

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.**

MARRIOTT HOTEL SERVICES, INC.

Employer,

and

UNITE HERE LOCAL 2

Petitioner.

Case No. 20-RC-236046

**UNITE HERE LOCAL 2'S OPPOSITION TO
MARRIOTT HOTEL SERVICES, INC.'S REQUEST FOR REVIEW OF THE
REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION**

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INTRODUCTION

On March 15, 2019, the Regional Director of Region 20 issued a unit determination in which she found that a bargaining unit consisting of housekeeping and food & beverage employees employed at the San Francisco Airport Marriott Waterfront Hotel (“Hotel”) was appropriate for bargaining. The Employer argues that there are compelling reasons for the Board to set aside that determination, contending that the Regional Director departed from officially reported precedent, that certain factual findings supporting her decision were clearly erroneous, and that the Board should review and overturn longstanding precedent that supported her determination. The Employer’s request for review raises no substantial issue of fact or law that merits review. It should be denied.

ISSUES PRESENTED

1. Since 1966, the Board has adhered to the policy of applying traditional community-of-interest principles in making unit determinations in the hotel industry. In this case, the Regional Director carefully analyzed the record evidence in light of these community-of-interest factors and in view of prior Board decisions, and reached a reasoned determination that the petitioned-for bargaining unit was appropriate with a minor modification. Is the Employer’s claim that the Regional Director departed from officially reported agency precedent without merit?

2. In various cases, the Board has referred to differences in skills, training and job functions between manual labor and clerical employees as distinctions between a “blue collar” and “white collar” hotel workforce. Analyzing such distinctions in skills, training, and job functions between included and excluded employees is required by the Board’s community-of-interest test for appropriate bargaining units both in the hotel industry and elsewhere. Should the

Board reject the Employer's proposal that the Board no longer give weight to these community-of-interest factors in making unit determinations in the hotel industry?

3. The Employer argues that the Regional Director committed prejudicial error by failing to include Guest Service Aides (bellmen) in the bargaining unit even if her decision to exclude other Front Office employees was correct. But in proceedings before the Regional Director, the Employer argued that Guest Service Aides are so functionally integrated with other Front Office employees that they could not be included in the bargaining unit by themselves. Should the Board deny review to an argument that the Employer did not make to the Regional Director, and which in fact is directly contrary to the argument it made to the Regional Director?

PROCEDURAL HISTORY

The Petitioner filed the petition in this case on May 2, 2019. As originally filed, the Petitioner sought an election in a bargaining unit described as follows:

Included:

All-full time and regular part time: Attendants-Health Club; AYS Runners; Bellmen; Housekeepers; Housekeepers-Lobby; Housekeepers-Turndown; Housekeeping Aids (Housemen); Housekeeping Laundry Attendants; Housekeepers; Project Room Team/Housekeeper Made Ready Employees; Attendants-Bar; Bartenders; Dining Room Attendants; Food Runners (Bar); Hanger Servers; Hosts; In-Room Dining Servers; In-Room Dining Operators; Beverage Runners; Cocktail Servers; Flight Servers-Lounge; Food & Beverage-M-Lounge; Cold-Side Attendants; Cooks; Dishwashers; Expeditors; Kitchen Purchasing Clerks; Kitchen Utility Employees; Cooks and Lead Cooks; Lead Stewards; Aisle CSMs; Banquet Bartenders; Banquet Cooks; Banquet Housemen (CSM); Banquet Servers (Including Regular On- Call); Housekeeping Aids-Banquet; Starbuck Barristas.

Excluded:

Auditors; AYS Operators; Banquet Administrative Assistants; Catering Supervisors; Front Desk Clerks; Chefs and Sous Chefs; Gate Path Employees; Housekeeping Leads; In-Room Dining Administrative Assistants; J-I Exchange Visitors; Kitchen Managers; Maintenance and Engineering Employees; Purchasing Storeroom Supervisors; Sales Employees; Supervising Cooks; Temporary Employees; Voyagers; Casual and Irregular Part time Employees; all

other Supervisors; Office Clericals; Professional Employees, and Guards as defined by the Act.

After the parties were unable to reach agreement on the unit definition, a hearing was conducted on March 5 and 6, 2019. The Employer took the position that the petitioned-for unit was inappropriate because it excluded Front Office employees, including Rooms Controllers, Front Desk Clerks and Agents, Guest Service Aides, Guest Service Representatives, Night Auditors, and At Your Service (AYS) Agents, as well as the Shipping & Receiving Attendant.¹

At the outset of the hearing, the Petitioner amended the petition to exclude the Guest Service Aides and the AYS Runners in light of initial evidence showing that these classifications belonged to the Front Office department. (Tr. 17-18.)² The Hearing Officer accepted the amendment. (Tr. 18.) The Employer maintained its position that all Front Office classifications must be included in order for the unit to be an appropriate one for bargaining.

At the close of the hearing, the Petitioner stated that, while it continued to believe that the petitioned-for unit was an appropriate one for bargaining, it would proceed to an election if one were directed in a bargaining unit that included AYS Runners, Guest Service Aides, and Shipping & Receiving Attendants (or any combination thereof). It would not agree to proceed in an election in a unit that included Guest Service Agents, AYS Agents, Rooms Controllers, and PM Front Desk Clerks. (Tr. 390-391.)

¹ As a matter of terminology, “Guest Service Aides” are commonly called “bellmen,” and were in fact included in the originally petitioned-for bargaining unit. The formal names of the other front office classifications that the Employer sought to exclude are “Rooms Controller,” “PM Event Desk Clerk” (also called Night Auditor), “Guest Services Representative” (also called Front Desk Clerk), and “AYS Agent.”

² References to the hearing transcript shall be made as “Tr. ___.” References to the Employer’s hearing exhibits shall be made as “EX ___” and references to the Petitioner’s hearing exhibits shall be made as “PX ___.” References to the Employer’s Request for Review shall be made as “RFR, ___.” References to the Regional Director’s Decision and Direction of Election shall be made as “DDE, ___.”

In post-hearing arguments to the Regional Director, the Employer continued to argue that the *only* appropriate unit was one that included all classifications of Front Office employees. As discussed below, the Employer did not argue that the bargaining unit could be made appropriate through the addition of Guest Service Aides separate from the other Front Office classifications. To the contrary, the Employer argued that Guest Service Aides could not be properly included within a bargaining unit unless *all* Front Office classifications were included.

The Regional Director issued her Decision and Direction of Election on March 15, 2019. She found that the petitioned-for bargaining unit was not an appropriate one for bargaining, but could be made appropriate by the inclusion of AYS Runners owing to their common supervision, functional integration with the Housekeeping department and the non-clerical nature of their job duties. The petitioned-for unit as modified by the Regional Director's unit determination will be referred to herein as the "Bargaining Unit." The Regional Director also ordered that certain "lead" classifications of employees within the Bargaining Unit vote subject to challenge because of their disputed status as 2(11) supervisors.³

A representation election was held on March 28, 2019. The tally was 107 votes in favor of the Petitioner and 97 against, with 11 challenged ballots. In a post-election proceeding, the parties waived their challenges and the challenged ballots were opened. The final tally was 110-105 in favor of the Petitioner. The Regional Director certified the Bargaining Unit on April 11, 2019.

³ The Employer does not seek review of the Regional Director's finding that AYS Agents should be included in the Bargaining Unit. The Petitioner addresses that determination only to the extent necessary to show that the remainder of the Regional Director's determination was also correct.

FACTS

The Regional Director made thorough factual findings pertinent to each of the traditional community-of-interest factors that govern the appropriate unit analysis. *See, e.g., In Re United Operations, Inc.*, 338 NLRB 123 (2002). The Petitioner shall review the Regional Director's findings with reference to the evidence that supports them.

A. Departmental Organization & Supervision.

The Employer organizes its operations into separate departments, including Front Office, Services (or Housekeeping), Event Operations (or Banquets), Culinary, Restaurants, and Loss Prevention. Each department is managed by a department head, and each has a set of lower-level managers who supervise the department's day-to-day operations. (DDE, 2; EX 1; Tr. 97-99; 261-263.) The classifications primarily in dispute in this proceeding belong to the Front Office department. With the exception of the AYS Runner, these job classifications are utilized solely within the Front Office department and are supervised on a regular basis solely by Front Office department managers. (DDE, 2.)

Like other departments, the Front Office has its own dedicated management team. (DDE, 2.) This team consists of Front Office Manager Shane Okumura, Assistant Front Office Manager Linda Marcellus, Assistant Rooms Manager Fred Eisenmen, Assistant Rooms Manager Alice Poon, and Rooms Voyager Andrew Espiritu. (DDE, 2; Tr. 48-49.)⁴ Okumura manages the department on a day-to-day basis. (DDE, 2; Tr. 261-263.) He is responsible for all front office functions and staff, and directs other managers and employees to execute front office operations, including guest arrival and departure procedures. (DDE, 2; PX 1.) He ensures compliance with Front Office policies, standards and procedures. (DDE, 2; PX 1.) In collaboration with the

⁴ The "Voyager" position refers to a manager-in-training.

