a comprehensive five day per week training program generally lasting for four to five weeks.⁵ Employees are considered trained when the General Manager feels they are competent for the job.

⁵ Depending on the individual, training can be completed in as little as two weeks or as long as three months.

The record reflects instances of promotions from Housekeeping to front desk positions. Leila Szalandzy was a housekeeper who currently works at the front desk. Once every two or three months she may be requested to perform a housekeeping task, such as making beds. Similarly, front desk employee Jason Phillips works to help clean rooms approximately twice a month. He usually performs this work in the evenings if a room can be rebooked when there are no housekeepers available to clean the room.

Brittany Horsely is a housekeeper who was promoted to a front desk position in April 2014. At the time of the hearing she was still in training. While she is in training she primarily works at the front desk.⁶ The record indicates that once the training is complete the Employer does not anticipate having full-time front desk work available, so Horsely may have to split her schedule between front desk and housekeeping work, such that she could work one to days per week in housekeeping.

The Employer's breakfast bar is open to guests from 6:30 a.m. to 9:30 a.m., and is located near the lobby area. There are four breakfast bar employees, who also report to Smith. The breakfast bar employees begin work at approximately 5:30 a.m. and work until they have completed their job tasks. The breakfast bar has food warmers and servers, and a pancake machine which the breakfast bar employees must know how to dismantle and clean. The starting wage of these employees is between \$7.25 and \$8.00. Breakfast bar employees maintain their own schedule, which does not appear to be written. Their uniform consists of black pants, a tan tunic and a name tag.

One housekeeping employee, Nicole Rosenberry, is scheduled to work in the breakfast bar on alternate Wednesdays. Depending on when the truck delivering goods arrives,

⁶ The record reveals that Horsely began working at the front desk in March, 2014, and that her last day working as a housekeeping department employee was in early April, 2014.

Rosenberry literally performs the “heavy lifting” of orders of foodstuffs and materials in the breakfast bar area, after which she can choose to work additional hours in housekeeping.⁷

D. Analysis

i. Applicable Case Law

The Employer seeks to include approximately ten front desk and breakfast bar employees in the petitioned-for unit on the basis that they share an overwhelming community of interest with the maintenance, laundry and housekeeping employees. In its brief, the Employer acknowledges that the unit sought by the Petitioner is readily identifiable and shares a community interest. However, citing *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83, slip op. at 11 (2011), the Employer contends that the unit is inappropriate because it seeks to exclude employees who share an overwhelming community of interest with the petitioned-for employees. The Employer argues that there is no legitimate basis upon which to exclude the front desk and breakfast bar employees from those in the petitioned-for unit.

The Act does not require a petitioner to seek representation of employees in the most or broadest appropriate unit possible, but only in an appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996). Thus, the Board first determines whether the unit proposed by a petitioner is appropriate. When the Board determines that the unit sought by a petitioner is readily identifiable and employees in that unit share a community of interest, the Board will find the petitioned-for unit to be an appropriate unit, unless the employees in a broader unit share an “overwhelming community of interest” with those in the petitioned-for unit. *Specialty Healthcare*, 357 NLRB No. 83 (2011), slip op. at 7.

Thus, the first inquiry is whether the employees in the job classifications sought by Petitioner are readily identifiable as a group and share a community of interest. The Board considers whether the employees sought are organized into a separate department; have

⁷ The record indicates that Rosenberry performs this function because the other breakfast bar employees are not capable of lifting the product into the storage areas.

distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *United Operations, Inc.*, 338 NLRB 123 (2002); *Specialty Healthcare*, supra, at 9. Particularly important in considering whether the unit sought is appropriate are the organization of the facility and the utilization of skills. *Gustave Fisher, Inc.*, 256 NLRB 1069, fn. 5 (1981). However, all relevant factors must be weighed in determining the community of interest.