Human Resources Department, he makes decisions regarding the issuance of discipline under the Employer's progressive discipline system, and ensures that such decisions and their associated documentation are completed according to standard and local operating procedures. (DDE, 2; PX 1; Tr. 30, 93-94; 264-265; 316.) He and the departmental managers under his authority administer performance appraisals for Front Office employees. (Tr. 94-95; 265-266.) These are used to establish eligibility for job transfers. (Tr. 95.) He is responsible for employee scheduling, and makes decisions regarding employee leave and vacation for Front Office employees. (DDE p. 2; Tr. 316.) Okumura carries out these duties with respect to the Front Office Department only; he is not responsible for managing employees in other departments. (Tr. 66; *see generally*, Tr. 259-268; 270.) The Front Office management team conducts daily meetings (or "standups") with employees in the Front Office Department. The meetings do not involve employees from other departments. (Tr. 50; 306-307.)

The Housekeeping Department is managed by Director of Services Amy Yoo, Manager of Rooms Alex Gomez, and Rooms Voyager Ryan Rama. (DDE, 2; EX 1; Tr. 76-77.) Together with her management team, Yoo oversees day-to-day housekeeping operations, ensures room cleanliness, collaborates with Human Resources about the discipline of housekeeping employees, runs daily standup meetings for housekeeping employees, conducts annual performance appraisals for housekeeping employees, approves vacation and leave requests, and sets schedules. (DDE, 2-3; Tr. 30; 95; 165; 179; 206; 215; 307-308; 314-315.) Classification of employees in the Housekeeping department include housekeepers, lobby housekeepers, housekeeping aides (or "housemen"), laundry attendants, and health club attendants. (Tr. 77-78.) The Front Office management team is not involved with the day-to-day supervision of the Housekeeping Department. (DDE, 3; Tr. 66; 307-308.)

The other departments included within the Bargaining Unit are Culinary, Restaurants, and Banquets. Employees within the Culinary department work as cooks and lead cooks, cold-side attendants, lead stewards, dishwashers, expeditors, kitchen purchasing clerks, kitchen utility employees, and bakers. (DDE, 3; EX 1; Tr. 78-79.) Employees within the Banquets department include banquet servers and bartenders, banquet housemen (or aides), and banquet housekeepers. (DDE, 3; EX 1; Tr. 81-82.) Employees within the Restaurants work as hosts, servers, food runners, bar attendants, baristas, room service operations and in-room dining servers. These employees work in the various restaurants and bars that the Employer operates, as well as in room service. (DDE, 3; Tr. 86-88.)

The Loss Prevention department is managed by Director of Loss Prevention Noel Keenan. The Shipping & Receiving Attendant (whom the Employer contends should have been included in the Bargaining Unit) works in the Loss Prevention. He is directly supervised by a Loss Prevention Supervisor or by Keenan himself. (DDE, 3;Tr. 250.)

The Employer also maintains an Engineering department under Director of Engineering Kazuaki Takahashi. (EX 1.) Classifications of employees within the Engineering department include senior engineers, engineers, and preventative maintenance employees. (Tr. 89.)⁵

Each department operates under the oversight of an executive committee level manager who reports directly to the Hotel's General Manager. (DDE, p. 3; Tr. 99.) The Front Office and Housekeeping departments fall under the oversight of Director of Rooms Operations Ali Lahip. (EX 1; Tr. 99.) Lahip is responsible for managing profitability and maintaining service standards in the Front Office and Housekeeping departments. (DDE, p. 3.) To provide oversight of the

⁵ The Employer did not contend that inclusion of these Engineering department employees was necessary to render the Bargaining Unit appropriate for bargaining, and it acknowledged that does not contend that a "plant-wide" bargaining unit is necessary. (Tr. 238.)

business, he communicates routinely with Front Office department staff for information about competitive pricing, compliance with contracts, and the proper handling of “VIP” customers. (Tr. 168; 366-368.) He also conducts walk-throughs of the entire hotel, and visits both the Front Office and Housekeeping departments to receive information about their operations. (Tr.166; 168). In the course of performing these duties, Lahip has sporadic occasion to directly supervise employees in either the Front Office or Housekeeping department. But the Regional Director found that, although Lahip “directs some employees at random to perform or prioritize work one to three times per day,” the actual day-to-day supervision is conducted by Okumura and Yoo in their respective departments because it is they who “are responsible for running daily department meetings, scheduling employees, collaborating with Human Resources on the discipline of their respective employees, and approving leave requests.” (DDE, p. 10.)

In an attempt to show that this finding was clearly erroneous, the Employer points to instances in which Lahip testified that he has become personally involved in supervising employees in one or the other department. This testimony was highly anecdotal in nature. Lahip testified that he attends daily stand-up meetings in the Housekeeping Department from “time to time,” recalling as an example one occasion when he participated in a training for housekeepers on a new bed-making procedure. (Tr. 166; 183; 187.) He also stated he might instruct a housekeeper to make up a room for a visiting VIP (although he allowed that this happens “not too often”). (Tr. 184-185.) Together with “other department heads,” he might get involved in advising housekeepers which rooms need to be cleaned first to meet the schedule of incoming flight crews. (Tr. 186.) He might accept a leave request from an employee and forward it on to the appropriate department head. (Tr. 206; 215.) If he saw hair on the floor of a shower, he might tell the housekeeper to make sure to clean it, or if a key to the laundry closet was not

working, he might help a housekeeper get the problem rectified. (Tr. 182; 184.) In the Front Office, Lahip might ask a Guest Service Representative to update the names of individual airline crew members into the system after a group check-in; he might coach an employee on the correct verbiage to use when addressing a guest; or he might ask that a Front Office employee stock the gift shop if he saw that it needed replenishment. (Tr. 351-352; 354.)

Despite these instances, the Employer failed to show that the Regional Director erred in finding that, while Lahip exercises overall financial management of the rooms operations, Okumura and Yoo exercised separate day-to-day supervision over employees in their respective departments. (DDE, 10.) Only in passing does the Employer acknowledge Okumura and Yoo's roles as the heads of their departments, and does not grapple at all with the record evidence demonstrating the extent of their separate decision-making authority over such matters as the direction of work, scheduling, leave, discipline, work assignments, and other key indices of supervisory control. (RFR, 6, 13, 28.) In view of the testimonial evidence and the Employer's own job descriptions (which Lahip acknowledged were accurate, Tr. 263-265), the Regional Director committed no error in finding that Front Office and Housekeeping department employees are separately supervised.

B. Skills and Training.

The Regional Director found that all employees receive common training on subjects such as harassment prevention, the Americans with Disabilities Act, human trafficking, service standards, and the Marriott corporate culture. (DDE, p. 4; Tr. 31.) But the Regional Director also found that Front Office employees are required to undergo job-specific training that is unique to their largely clerical duties. All Guest Service Agents, Rooms Controllers, AYS Agents, and Night Auditors are trained in procedures for checking guests in and out of the Hotel,

and routinely cover for each other in performing this work. (Tr. 275-279; 284.) In addition, Rooms Controllers are trained in the specifics of blocking off rooms to assure their availability for future reservations and to manage room inventory. (Tr. 284-285.) Night Auditors are trained to conduct “front” and “back” audits, which are separate accounting operations performed to ensure that all charges have been posted, that the rates charged to the customer coincide with the proper market code, that all room taxes have been posted, that credit card receipts are reconciled, and so forth. The training in this task may take weeks. (Tr. 279-281.) Guest Service Agents, AYS Agents, Rooms Controllers, and Night Auditors are all trained in the operation of the Employer’s telephone system, the MICROS point-of-sale system, the electronic key-making system, credit card readers, and other specialized tools of their trade. (Tr. 273-275.)

All Front Office employees (with the exception of the AYS Runners), as well as the Shipping & Receiving Attendant, receive specialized training in the Employer’s Full Service Property Management System (the “FSPM System”), a computer system that allows the Employer to manage its reservations, check-ins and check-outs, billings, and other operational requirements. (DDE, p. 4). Guest Service Representatives, AYS Agents, Rooms Controllers, and Night Auditors are trained for up to two to three weeks to achieve competency in using the FSPM System. (Tr. 258-259; 273.) Guest Service Aids are also trained to use the FSPM System, but their use is less sophisticated and their training more basic. (Tr. 285.) The Shipping & Receiving Attendant is trained to use the FSPM System and uses it regularly to inventory and track deliveries. (Tr. 257-259.) No employee within the Bargaining Unit uses the FSPM System or is trained in its operation. (Tr. 285; 287-289; 320.)

The Regional Director found that significant differences in education and language prerequisites separate Front Office employees from employees in the Bargaining Unit.

According to job descriptions for the positions, a high school degree or its equivalent is a “preferred qualification” for Guest Service Representatives, AYS Agents, Night Auditors and Rooms Controllers. (PX 3-6, 8.) As a practical matter, Lahip testified that he did not know of any employee in the Front Office who did not have at least a high school degree, and believed that at least some had one or more years of college education. (Tr. 320-321.) In contrast, Lahip testified that there was no high school education requirement expected of employees in the Housekeeping department. (Tr. 192.)

English proficiency and strong communications skills are also a requirement for Front Office positions. (DDE, p. 4; PX 3-6; 8.) According to Lahip, “they must be able to communicate effectively with every guest.” (Tr. 321.) Furthermore, competency in telephone etiquette, writing, reading, problem solving and/or computers is required for Guest Service Agents, AYS Agents, Night Auditors, and Rooms Controllers. (EX 3-6.) In contrast, English proficiency is not required for employees in the Housekeeping department, and many speak English in only a rudimentary manner. (Tr. 321.)

C. Job Functions.

The Regional Director found that Front Office employees have distinct job functions and perform distinct work from the Hotel’s manual workforce that the Petitioner seeks to represent.

Guest Service Representatives are responsible primarily for checking guests in and out of the Hotel. They verify guest identity, secure a valid form of payment, and activate guest keys using the electronic key machine. They set up the guest accounts for billing meals and incidentals, and verify and adjust billings. They process guests’ checkouts, resolve disputed charges, retrieve room keys, and solicit guest comments. They process Marriot Reward program information, and seek to sign up new guests to the program. They answer questions, give

directions, and provide general assistance. (DDE 4; EX 4; Tr. 46; 169; 271.) Guest Service Representatives wear professional attire consisting of a shirt and tie for men, and a jacket, blouse and pants for women. (Tr. 62.)

The PM Front Desk Clerk staffs the Front Office during the night. In that capacity, these employees are responsible for handling all the job duties of a Guest Service Agent. (DDE, p. 4; EX 3.) In addition, the PM Front Desk Clerks are responsible for performing front end and back end audits using their extensive training in the FSPM System. (Tr. 70-71; 170.) The PM Front Desk Agent wears the same uniform as the Guest Service Representative. (Tr. 74.)

Guest Service Aides are responsible for welcoming guests and assisting them through the check-in and check-out process. (DDE, p. 5; EX 8). They transport luggage to guests' room upon request. They also perform a concierge function, answering guest questions, making recommendations, booking itineraries, tours, or transportation, and providing directions either inside or outside the Hotel. They use the FSPM System to look up guests, to process laundry pickup and delivery orders, and for other reasons. (Tr. 61; 171; 317-319.) Guest Service Aids wear a uniform jacket and attend daily meetings with the Front Office department. (Tr. 62.)

The Rooms Controller reviews room reservations and blocks rooms based on type and category to ensure that they are available for guests when they arrive. (Tr. 71.) They are also responsible for handling reservations and check-ins for airline flight crews. (Tr. 71; 171-172.) The duties of the Rooms Controller overlap significantly with those of Guest Service Representatives, and the Room Controllers cover the Guest Service Representatives positions as needed. (EX 4 & EX 5; Tr. 72-73; 171-173.) The Rooms Controller also performs the functions of an AYS Agent by sitting in the AYS area and answering telephones as needed. (Tr. 73.)

AYS Agents are responsible for two major tasks: operating the Hotel's telephone system

and assisting with the check-in/check-out process. (DDE, p. 5.) With respect to their duties as telephone operator, AYS agents answer calls from inside and outside the Hotel, routing those calls to the appropriate destination. (Tr. 52.) AYS Agents are also responsible for processing all guest check-ins through Marriott's mobile phone app. When a guest checks in through the app, an AYS Agents reserves the room, prepares the room key, and communicates to the guest via the app that the room is ready. (Tr. 52; 291-295.) The number of guests who check in through the app is increasing, and administering such check-ins constitutes some 30 to 40 percent of an AYS Agent's working day. (Tr. 294; 358-359.) AYS Agents are also tasked with addressing pre-arrival requests by guests for special amenities or services. The AYS Agent will direct the AYS Runner to fulfill the request prior to the guest's arrival. (Tr. 286.) AYS Agents wear professional attire consisting of a sweater or a vest, accompanied by a tie for men. (Tr. 62.)

AYS Runners are principally responsible for transporting items such as rollaway beds, cribs, refrigerators, toiletries, and other amenities to guest rooms. (DDE, p. 5; EX 9; Tr. 64; 302-303.) Although coded as Front Office employees for payroll purposes, Lahip testified that AYS Runners are supervised on a day-to-day basis by Yoo, and that they more commonly interact with employees in the Housekeeping department. (Tr. 309, 311; 314-315.)

The Shipping & Receiving Attendant's principal job duty is to receive mail deliveries to the hotel, inventory them, distribute them to the respective departments, and to notify the recipients of their arrival. (DDE p. 5; Tr. 80-81.) In performing these tasks, he interacts principally with the heads of various departments, as well as Guest Service Aides in the Front Office department. (Tr. 227; 231; 237.) He also interacts with AYS Runners who might be dispatched to move various supplies to the Housekeeping department. (Tr. 232.) There is currently a single incumbent to the position who works as both a Shipping & Receiving

Attendant and as a Loss Prevention Officer (or Security Guard). (Tr. 254.) The Shipping & Receiving Attendant wears the same uniform as other Security Guards. (Tr. 254-255.)

Classifications of manual labor employees within the Bargaining Unit share none of the unique clerical duties of Front Office employees and the Shipping & Receiving Attendant. Employees in the Housekeeping department are responsible for ensuring that rooms are cleaned for guests who are staying over as well as for incoming guests. This entails making beds, dusting and cleaning, vacuuming, cleaning showers, and performing related manual tasks. (Tr. 182-183; 187-188; 323-324.) Lobby attendants are responsible for mopping and cleaning the public areas of the Hotel. (Tr. 77-78.) Other classifications within the Housekeeping department are responsible for laundering bed linen, cleaning the health club and pool, and other cleaning activities. (Tr. 77.) Employees in the Culinary department prepare and cook food, wash dishes and clean kitchen areas, stock kitchen supplies, and similar tasks. (DDE, 5; Tr. 78-79.) Employees in the Restaurants department provide service to guests at the Employer's restaurants, bars, lounges, and coffee shop. (DDE, 5; Tr. 86-88.) Employees in the Banquets department are responsible for staging, serving, and cleaning up banquet events and catered meals. (DDE, 5; Tr. 82-83.)

D. Functional Integration & Frequency of Contact.

The Regional Director found that employees throughout the Hotel have routine contact with one another in order to ensure smooth service delivery to the Hotel's guests. (DDE, p. 6.) With respect to interactions between Front Office employees and classifications of employees within the Bargaining Unit, these contacts are customary for any hotel. Rooms Controllers and other Front Office employees communicate with Housekeeping leads to notify about early guest check-ins, to inquire about room status, and to ensure room availability for guest arrivals. (Tr.

172.) AYS Agents communicate with AYS Runners regarding amenities and other items that must be delivered to rooms. (Tr. 174-175). A housekeeper might call an AYS Agent to determine if a “Do Not Disturb” room is actually vacant. (Tr. 174-175.) A food server in a restaurant will call the Front Office to get the correct name or room number for a customer who has made a charge to his or her room. (Tr. 175.) Guest Service Aids might instruct lobby attendants to clean up a spill in the lobby. (Tr. 175-176.) AYS Agents might take room service orders made by guests outside Room Service’s hours of operations, and convey those orders so that they are waiting the next morning. (Tr. 180.) They might go down to the Kitchen to see if there is food available for a guest who has arrived late. (Tr. 175; 106.)

There is no dispute as a general proposition that hotel operations are characterized by a certain degree of functional integration across departments. The Board itself has long recognized that hotels are integrated enterprises, and that different departments must routinely coordinate in order to ensure that the services requirements are met. Interactions that the Board has found to be routine include, for example, “coordination between the front desk employees and housekeeping concerning the availability of rooms and in making sure room occupancy is correctly listed on both the housekeeping and the front desk computers.” *See Lodgian, Inc.*, 332 NLRB at 1252; *Dinah’s Hotel & Apartments*, 295 NLRB at 1100 (noting “coordination between front desk personnel and the housekeeping staff regarding availability of rooms and items left behind by guests”); *see also Arlington Hotel*, 126 NLRB at 403 (citing interactions between front office and housekeeping as evidence of the inherently integrated nature of hotel operations). They have also included “contact between the cashiers/hostesses in the food and beverage department and front office personnel, particularly the night auditors, in reconciling cash received in the restaurant with computer receipts.” *Lodgian, Inc.*, 332 NLRB at 1252.