The second inquiry is whether additional employees share an overwhelming community of interest with the petitioned-for employees. Expansion of an otherwise appropriate unit is required only when there "is no legitimate basis upon which to exclude [the] employees from "the larger unit because the traditional community of interest factors "overlap almost completely." *Specialty Healthcare*, supra, at 11-13, and fn. 28 (quoting *Blue Man Vegas, LLC v. NLRB*, 529 F. 3d 417, 421-422 (D.C.Cir. 2008)). The burden of demonstrating the existence of an overwhelming community of interest is on the party asserting it. *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163, slip op. at 3, fn. 8 (2011).

In *DTG Operations, Inc.*, 357 NLRB No. 175 (2011) the Board, relying on *Specialty Healthcare*, reversed a regional director's decision that the petitioned-for unit of rental service agents (RSAs) and lead rental service agents (LRSAs) at a rental car operation was not an appropriate unit for bargaining and the smallest appropriate unit was a wall to wall unit of all hourly employees including lot agents, mechanics, staff assistants and lead staff assistants. The Board identified differences between the work hours, uniforms and work functions of the petitioned-for employees and the employees in the larger unit. For example, the RSA and LRSA function was staffed 24 hours per day and their uniform was more professional and of better quality material than that of other employees. RSAs greeted customers, processed rental

contracts, answered telephone calls and responded to customer questions and complaints before directing the customer to the next step of the car rental process.

RSAs and LRSAs performed the work of other classifications when they covered breaks or on the overnight shift when other employees were not there. Lot and return employees did not perform RSA duties other than in limited instances. The Board noted that infrequent or limited interchange among the larger unit did not preclude a finding that the petitioned-for unit had a distinct community of interest. The Board recognized that although the employer's facility was functionally integrated, with all employees working toward renting vehicles to customers, each classification had a separate role in the process.

Similarly, in *Guide Dogs for the Blind, Inc.*, 359 NLRB No. 151 (2013) the Board relied on *Specialty Healthcare* in concluding that the petitioned-for unit of canine welfare technicians and instructors was appropriate, and the employer had not met its burden of demonstrating that the other dog handling classifications it sought to include shared an overwhelming community of interest with the petitioned-for employees. The Board made this determination even though all of the dog handling classifications worked together to accomplish the growth, development, training and care of the guide dogs and some of the classifications sought to be included performed certain tasks similar to those performed by the employees in the petitioned-for unit. The Board again noted that each classification had a separate role in the employer's process and the petitioned-for employees had limited interaction and interchange with the other classifications.

The Board has long held that hotel housekeeping and maintenance units are appropriate units for collective bargaining. See, e.g. *Western Lodging Corp., d/b/a Stanford Park Hotel*, 287 NLRB 1291(1988). In that case, all hotel employees received the same fringe benefits and were subject to the same personnel policies. In finding the petitioned-for housekeeping and maintenance unit appropriate, the Board focused on the common supervision by the executive housekeeper of the maintenance and housekeeping employees, and the minimal evidence of

these two classifications performing the functions of employees in other classifications. Interchange occurred infrequently, primarily when the hotel was unusually busy. Similarly, there was minimal evidence of permanent transfer between classifications, although the employer's policy appeared to encourage such transfers. The manual nature of the housekeeping and maintenance employees' work also militated toward a finding of community of interest for these employees. See also *Holiday Inns, Inc., d/b/a Holiday Inn-Troy*, 238 NLRB 1369 (1978) at 1369.

Front desk employees in a hotel have also been held to be an appropriate unit by themselves. *Dinah's Hotel Corporation d/b/a Dinah's Hotel & Apartments*, 295 NLRB 1100 (1989). In *Dinah's Hotel Corporation*, supra, at 1101, the Board found that front desk employees primarily do "clerical" or "white collar" work. In that case, the front desk employees had similar working conditions to housekeeping employees, were supervised separately from housekeeping employees, and did not interchange with other employee groups. Relying particularly on the finding that front desk employees perform work which greatly varied in kind from that of other employees, the Board found that the front desk employees did not share a sufficient community of interest with the employer's manual/physical service employees to mandate their inclusion in the overall unit. See also *Western Lodging Corp., d/b/a Stanford Park Hotel*, 387 NLRB 1291 (1988); *Hotel Equities, d/b/a The Regency Hyatt House*, 171 NLRB 1347 (1968).