As discussed below, the necessary integration of functions among front desk and other hotel operations does not by itself dictate that a hotel-wide bargaining unit is required under controlling law. The kind of evidence that the Employer adduced have in favor of its argument that the Hotel's Front Office and Housekeeping departments are "highly integrated" and "inseparable" is of the same type that the Board has found routine in practically every hotel case. It bears noting in this regard that the Employer relies upon generic Marriott corporate job descriptions as evidence that the coordination between Front Office and Housekeeping operations at this Hotel is somehow unique. (*See* RFR, 7-8; EX 3; EX 4 EX 4; EX 5; EX 6; Tr. 78). Such standard documents do not provide persuasive evidence that the Hotel's operations are more highly integrated than is normally the case at any hotel. Furthermore, Lahip acknowledged that he had no basis to compare the integration of this particular hotel with any other Marriott property, whether an "airport hotel" or otherwise. Tr. 178; 291.) Former Director of Human Resources Lisa Krone has worked at other hotels in the Marriott family, but offered no assessment of the comparative degree of the Hotel's functional integration

The Employer contends that the level of integration among its Front Office and Housekeeping employees at the Hotel is somehow unusual because this is an "airport hotel" that has unique operational requirements. At the outset, its treatment of the evidence to support this proposition is misleading. It avers in its brief that the Hotel has "many" contracts with airlines to "provide large numbers of guest rooms." The actual evidence was not so certain: Lahip testified to "several" airlines contracts (not "many"), gave no indication as to the number of guest rooms required, and stated that only "a couple" of them had contractual early check-in requirements. (RFR, 6; Tr. 186). It avers that the Hotel requires "quick turnaround" of rooms because it "often operates at close to or at maximum occupancy rates," but cites as evidence for that broad

statement testimony by Lahip that the Hotel was at 100 percent occupancy the day prior to the hearing. (RFR, 11; Tr. 186-187.) There was no evidence to support the assertion that the Hotel regularly operates at or near full occupancy.

But even if it is true that the Hotel's status as an "airport hotel" presents distinct operational challenges, there was no evidence that the degree and nature of interactions among employees of different departments was anything other than ordinary for the industry. The Hotel is hardly the only high volume hotel in the extremely busy San Francisco market, and yet Front desk employees are not as a rule included in the same bargaining units as housekeeping and other employees at other hotels. (Tr. 134-135.) The Employer's evidence of interactions between Front Office and Housekeeping employees was unexceptional, and did not establish an inordinate degree of integration of operations between these departments.

E. Interchange.

The Regional Director found that there is frequent interchange among employees *within* the Front Office in the sense that employees in different classifications regularly perform the work of other classifications within the Department. (DDE, 7.) Thus, Guest Service Agents will frequently perform the work of AYS Agents and *vice versa*. (Tr. 277.) Rooms Controllers and Night Auditors cover the front desk, and their job duties overlap significantly with the jobs of Guest Service Agents. (Tr. 72-73; 170.) Rooms Controllers will answer the phone when an AYS Agent is occupied. (Tr. 72-73.) AYS Agents cover the bell stand when a Guest Service Aide is not available. (Tr. 58.) Indeed, the Employer presented evidence that about one-third of Front Office employees are qualified to work in more than one Front Office classification, and they frequently do. (Tr. 207-216).

In contrast, such interchanges are highly uncommon between Front Office employees and

employees within the Bargaining Unit. (DDE, 6.) Krone testified that an AYS Agent who previously worked as a Starbucks barrista volunteered to cover a shift there once. (Tr. 59.) Lahip testified that the same employee had previously worked as a housekeeper and has volunteered to help clean some rooms on sporadic occasions. (Tr. 346.) Lahip vaguely recalled seeing a Guest Service Aide work a couple of banquet events over the last couple of years, although Banquet Server Bherad Barekh testified that he has *never* seen a Front Office employee work a banquet event during his 22 year tenure at the Hotel. (Tr. 202-203; 334; 381.) In either event, interchanges between included and excluded employees are very infrequent.

The Employer presented extensive evidence regarding employees who are “double coded” to work in multiple positions. But while double-coding indicates that an employee has transferred into the Front Office at some point in the past (and retained their original code for payroll purposes), it does not necessarily indicate that employees continue to interchange job duties. (DDE, 6, 12.) Only four employees have transferred permanently from Bargaining Unit positions into the Front Office over an indeterminate period of time. (Tr. 345-346.) There is no evidence that *any* employee has transferred from the Front Office into a Bargaining Unit position. Other than on a few sporadic and vaguely recalled occasions, there have been no temporary interchanges between excluded and included employees.

In contrast, employees within the Bargaining Unit more regularly exchange with one another across departments. Although there are only two permanent AYS Runners, several employees in the Housekeeping Department are double-coded to perform this work, and do in fact perform it. (Tr. 217-223.). This interchange was one of the reasons the Regional Director cited in ruling that AYS Runners share a sufficient community of interest with petitioned-for employees to require their inclusion. (DDE, 12.) Employees who are classified as food servers

within the Restaurants department or kitchen workers in the Culinary department work with some regularity as banquet servers within the Banquet Department. (Tr. 333.) There is also a group of housekeepers who sometimes work banquet events when the Employer has additional labor needs. (Tr. 338-339; 378; 380.) Front Office employees do not work these events (except on the one or two occasions that Lahip vaguely recalled).

F. Terms and Conditions of Employment.

The Regional Director found that the Employer offers full-time employees the same medical, dental, tuition reimbursement, retirement savings, and other welfare benefits. (DDE, 7.) All employees use the same time-keeping system, and earn hourly wages paid weekly. (DDE, 7.) Employees in the Front Office department are generally higher paid than employees in the Bargaining Unit: for example, housekeepers and housekeeping aides earn \$18.80 per hour, whereas AYS Agents, Guest Service Representatives, and Rooms Controllers earn \$19.80, \$21.95, and \$22.95 respectively.⁶ (DDE, 7; PX 4.) The Employer maintains an employee handbook and Standard Operating Procedures that apply to all employees. (DDE, 7.) However, the Front Office has its own departmental policies, violations of which may also lead to discipline. (Tr. 267-268; 270.)

G. Industry Practice.

The Regional Director found that the Union represents employees at 37 “Class A” hotels in San Francisco and San Mateo Counties. A Class A Hotel is one that, like the Hotel, has a food and beverage and banquets department. (Tr. 146.) The Petitioner does not represent any wall-to-wall bargaining units in such hotels. Specifically, the Petitioner does not represent front office

⁶ Guest Service Aides earn less at \$18.00 per hour, but they earn regular tips for assisting guests. (Tr. 325-326).

guest service agents, night auditors or room controllers. (Tr. 42-43; 134; 140-141.) It does represent AYS Agents (or PBX operators as they are often called) at many hotels, including at the Marriott properties in San Francisco. (Tr. 139.) But AYS Agents at unionized Marriott properties do not share the same degree of interchange and overlapping duties with Guest Service Agents as they do at the Hotel. For example, they do not cover the work of Guest Service Agents as they do at the Hotel here, and they do not handle guest check-ins through the mobile app or otherwise. (Tr. 44; 104; 139-140; 144-145.)

ARGUMENT

The Regional Director's decision to order an election in the Bargaining Unit was rationally based upon an appropriate consideration of the community-of-interest factors that govern unit determinations in the hotel industry. She properly applied agency precedent in reaching her decision, and did not give unwarranted weight to any specific community-of-interest factor in the analysis. There is no compelling reason to review her determination.

I. The Regional Director followed established Board precedent in making her unit determination, and the Employer fails to present compelling reason for review of her application of that precedent.

Describing the Hotel as “modern” and “highly integrated,” the Employer argues that Board precedent required the Regional Director to find only a wall-to-wall bargaining unit appropriate. (RFR, 16, 18). But the Employer raises no compelling reason to grant review because the Regional Director did not depart from Board precedent. The Union shall first review the legal framework for making appropriate unit determinations in the hotel industry, and then discuss how the Regional Director engaged in considered decisionmaking in directing an election in the Bargaining Unit.

A. The Board has long rejected the rule that wall-to-wall bargaining units in the hotel industry are the only appropriate ones for bargaining.