- ii. There is not an Overwhelming Community of Interest between the Petitioned-for Employees and those in the Front Desk and Breakfast Bar Departments so as to Compel their Inclusion in a Single Unit

In this case, all of the petitioned-for employees share the same job classification of housekeeping and maintenance. All are part of the Housekeeping Department and are commonly supervised by the Executive Housekeeper. The work they perform is cleaning rooms, cleaning public areas, linen changing, light maintenance work, and laundry. They work similar schedules. It appears that employees in this department are regularly scheduled to

interchange between housekeeping, maintenance and laundry duties. They are given departmental training which is particular to the Housekeeping Department. Their starting pay is lower than the front desk personnel and their uniform is different from those worn by either front desk or breakfast bar employees.

The record reflects one or two instances of promotion from the Housekeeping Department to the Front Desk Department. In addition, infrequently the front desk personnel performs limited housekeeping tasks when the hotel is unusually busy.⁸ There is no evidence that housekeeping personnel perform front desk duties other than on rare occasions to answer the telephone.

Based on these factors and the record as a whole, I conclude that the petitioned-for unit of maintenance, laundry and housekeeping employees constitute a readily identifiable group and share a community of interest.⁹

The Employer contends that the *only* appropriate unit must include the front desk and breakfast bar employees with the employees in the petitioned-for unit. As noted, under *Specialty Healthcare*, supra, the proponent of the larger unit must demonstrate that the additional employees it seeks to include share an “overwhelming” community of interest with the petitioned-for employees, such that there “is no legitimate basis upon which to exclude certain employees from” the larger unit because the traditional community of interest factors “overlap almost completely.” *Id.* slip op at 11-13. Applying that framework here, I find that the front desk employees and breakfast bar employees do not share an overwhelming community of interest with the petitioned-for employees such that there is no legitimate basis upon which to exclude those employees from the unit found appropriate.

⁸ In these circumstances, the front desk employees maintain their higher front desk wages when they perform housekeeping work.

⁹ As noted above, housekeeping employee Nicole Rosenberry works twice a month in the breakfast bar placing incoming products in the breakfast bar area. I do not find that this regular, but limited, activity provides a substantial basis on which to include the breakfast bar employees into the petitioned-for unit.

Front desk and breakfast bar employees are organized into different departments and are separately supervised by Guest Services Manager Smith. These employees receive job-specific training which is different from the job-specific training given to the petitioned-for employees in the Housekeeping Department. The schedules of the front desk and breakfast bar employees differ from those of Housekeeping Department employees. Front desk employees also receive higher starting wages than housekeeping employees. While the breakfast bar employees receive wages similar to housekeeping employees, it appears that they work fewer hours.

Generally speaking, the front desk employees perform clerical work. This includes making reservations, using the computers, answering telephone calls, checking guests in and out, and greeting the public. These employees are directly involved in customer service, and their work location is in the public area of the building. Breakfast bar employees are also directly involved in serving customers of the hotel, in a public area of the building. They are the “face” of the hotel, and guests are directly served by these employees in a significantly different manner than the housekeeping employees. Maintenance, laundry and housekeeping employees do not receive customer service training, they do not provide direct customer service, and they work out of the public view. In addition, front desk employees do not have frequent interactions with housekeeping employees other than to occasionally ensure that a room is cleaned or that a minor maintenance issue is addressed.