This is not the first time that the Board has been met with arguments that a wall-to-wall unit is necessarily appropriate simply because hotel employees share common employment terms and inevitably work together towards the common goal of serving hotel guests. For a short period of time in the 1960s, the Board adhered to a policy of finding only wall-to-wall hotel units appropriate in light of the fact that hotel operations are necessarily integrated and that employees must interact across job occupations in order to make the hotel run. But the Board long ago abandoned that a policy favoring wall-to-wall units in favor of the balanced community-of-interest analysis that the Regional Director applied here. The evidence of functional integration that the Employer advances in this case is no different than the kind that the Board has reviewed in the past when rejecting the rule that wall-to-wall units are the only appropriate ones for bargaining.

The Board did not assert jurisdiction over the hotel industry at all until 1959. *See Floridan Hotel of Tampa, Inc.*, 124 NLRB 261, n. 10 (1959). Just a year later, the agency adopted a bright-line rule that “in the hotel industry, all operating personnel have such a high degree of functional integration and mutuality of interests that they should be grouped together for collective-bargaining purposes.” *Arlington Hotel Co., Inc.*, 126 NLRB 400, 404 (1960). Among the issues in *Arlington Hotel* was whether or not to include front office employees in a bargaining unit in which the petitioning union sought to represent the hotel’s manual labor force including “room maids, scrub women, repair and maintenance men, kitchen help, waiters, [and] laundry workers.” *Id.* at 402. Emphasizing facts similar to those that the Employer here argues should control the analysis, the Board reasoned that wall-to-wall units in the hotel industry are necessary because there is “a high degree of cooperation among all the employees and

integration of all the departments, in the common goal of serving the hotel guests.” *Id.* at 403. With specific reference to front office employees, the Board found that these employees “give room keys to the bellboys, check with the housekeeping department on the status of rooms, give the telephone operators index cards on the guests, and call the service elevator operators to take departing guests’ bags downstairs.” *Id.* 403. Moreover, all employees in the hotel “work in the same building, are centrally hired, and share in the same fringe benefits.” *Id.* 404. Following 1960, the Board applied *Arlington Hotel* repeatedly to rule that front office employees must automatically be included in hotel bargaining units of manual employees because of the functionally integrated nature of hotel operations.⁷

Yet despite its ease of applicability, the Board soon found the *Arlington Hotel* approach to be unworkable. First, the Board recognized that where the petitioning union’s customary jurisdiction excluded certain classifications of employees, requiring their inclusion under *Arlington Hotel* actually undermined the purpose of the Act. *See Water Tower Inn*, 139 NLRB 842, 846 (1962) (“To apply [the *Arlington Hotel*] rule where the probative evidence establishes that, despite the “functional integration and mutuality of interests” of operating personnel, the parties have for years bargained, pursuant to contract, in less than hotelwide units, would

⁷ *See Manger-Savannah Corp., Inc.*, 126 NLRB 1136, 1138 (1960) (ruling that “the interests and duties of front-office employees require that they be part of a unit of hotel operating and maintenance personnel.”); *Sw. Hotels, Inc.*, 126 NLRB 1151, 1155–56 (1960) (“Despite the differences in duties, education, and manner of dress from those of other hotel employees, we find that the front-office personnel are not office clerical or managerial employees and should properly be included in a unit of operating and maintenance hotel employees.”); *Waikiki Biltmore Inc.*, 127 NLRB 82, 83 (1960); (“In accord with the decision in the *Arlington Hotel* case, we find that the front desk personnel as well as the auditors, whom we find to be office clericals, properly belong in the existing unit.”); *Ray, Davidson & Ray*, 131 NLRB 433, 436 (1961) (“Although the employees vary widely in skill, many are not skilled, and others work as office clerical employees, our policy in the analogous retail industry and hotel industry is not to exclude any employee for such a reason.”).

undermine the stability inherent in such a bargaining pattern and have an unsettling effect on labor relations.”). Subsequent to *Water Tower Inn*, the focus of the agency’s inquiry in hotel unit determination cases frequently focused on the scope of the petitioning union’s local practice with respect to operations that it sought to exclude from a proposed bargaining unit. *See, e.g., Laronde Bar & Rest., Inc.*, 145 NLRB 270, 271 (1963); *Management Directors, Inc.*, 148 NLRB 1053, 1055 (1964).

In 1966, the Board abandoned *Arlington Hotel* altogether in *77 Operating Company d/b/a Holiday Inn Restaurant*, 160 NLRB 927 (1966). Noting that it had “gained much experience and better insight into the nature of the hotel-motel industry” since 1960, the Board concluded that “[a]though . . . employees in the various facilities of hotels and motels have a basic mutuality of interest, neither their functions nor their mutual interests are in all cases integrated to such a high degree that an overall unit should be found the only appropriate unit.” *Id.* at 929. Rather, the Board would “hereafter consider each on the facts peculiar to it in order to decide wherein lies the true community of interest among particular employees.” *Id.* at 930.

The Board subsequently affirmed this approach in *Omni-Dunfey Hotels, Inc. d/b/a Omni International Hotel of Detroit*, 283 NLRB 475 (1987). Citing cases, the Board stated that since *77 Operating Company*, it has “made unit determinations in the hotel/motel industry on a case-by-case basis, utilizing the same traditional community-of-interest criteria used in other industries.” *Id.* at 475. The Board also emphasized that in the hotel industry, as in other industries, “[i]t is beyond peradventure that the Act allows a union to petition for an appropriate unit, and does not require it to seek the most appropriate unit, even when a different unit than that petitioned-for might be more appropriate than the one it seeks.” *Id.* *See also PCC Structural, Inc.*, 365 NLRB No. 160, *15 (2017) (affirming that under traditional community-

of-interest principles, “a proposed unit need only be *an* appropriate unit, and need not be *the most* appropriate unit.”) (emphasis in original).

In line with this history, the Board applied community-of-interest considerations to find that hotel bargaining units consisting of just a single department or excluding certain departments were appropriate ones for collective bargaining notwithstanding that all operations were integral to the functioning of the enterprise and that all employees shared certain terms of employment in common. *See, e.g., Hotel Equities, d/b/a/ The Regency Hyatt House*, 171 NLRB 1347 (1968) (finding a unit excluding front office and other clerical employees appropriate); *Ramada Inns, Inc.*, 221 NLRB 689 (1975) (finding bargaining unit of housekeeping, maintenance, and bellmen appropriate, and excluding front office); *Lane Avenue Property, Ltd., d/b/a Ramada Inn West*, 225 NLRB 1279, 1280 (1976) (finding unit of housekeeping and maintenance employees appropriate, and excluding front office); *Omni-Dunfrey Hotels*, 283 NLRB at 475 (finding unit of engineering employees appropriate); *Lodgian, Inc. d/b/a/ Holiday Inn City Center, Inc.*, 332 NLRB 1246, 1251-1254 (2000) (finding unit excluding front office employees appropriate); *Dinah’s Hotel Corp., d/b/a Dinah’s Hotel & Apartments*, 295 NLRB 1100, 1100-1102 (1989) (finding unit consisting of front office only appropriate).

The Employer argues that the Regional Director departed from Board precedent in finding the Bargaining Unit to be appropriate. As hereafter shown, she did not.

B. The Regional Director correctly applied Board precedent by balancing the relevant community-of-interest factors in making her unit determination.

In determining that the Bargaining Unit was appropriate for collective bargaining, the Regional Director analyzed the record evidence in view of the relevant community-of-interest factors: whether the employees (1) are organized into a separate department; (2) have distinct skills and training; (3) have distinct job functions and perform distinct work; (4) are functionally

integrated with other employees; (5) have frequent contact with other employees; (6) interchange with other employees; (7) have distinct terms and conditions of employment; and (8) are separately supervised. (DDE, p. 8). The Regional Director considered the evidence in light of all of those factors, and did not give any single one of them controlling weight. The Petitioner will review key aspects of the Regional Director's decision and address the Employer's contentions that she departed from Board precedent.

Departmental structure and supervision

With respect to organizational structure and supervision, the Regional Director found that Front Office employees are organized into a distinct departments, and that they are separately supervised. She weighed these factors in favor of determining that a bargaining unit that excluded Front Office employees would be appropriate. (DDE, 10.)

The Employer argues that the Regional Director's findings were clearly erroneous. At the outset, it repeatedly contends that the both Front Office employees and Housekeeping employees belong to what it labels the "Rooms Operations Department." (RFR, 5, 6 10, 18, 28.) That characterization is not supported by the evidence. While Lahip has the *title* of Director of Rooms Operations and serves on the Hotel's executive committee in that capacity, Krone's testimony and the Employer's organizational chart made clear that the Front Office and the Housekeeping departments are separate departments within the Employer's organizational structure. (Tr. 98-99; EX 1.) The Regional Director correctly found this to be the case. (DDE, 10.) While the Employer is free to argue that the integration of these two departments is close, it should not mislead by inventing a "department" that does not exist within the Employer's organizational structure.

The Regional Director was also correct to find that Front Office and Housekeeping employees are separately supervised. It is true of course that Lahip exercises oversight over both the Front Office and Housekeeping departments in his capacity as Director of Rooms Operations. But while the Regional Director acknowledged this fact, she found that Lahip's actual exercise of supervisory duties was limited and insufficient to alter a finding that Okumura and Yoo exercised meaningful, *separate* supervision of their respective departments. (DDE, p. 10.) In contesting this finding, the Employer inflates anecdotal examples of Lahip's direct interventions with employees in one or the other department to argue that Lahip exercises constant day-to-day supervision. Thus, while the Employer suggests that Lahip attends standup meetings in the Housekeeping department every morning, Lahip actually testified that he attended "some" them from "time-to-time." (Tr. 166; 187; *compare* RFR, 9; 26.) While the Employer asserts that Lahip is "commonly approached" by housekeepers who have issues with their laundry or room keys, Lahip in fact recounted a single event that had happened on a specific day. (Tr. 181.) While the Employer argues that Lahip trains housekeepers on an "as-needed basis" on how to make beds, Lahip was in fact testifying to a new procedure that had been rolled out at a certain point in the past. (Tr. 183.) And even as the Employer portrays Lahip as a one-man-show supervising all employees every day while also running the financial side of the operation, the Employer does not grapple at all with the evidence demonstrating that Okumura and Yoo, both personally and through their management teams, exercise close day-to-day supervision of their departments, including by "running daily department meetings, scheduling employees, collaborating the Human Resources on the discipline of their respective employees, and approving leave requests." (DDE, 10.)

Substantial record evidence supports the Regional Director’s finding that Lahip’s *ad hoc* interactions with employees in the Front Office and Housekeeping departments did not supplant the actual day-to-day supervisory control exercised by the department heads. In view of this evidence, she properly weighed the separate supervision of the Front Office employees as a factor supporting a conclusion that they need not necessarily be included to render the Bargaining Unit appropriate. *See, e.g., Omni-Dunfry Hotels*, 283 NLRB at 479, 476 (the “immediate supervision” of engineering employees favor finding an engineering-only unit appropriate notwithstanding that they were jointly supervised a higher level by the rooms division head); *Exec. Res. Assocs.*, 301 NLRB 400, 402 (1991) (the fact that director spoke daily with program managers under his control, made all final personnel decisions and had control over labor relations did not eviscerate the importance of the direct, day-to-day supervision of the employees’ immediate supervisors in the community-of-interest analysis).⁸

Distinct skills and training and distinct job functions

The Regional Director found that Front Office employees have distinct skills, training, and job functions from employees in the Bargaining Unit. (DDE, 10.) She made this finding based upon abundant record evidence establishing that Front Office employees perform largely clerical duties and receive extensive training in implementing the Hotel’s check-in and check-out procedures, handling guest folios, conducting night audits, making key cards, operating the phone system at an advanced level, or, in the case of the Shipping & Receiving Attendant, coordinating incoming and outgoing deliveries. In contrast, the Bargaining Unit consists of employees who are primarily engaged in manual labor, and who have skills and training

⁸ It bears mention that the Employer also does not contest the Regional Director’s finding that the Shipping & Receiving Attendant is separately supervised and belongs to a different department than petitioned for employees.

commensurate with such jobs.

In support of her conclusion that distinctions in skills, training, and job functions are germane, the Regional Director cited Board precedent in which the agency has distinguished between “white collar” clerical occupations in a hotel’s front office and “blue collar” manual labor occupations performed by employees who make beds, mop floors, scrub pots, and carry heavy banquet trays. *See Hotel Equities d/b/a The Regency Hyatt House*, supra, 171 NLRB at 1349; *Dinah’s Hotel & Apartments*, 295 NLRB at 1101. (DDE, 11-12.) The Employer does not generally dispute the Regional Director’s characterization of its Front Office employees as “white collar” or “clerical” or her characterization of classifications in the Bargaining Unit as “blue collar” or “manual.” Instead, the Employer argues that there are compelling reasons for the Board to reconsider the supposed distinction between these two classes of workers in appropriate unit determinations because it “does not make sense in modern, highly intergrated hotels.” (RFR, 18.)⁹

Contrary to the premise of the Employer’s argument, neither the Regional Director here nor the Board in its prior cases has used the white collar/blue collar distinction as an analytical framework separate from the community-of-interest analysis. Rather, the “white collar/blue collar” metaphor is simply an accurate shorthand to refer to the reality that certain groups of employees within the hotel industry have notably different skills, training, and job duties than others. Giving weight to such distinctions where they exist is *required* by the community-of-interest analysis. It is not, as the Employer suggests, a means to circumvent it. Thus, in all cases in which the Board has noted a white collar/blue collar distinction (or a clerical/manual labor

⁹ The Regional Director correctly acknowledged that Guest Service Aides are not purely white collar, but that they perform some manual labor work. (DDE, 10.) The Petitioner will address the Employer’s arguments regarding Guest Service Aides below.

distinction) in discussing job skills and duties, the agency has addressed the distinction within the context of other community-of-interest considerations, and not as a replacement for them. *See, e.g., Regency Hyatt House*, 171 NLRB at 1359 (noting that the manual employees have their own immediate supervisors who are different than the front office supervisors, wear uniforms that are different from the business dress of the clerical employees, engage in entirely different types of manual tasks than the front office employees, have only routine contact with front desk employees in which they are mostly just told what to do, and have little if any interchange with them); *Dinah's Hotel & Apartments*, 295 NLRB at 1101 (noting that the petitioned-for unit of front office employees “enjoy a higher wage scale than employees in other departments; assist employees in other departments only very infrequently; are supervised separately from the housekeeping employees, . . . do not interchange with the other employee groups, and most importantly, perform work which greatly varies in kind from that of the other employees”); *Lane Avenue Property, Ltd. d/b/a Ramada Inn West*, 225 NLRB at 1279 (“employees in the requested unit are separately supervised, do not interchange with other employees on a regular basis, and they are engaged in the performance of distinctive manual functions in furtherance of the objectives of their respective departments”); *Ramada Inns, Inc.*, 221 NLRB, at 691 (“[t]he front desk employees are likewise separately supervised and they are engaged in essentially clerical functions. Also, as revealed by the record, the front desk employees infrequently perform the manual functions of the other hotel employees.”)

The Employer’s argument that the Board should “reconsider” the so-called white collar/blue collar distinction raises no compelling basis to grant review. The Regional Director’s emphasis upon distinctions in skills, training and job duties between excluded and included employees was not only consistent with Board precedent, it was required by that precedent as

part of the community-of-interest analysis. She correctly found that Front Office employees and the Shipping & Receiving Clerk perform qualitatively different work requiring different skills, aptitude, and training, and she properly weighed these distinctions in determining that their inclusion in the Bargaining Unit was not mandatory.

Frequency of contact and interchange

The Regional Director found that employees included in and excluded from the Bargaining Unit have frequent and routine contact with one another inasmuch as “[a]ll of the departments maintain contact with one another to ensure smooth service delivery to the Hotel’s guests.” (DDE, 11.) The Regional Director did not ignore this factor, but found that it is not determinative in the presence of other factors demonstrating that Front Office employees need not necessarily be included in the Bargaining Unit. (DDE, 11.)

As discussed above, the Employer’s evidence of coordination between Front Office and Housekeeping employees established nothing unique about this Hotel. It is true that Front Office employees regularly communicate with Housekeeping department regarding various operational issues to ensure that rooms are ready to be sold. It is also true that Front Office employees communicate regularly with other departments to communicate guest needs and to ensure service standards. But while acknowledging these interactions, the Regional Director’s decision not to give them determinative weight was fully consistent with Board precedent. As discussed above, the Board once considered that wall-to-wall units in the hotel industry are necessary because hotels by nature have “a high degree of cooperation among all the employees and integration of all the departments, in the common goal of serving the hotel guests.” *Arlington Hotel*, 126 NLRB at 402. That policy is no longer the law. The fact that hotels generally—and this Hotel in particular—require employees to work in close coordination with one another to ensure that

rooms are turned around and that guests are service standards are maintained does not dictate that inclusion of all employees who participate in this common endeavor must belong to a single bargaining unit. Espousing that view would constitute a return to *Arlington Hotel's* principle that only a wall-to-wall unit is appropriate.¹⁰

The Regional Director also gave appropriate weight to the near total absence of interchange among employees who are included and excluded from the Bargaining Unit. (DDE, 11.) She found that there was evidence of a very small number of employees from manual labor positions who have transferred permanently into the Front Office as AYS Agents, Guest Service Aides, or other positions. But as she noted, the Board has historically accorded permanent transfers less weight than temporary interchange in assessing the community of interest shared by two groups of employees. *See MGM Mirage*, 338 NLRB 529, 534 (2002); *Red Lobster*, 300 NLRB 908, 911 (1990). With respect to temporary interchanges, the record establishes, that instances of excluded employees working performing work within the Bargaining Unit was extremely isolated, while instances of employees in the Bargaining Unit performing work in the Front Office or as a Shipping & Receiving Attendant was non-existent. (DDE, 11.) Notwithstanding the Employer's arguments to the contrary, the regularity (or not) of interchange among included and excluded employees has been a factor to which the Board has assigned significant weight both in cases in which the agency found narrow units appropriate and in which it found broader units necessary. *See, e.g., Lodgian*, 332 NLRB at 1252 (finding exclusion of front office employees warranted and noting that there were very few instances of front office employees performing tasks generally assigned other groups of employees); *compare Servico*,

¹⁰ As discussed below, even if the Board were inclined to consider such a change in the law, this case does not provide the proper vehicle for doing so because neither party contends that a wall-to-wall unit is necessary in this case.