The Employer argues in its brief that several front desk employees also work in the housekeeping department. I find the evidence in this regard unpersuasive. Jason Phillips has worked full time in the Front Desk Department since August, 2012. Since that time he worked one day in housekeeping in April, 2014. In addition, he occasionally works in a housekeeping function in the evenings to enable the Employer to re-sell a room. Leila Szalandzy was promoted to a front desk position from housekeeping in November, 2013. Since that time she has infrequently assisted with making beds in the guest rooms. Brittany Horsely, formerly a housekeeping employee, was, at the time of the hearing, training for a front desk position. It is

unclear whether she will work full-time at the front desk when she finishes her training, but at the time of the hearing she was involved full-time in training at the front desk. It is a possibility that she may work one to two days per week in housekeeping when her training is complete but the duration of such an arrangement is unclear. If Horsely continues to perform housekeeping work when her training is completed, she might meet the definition of a dual function employee. A dual function employee is an employee who performs more than one function for the same employer and may vote in an election if he or she regularly performs duties similar to those performed by unit employees for sufficient periods of time to demonstrate a substantial interest in the working conditions of the unit. See *Harold J. Becker Co.*, 343 NLRB 51 (2004). However, Horsely's future status is unknown at this time, and therefore it would be speculative to determine to what extent she will perform duties in the unit found appropriate herein.¹⁰

Based on the record, I do not find that the front desk and breakfast bar employees share an overwhelming community of interest with the employees in the petitioned-for unit such that their inclusion in the unit is required. *Specialty Healthcare*, slip op. at 11-13. Accordingly, based on the above and the record as a whole, I find appropriate the petitioned-for unit of the maintenance, laundry and housekeeping employees and excluding the front desk and breakfast bar employees.

III. SUPERVISORY STATUS OF ROBERT DELBENE

Remaining for consideration is the status of housekeeping employee Robert DelBene, a, who the Petitioner, contrary to the Employer, contends should be excluded from the unit as a supervisor.

¹⁰ Based on the record I am unable to conclusively determine the status of Brittany Horsely. To be eligible to vote an employee must perform unit work during the payroll period. *Dyncorp/Dynair Services*, 320 NLRB 120 (1995). It is unclear whether Horsely has performed unit work in the relevant period. In addition, the record evidence is insufficient to warrant a finding that she is eligible to vote as a dual function employee. The record contains only estimates of the amount of time Horsley may spend performing housekeeping when her training is complete. See *Arlington Masonry Supply Inc.*, 339 NLRB 817 (2003). Because her status is unclear, I will permit Horsely to vote subject to challenge in the election directed herein.

Section 2(11) of the Act defines the term supervisor as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In March, 2014, there was a short period after the previous Executive Housekeeper quit her employment and before current Executive Housekeeper Bobbie Devitt was hired. DelBene was appointed as an interim room inspector in the Housekeeping Department for a period of one or two weeks. This position required him to inspect the room cleaning functions of other employees. In addition, for that one to two week period, DelBene made specific daily assignments as to which rooms each housekeeper would clean. He did not establish the overall work schedule for employees during that period.

The record indicates that during this time period one housekeeping employee called off and that DelBene told another employee that such behavior would not be tolerated. The employee who had called off never returned to work but the record reveals that this was because the employee voluntarily resigned. After Devitt was hired, it appears that DelBene briefly continued to assign some tasks to other housekeepers until mid-April, 2014.

During the vacancy in the Executive Housekeeper position, DelBene did not hire, transfer, suspend, lay off, recall, promote, discharge, reward or discipline other employees, or adjust their grievances or effectively recommend such action. The record contains no evidence to establish that DelBene had the authority to discipline or to effectively recommend discipline.

The Board addressed “assigning” work to employees and “responsibly directing” employees, or effectively recommending such actions, in *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006), *Croft Metals, Inc.*, 348 NLRB 717 (2006) and *Golden Crest Healthcare Center*, 348 NLRB 727(2006). In accordance with the Board’s decisions in these three cases, if the record

establishes that the purported supervisor satisfies the Board's stated definitions for either assigning or responsibly directing other employees, or effectively recommending such actions, then it must be determined whether they do so using the Board's stated definition of "independent judgment." *Oakwood Healthcare*, at 696.

In *Oakwood Healthcare*, the Board defined "assign" as the act of designating an employee to: a place, such as location, department or wing; or a time, such as shift or overtime; or a task, which must involve "significant overall duties," not ad hoc instructions to perform a discrete task.

In *Oakwood Healthcare*, the Board defined "responsibly to direct" as the act of directing what job shall be done next or who shall do it, provided that the direction is both "responsible" and carried out with "independent judgment." *Oakwood Healthcare*, supra at 690.

"Responsible" means "accountable," which requires a showing that the person directing the performance of a task must be held accountable for the performance of that task, and must have the authority to correct any errors made. In other words, there must be a prospect of adverse consequences to the person directing the work if the work is not performed properly or no corrective action is taken.

Additionally, there must be evidence of actual accountability, i.e., more than a merely paper showing that there is a prospect of adverse consequences. Where accountability is reflected in employee evaluations, there must be evidence that the rating for direction of subordinates may have an effect on that person's terms and conditions of employment. *Golden Crest*, 348 NLRB at 731.

In *Oakwood Healthcare*, the Board explained that "independent judgment" means to act free of the control of others and form an opinion or evaluation by discerning and comparing data, provided that the act is "not of a merely routine or clerical nature." Actions form a spectrum between the extremes of completely free actions and completely controlled ones, and the degree of independence necessary to constitute a judgment as "independent" lies somewhere in between those extremes. To be an independent judgment, the act must involve

a degree of discretion that rises above the “routine or clerical.” *Oakwood Healthcare*, supra at 694.

The record establishes that DelBene did not and does not assign or responsibly direct any other employees as those terms are used in Section 2(11) of the Act. There is no evidence in the record that would support the conclusion that DelBene is or was held accountable in any manner for directing housekeepers or that he is or was subject to possible adverse consequences for improper performance of their duties. Therefore, the Petitioner has, by an absence of proof on a necessary element of the responsible direction function, failed to carry its burden of proving DelBene’s supervisory status based on the responsible direction of others.

While DelBene scheduled employees’ daily work assignments and inspected rooms during this one to two week period, it appears that other employees have occasionally been called upon to inspect rooms or to make room cleaning assignments. This was a temporary assumption of duties and the Board has held that a temporary or sporadic assumption of duties does not confer upon him supervisory authority within the meaning of Section 2(11) of the Act. See, e.g. *In re Family Healthcare, Inc.*, 354 NLRB 254, 261 (1009); *Latas De Aluminio Reynolds*, 276 NLRB 1313 (1985)

The party asserting the supervisory status of an individual bears the burden of proof. *Kentucky River Community Care*, 532 U.S. 706, 711-12 (2001). In this case I find that the Petitioner has not sustained its burden. Accordingly, I will include Robert DelBene in the unit found appropriate herein.

IV. FINDINGS AND CONCLUSIONS

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

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.

3. The Petitioner 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 purposes of collective bargaining within the meaning of Section 9(b) of the Act:¹¹

All full-time and regular part-time maintenance, laundry and housekeeping employees employed by the Employer at its Delmont, Pennsylvania facility; and excluding all office clerical employees, breakfast bar employees, front desk employees and guards, professional employees and supervisors as defined in the Act.

V. 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 Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 30. 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.

A. 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

¹¹ Pursuant to the afore-mentioned stipulation of the parties at the hearing, employee Rita Copley shall be placed on the *Excelsior* list and be permitted to vote subject to challenge. Pursuant to my decision herein, employee Brittany Horsely shall be placed on the *Excelsior* list and be permitted to vote subject to challenge as well.

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.

B. 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 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 June 4, 2014. 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, by mail, or by facsimile transmission at 412-395-5986. To file the eligibility list electronically, go to the Agency's website at 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 (2)** 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.

C. 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 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.

VI. 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 June 11, 2014. The request may be filed electronically through the Agency's website, www.nlr.gov,¹² but may not be filed by facsimile.

Dated: May 28, 2014

/s/Rhonda P. Ley

Rhonda P. Ley, Acting Regional Director
NATIONAL LABOR RELATIONS BOARD
Region Six
William S. Moorhead Federal Building
1000 Liberty Avenue, Room 904
Pittsburgh, PA 15222

Classification Index
401 7500

¹² To file the request for review electronically, go to www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.