Inc., 214 NLRB 51 (1974) (finding inclusion of front office employees required and noting that both included porters and excluded front office employees drove the employer's airport van, that both groups of employees made room service deliveries, and that front office employees sometimes cleaned guest rooms); *Golden Eagle Motor Inn*, 246 NLRB 323, 323 (1979) (finding inclusion of front office employees required and noting that front office employees also cleaned and made up rooms two to three times per week and performed other non-clerical duties). The Regional Director did not, as the Employer contends, lend exaggerated weight to the lack of interchange among excluded and included employees. It is a factor that she was required to consider, and she gave it appropriate weight in light of the totality of the circumstances.

Based upon her careful weighing of the evidence, the Regional Director correctly found that the Bargaining Unit was appropriate for bargaining notwithstanding that it excludes Guest Service Agents, PM Front Desk Clerks, Rooms Controllers, Guest Service Aides, and the Shipping & Receiving Attendant. She judiciously determined that AYS Runners must be included in the Bargaining Unit owing to the fact that they fall under the Housekeeping department's supervisory oversight, they regularly interchange job duties with other members of the Housekeeping department, they perform solely manual labor, and they do not receive the level of training that Front Office employees receive. Whether or not the Bargaining Unit is the *only* unit that would be appropriate bargaining, it has a rational foundation and is clearly at the least *an* appropriate unit for bargaining. *U.S. Can Co.*, 305 NLRB 1127, 1140 (1992). That is enough.

- C. The cases that the Employer relies upon to argue that Front Office employees are highly integrated into the Hotel's operations are distinguishable, and do not undermine the Regional Director's conclusion that the Bargaining Unit is an appropriate one for bargaining.**

The Employer claims that the Regional Director departed from certain cases that it

contends support its the theory that a wall-to-wall unit in this case was necessary owing to the assertedly high degree of integration among its operations. The cases that the Employer cites are distinguishable and do not mandate a hotel-wide unit in this case.

Employer argues that the Board’s decision in *Atlanta Hilton Towers*, 273 NLRB 87 (1984) is instructive as to why a “nearly wall to wall” unit is appropriate in the present case. *Atlanta Hilton* is distinguishable on several fronts. In *Atlanta Hilton*, the Board reviewed the certifications of two separate bargaining units in a refusal-to-bargain case. The first bargaining unit consisted principally of housekeeping classifications, excluding front office and other clericals, and the second consisted principally of food & beverage employees, also excluding front office and other clericals. *Id.* at n. 3 & n. 4.¹¹ The hotel at issue specialized in staging conventions, and derived 83 percent of its revenue from this business. *Id.* at 88. Personnel from various departments including food & beverage, front office, catering and communications were directly involved in selling convention business to potential customers. *Id.* Staging the conventions themselves required “close coordination among all hotel areas:” prior to each convention, personnel from across different departments participated in a preconvention meeting, and a convention resume was subsequently sent to approximately 40 different departments at the hotel containing instructions for the particular event. *Id.* Management implemented an extensive internal communication system in order that employees across departments could coordinate during the performance of their work. *Id.* In addition, decisions about employment terms were highly centralized such that, unlike in the instance case, human resource executives took final action on all personnel decisions while the hotel’s general manager issued memoranda

¹¹ A third bargaining unit of property operations employees had been certified some years before and were subject to a collective bargaining agreement. *Id.* at n. 5.

on minor details of the hotel's operation such as the purchase of a knife for kitchen employees, approval of a vacation request for a front desk employee, and the proper clearing of elevators and lobbies by housekeepers. *Id.* There was an extensive pattern of transfers both between the separate bargaining units and between bargaining unit and non-bargaining unit positions, and some degree of temporary interchange of personnel between departments. *Id.* 89. The Board cited these factors as favoring an overall unit. Compounding matters, the Board found that the separate units that the regional director had found appropriate lacked a rational foundation. The regional director relied on *Regency Hyatt House, supra*, to find that unrepresented "blue collar" workers shared a sufficient community of interest apart from the broader interest they share with other employees to warrant separate representation. *Id.* at 91. The Board did not dispute this principle as a general proposition, but stated that it could not agree to its application in the case because the regional director had not explained why he had separated "blue collar" workers into two separate bargaining units, included some "white collar" workers in each, and excluded other "white collar" workers from both. *Id.*

The present case is clearly distinguishable from *Atlanta Hilton*. While the Employer analogizes the Hotel to the Atlanta Hilton's convention business because it is a so-called "airport hotel" that also has contract requirements it must meet, the evidence fails to establish either that compliance with airline contracts requires the kind of highly integrated coordination that staging conventions does, nor that the airline contracts constitute any particular percentage of the Employer's business (there was no evidence as to that at all). Furthermore, the present case lacks the elements of regular transfers among included and excluded employees and close centralized control of labor relations over matters such as discipline, scheduling, leave requests and other conditions of employment that characterized the *Atlanta Hilton* case. Finally, the

Bargaining Unit here does not suffer from the illogical inconsistencies that the separate bargaining units did in *Atlanta Hilton*, which the Board found gerrymandered employees into separate groups despite similarity of skills and despite frequent interchange and contact.

The Employer also relies on *Servico, Inc.*, 214 NLRB 51 (1974). *Servico* only illustrates why the Regional Director's decision in this case was correct. In *Servico*, the Board overruled the Regional Director's determination that a separate unit of maids, porters, housemen-maintenance, and an inspectress was appropriate. The Board cited the regular overlap in duties between employees included and excluded from the unit: specifically, porters included in the unit spent much of their time driving the employer's airport van, and they also worked as front desk agents and room service deliverers; front desk clerks excluded from the unit also drove the airport van, cleaned guest rooms when necessary, and delivered room service; groups of included and excluded employees all cleaned various areas of the hotel. *Id.* 651-652. In contrast, the Regional Director correctly found in the present case that there is no meaningful interchange of job duties between included and excluded employees.

In *Ramada Beverly Hills*, 278 NLRB 1986 (1986), the Board found a wall-to-wall bargaining unit appropriate owing to the centralized control of labor relations in the person of the general manager, who exercised final authority to approve all hires and firings and who served as the Employer's in-house grievance representative. In so ruling, the Board rejected the Regional Director's reliance on two previous unit determinations at the hotel finding that separate units of food & beverage and housekeeping employees would be appropriate. *Id.* at 692. In finding a wall-to-wall unit appropriate, the Board did not find indicate what community-of-interest factors were at play in the prior unit determinations, and therefore the factual basis for the decision is difficult to ascertain. The following year, the Board affirmed in *Omni-Dunfrey Hotels* that all

community of interest factors must be considered, and that no single factor is determinative.

In the *Westin Hotel*, 277 NLRB 1506 (1986), the Board found that a separate unit of maintenance employees was not appropriate after the Sixth Circuit had ruled in a previous appeal that the regional director's finding of unique skills and separate supervision of these employees "was not very strong." *Id.* at 1508. The maintenance workers spent 80 to 90 percent of their time working alongside other employees, and were frequently assisted by them in their tasks. The Board found that the maintenance, housekeeping and property maintenance employees shared an integrated function of ensuring that the hotel was maintained, but that maintenance employees as a separate unit was not appropriate. *Id.* The employer did not seek a wall-to-wall bargaining unit and the issue of front office employees was not at all at issue.

None of the cases cited by the Employer requires a conclusion that a hotel-wide unit was the only appropriate unit that could be found in this case. The Regional Director did not depart from reported precedent in finding that the Bargaining Unit was at least an appropriate unit for bargaining.

II. Even if the Board were inclined to abandon traditional community-of-interest principles in unit determinations for hotels, this case does not present the proper occasion to do so because the Employer does not actually take the position that a wall-to-wall bargaining unit is necessary.

The Employer argues that the Board should abandon the asserted white collar/blue collar distinction in making appropriate unit determinations in the hotel industry. But, as discussed above, the distinction between the skills, training and duties necessary to perform clerical desk jobs in a professional setting are by nature different than the skills, training, and duties necessary to perform the often-strenuous manual labor associated with jobs in other operations of a hotel. Application of traditional community-of-interest factors *requires* consideration of these distinctions.

Although it does not expressly so state, the Employer is really advocating that the Board overrule *77 Operating Company* and return to *Arlington Hotel*'s bright-line policy of finding that wall-to-wall units in the hotel industry are necessary owing to the inherent integration in functions across all departments. The Board should not entertain such a request for review because decades of Board experience and precedent has demonstrated that a flexible approach is both workable and necessary for this industry. See *Omni-Dunfrey Hotels, Inc.*, 283 NLRB at 475.

But even if the Board were to entertain the idea of overruling *77 Operating Company*, this case does not provide a proper vehicle for doing so. Despite its arguments regarding the highly integrated nature of the Hotel, the Employer does not argue that only a wall-to-wall bargaining unit is appropriate. While complaining that the distinction between blue collar and white collar jobs is "artificial" in a modern hotel, the Employer acknowledges that the Bargaining Unit is appropriate despite that it does not include blue collar positions within the Employer's Engineering department. Thus, the Employer is constrained to argue that a "nearly wall-to-wall" unit is appropriate. But within the logic of the Employer's argument, "nearly wall-to-wall" is an oxymoron. If all operations within the Hotel are so highly integrated as to require a hotel-wide unit, then the fact that engineering department employees are excluded from the unit cannot simply be dismissed without comment. These employees also play a crucial function in ensuring that the Hotel's facilities meet the standards required by the Employer's contracts, and they also receive the same medical and fringe benefits, undergo the same core training, are subject to the same disciplinary policies and employee handbook, and otherwise share key terms and conditions of employment in common. (Tr. 89-90.)

Having agreed that Engineering department employees are not necessary to include in an

appropriate bargaining unit, the Employer concedes that line-drawing is appropriate within a hotel workforce. It simply quarrels with the lines that the Regional Director chose to draw. Such second guessing does not raise a compelling basis to grant review.¹²

III. The Regional Director did not err in excluding Guest Service Aides from the Bargaining Unit, and the Employer has waived its argument that they should be included even if other Front Office employees are properly excluded.

The Employer argues that the Regional Director erred by excluding Guest Service Aides from the Bargaining Unit even if she was otherwise correct to exclude other Front Office employees. (RFR, 3, 21-23.) It argues that this constituted “clear error, as the Guest Service Aides are ‘blue collar’ employees who should have been included with the other ‘blue collar’ employees in the unit.” (*Id.*, p. 3.) The Employer argues that “[t]he Board should grant review to correct this error, which could have affected the outcome of this very close election.” (RFR, 21.)

The Employer is barred from asking the Board to review the Regional Director’s decision not to include Guest Service Aides separate from other Front Office classifications because the Employer argued the exact opposite before the Regional Director. In the underlying proceeding, the Employer argued without qualification that, despite being “blue collar,” the Guest Service

¹² Further undermining the Employer’s argument in favor of a hotel-wide unit is the fact that Petitioner does not represent hotel-wide units at other unionized properties in the San Francisco region, including at other Marriott properties. While the Regional Director considered industry practice a neutral factor because of uncertainties as to the comparability of the duties of AYS Agents and Guest Service Aides between the Hotel and other properties in the region, there is at least no dispute that Petitioner does not represent hotel-wide bargaining units at hotels such as this one, and that Front Office clericals are regularly excluded from the bargaining units that the Petitioner represents. Thus, while local practice may not address every dispute at issue in the placement of specific Front Office classifications, it is nonetheless germane to the analysis that hotel-wide units are not a practice in the locality and Front Office clericals are routinely excluded. *See Lodgian, Inc.*, 223 NLRB at 1255.

Aides could *not* be included in the Bargaining Unit absent inclusion of *all* Front Office employees. It wrote in its post-hearing brief:

Guest Services Aides Are Fully Integrated with the Front Office Employees, and by Necessity, a Unit that Includes the Guest Services Aides Must Include the Remaining Front Office Employees.

Despite being a blue collar job, the Guest Services Aides position is tightly integrated with the rest of the Front Office. The Guest Services Aides are part of the Front Office. They attend the same stand up meetings as the rest of the Front Office, and they are supervised by the exact same managers. This tight integration shows that any unit which includes the Guest Services Aides must, by necessity, also include the remaining Front Office Employees.

(Closing Brief of Marriott Hotel Services, Inc., p. 22, attached hereto as Exhibit A.)

Section 102.67(e) of the NLRB Rules & Regulations prohibits a party from raising ‘any issue or allege any facts not timely presented to the Regional Director.’” (*See* 29 C.F.R. § 102.67(e).) Because the Board did not argue that the blue collar duties of Guest Service Aides created a sufficient community of interest with the Bargaining Unit so as to mandate their inclusion separate from other Front Office employees (but in fact argued the exact opposite), the Employer is barred from asking the Board to accept review of this issue. *See Pulau Corp.*, 363 NLRB No. 8, n. 1, 2015 WL 5451457 (Sept. 16 2015). And while the Board is obviously required to adhere to its own rules in all cases, there are particularly good reasons for doing so in this instance. A party cannot opportunistically formulate its position on the proper scope of the bargaining unit based on the *results* of the tally. But the Employer does not disguise that that is exactly what it is doing here by arguing that the votes of the Guest Service Aides might have been outcome-determinative and so the Regional Director should have included them in the unit. The Board should not countenance this tactic, and cannot under its rules.

But even if the Employer were permitted to argue that Guest Service Aides should be

included in the Bargaining Unit separate from other Front Office employees, the Employer fails to show that the unit is not appropriate for bargaining despite their exclusion. The Regional Director found that Guest Service Aides perform “some manual labor when they handle luggage,” but that the majority of their tasks are “white collar in nature, such as making reservations for guests, assisting with check-ins, and making recommendations for activities.” (DDE, 10.) Guest Service Aides are separately supervised with other Front Office employees, receive some amount of training in the FSPM System like other Front Office employees, have only routine contact with Bargaining Unit employees, and have little to no interchange of job duties with them. As the Employer put it, “the Guest Services Aides position is tightly integrated with the rest of the Front Office.” (Exhibit A, p. 22.) These distinctions provide a rational foundation for the Regional Director to determine that the Bargaining Unit was appropriate despite the exclusion of Guest Service Aides. Even if the Employer had not waived its argument with respect to their inclusion separate from other Front Office employees, the reasoning behind the Regional Director’s decision to exclude them is unassailable.

CONCLUSION

The Regional Director did not depart from established precedent in determining that inclusion of Front Office employees was not necessary in order for the Bargaining Unit to be appropriate. She gave appropriate weight to the fact that Front Office employees work in a separate department under separate supervision by managers who have the day-to-day authority to make decisions regarding their work assignments, leave requests, discipline, and other important terms of employment. She did not ignore evidence that Lahip exercises authority over both the Front Office and Housekeeping departments, but rationally explained that his exercise of supervisory authority from time-to-time did not alter a finding that Okumura and his

management team exercised immediate day-to-day control over Front Office employees. She gave appropriate weight to the fact that Front Office employees have unique skills, training and job duties that distinguish them from the manual labor classifications in the Bargaining Unit. She did not ignore the fact that employees across all classifications have regular contact with one another because the functions of the Hotel—like any hotel—are integrated by nature, but she correctly declined to give this degree of integration determinative weight. Finally, she recognized that Front Office employees share certain terms of employment in common (as Engineering employees do), but she correctly found that this factor did not under the totality of circumstances mean that all employees must be included in the same unit. Her decision was soundly reasoned and squarely in line with agency precedent. The Employer raises no compelling reason to undo her factual findings and application of the law, nor does it raise compelling reasons to revisit the settled legal principles that she applied. The Request for Review should be denied.

Dated: May 14, 2019

Respectfully submitted,

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PROOF OF SERVICE

I am employed in the city and country of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 595 Market Street, Suite 800, San Francisco, CA 94105.

I hereby certify that a true and correct copy of the foregoing document entitled ***UNITE HERE LOCAL 2'S OPPOSITION TO MARRIOTT HOTEL SERVICES, INC.'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION*** was filed using the National Labor Relations Board on-line E-filing system on the Agency's website and copies of the aforementioned were therefore served upon the following parties via electronic mail on this 14th day of May, 2019 as follows:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 14, 2019 at San Francisco, California.

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