



## INTRODUCTION

On February 15, 2019, UNITE HERE Local 2 (the “Union”) filed a representation petition seeking to represent 270 full-time and regular part-time employees working in the following job classifications at the San Francisco Airport Marriott Waterfront (the “Hotel”):

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 [*sic*] 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 Baristas.<sup>1</sup>

The petitioned-for unit is inappropriate because it fails to include a significant portion of the Hotel’s workforce – employees classified as Rooms Controllers, Front Desk Clerks and Agents, Guest Services Aides, Guest Services Representatives, Night Auditors, At Your Service Agents, and At Your Service (“AYS”) Runners (collectively, “Front Office” employees”), as well as the Shipping & Receiving Attendant – who regularly interact with the vast majority of employees that are included in the petitioned-for unit and perform work subject to the exact same terms and conditions of employment under the same supervision as those employees. Indeed, the housekeeping employees described in the petition have the same manager supervising them on a day-to-day basis, Ali Lahip, as the Front Office employees. All of the Hotel’s employees, including those in the petitioned-for unit, the Front Office employees, and the Shipping &

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<sup>1</sup> At the hearing on March 5, 2019, the Union stated that it would no longer seek to represent employees classified as “AYS Runners” or “Bellmen.” However, at the close of the hearing, the Union stated it could include either or both of those classifications in a unit alternative to the one described in the petition. Marriott contends that employees belonging to both of these classifications must be included, along with the rest of the employees in the Front Office organization and the Shipping and Receiving Attendant.

Receiving Attendant, share common wage scales and benefits, and are subject to the same company and hotel policies, as well as have the same or very similar skills and training requirements. They therefore must be included in the unit in order for the unit to be appropriate for collective bargaining.

Thus, failure to include the Hotel's 38 Front Office employees and one Shipping & Receiving Attendant in the unit would create an impermissibly fractured bargaining unit, ill-suited for collective bargaining. The Front Office employees do not merely sit behind their desks isolated from the rest of the Hotel. On the contrary, the Front Office employees interact on a daily basis with many employees in the petitioned-for unit, in particular the Housekeeping employees, who are part of the same integrated organization as the Front Office.

At the hearing, the Union put forth evidence regarding other bargaining units that do not include Front Office employees. But under longstanding Board law, each unit must be examined individually at the particular employer to determine whether the proposed unit is appropriate. Here, the Hotel, being an airport hotel, is qualitatively different from the units the union discussed at the hearing. As described at the hearing, the Hotel is a busy airport hotel that has more than 20 contracts with airlines that require the Hotel to constantly have rooms available on an "ASAP" basis, at odd times throughout the day. This results – much more so than in the non-airport hotel units the Union discussed at the hearing – in extremely close coordination, interaction, and integration between Hotel employees, particularly the Front Office employees in charge of assigning rooms and handling room requests (whom the Union seeks to keep out of the unit) and the housekeeping employees, who "turn over" the rooms and get them ready for the incoming guests (whom the Union seeks to be in the unit, and who account for over one-third of the petitioned-for unit).

In addition, many employees are specifically double-coded to work as Front Office employees and to work under employee classifications in the petitioned-for unit – most notably in the housekeeping department. As a result, leaving the Front Office employees out of the unit will create the situation where, on nearly every shift, employees who regularly interact with each other and previously worked under the same working conditions will now potentially be subject to very different working conditions, work rules, pay, supervision, and standards, with some being represented by the Union and others not. The AYS Runner, who is a Front Office employee but actually functionally supervised by the housekeeping supervisors and management, represents this integration in a microcosm. Similarly, the AYS Agents (i.e. the phone operator/dispatch personnel) interact with housekeeping and other employees in the unit each day and all the time. The same is true of the Shipping & Receiving Attendant, who serves all the different departments in relation to mail deliveries. This is not a tenable situation, and thus the proposed unit is not an appropriate unit.

For these reasons, as described more fully below, the Regional Director should determine that the smallest appropriate unit in this case includes the petitioned-for unit, as well as the Front Office employees and the Shipping & Receiving Attendant, and direct an election accordingly, if the petition remains supported by a sufficient showing of interest. If not, the petition should be dismissed.

## **FACTUAL BACKGROUND**

### **I. Overview of the Hotel and Its Employment Policies and Processes**

The San Francisco Airport Marriott Waterfront (the “Hotel”) is a large hotel located in Burlingame, California. The Hotel, located in close proximity to the San Francisco Airport, is an “airport hotel” which contracts with many airlines to book large blocks of rooms for airline customers and personnel.

The Hotel is organized into several major departments, including Room Operations, Food & Beverage, Finance, Engineering, and Human Resources. (E. Exh. 1). Within those departments are smaller departments which are critical to the functioning of the major departments and the Hotel as a whole.

Lisa Kershner (“Kershner”) is the Hotel’s General Manager and is responsible for the overall administration and operation of the Hotel. Lisa Krone (“Krone”) was the Hotel’s Director of Human Resources from January 2013 to November 2018.<sup>2</sup> Krone testified that, as the Director of Human Resources, she was responsible for recruiting; hiring; onboarding; performance management; administering leaves of absence; administering disciplinary actions; arranging training; handling compliance issues; managing employee relations with respect to investigations, suspensions and terminations; overseeing the annual enrollment process for medical benefits; and completing recommendations for wages.

Most of the Hotel’s employment policies and processes, including hiring and discipline, are governed by overarching Marriott-company policies and are administered by the Hotel’s Human Resources department. For example, all of the Hotel’s employees are subject to the rules and policies contained in Marriott’s employee handbook, as well as other Hotel-specific policies, i.e., Local Standard Operating Procedures (“LSOPs”). Employees receive identical training on these rules and policies, including harassment prevention, business ethics, privacy, and others, upon being hired, and they are subject to the same disciplinary consequences when they commit violations of these rules and policies. (Tr. 26-37).<sup>3</sup> In addition to that training, all new hires are

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<sup>2</sup> Because of staffing complications, Krone remained Director of Human Resources at the Hotel until mid-January 2019.

<sup>3</sup> At the time of filing, which was less than 36 hours after the closing the hearing, the Company only received a transcript of the first day of the proceedings. As such, citations to the transcript were made wherever possible but are not complete.

required to participate in Marriott’s “core training programs,” which include training on preventing harassment, preventing human trafficking, business ethics, privacy, customer service, orientation, and the Marriott loyalty program. (Tr. 31).

Hotel employees also share many of the same wages and benefits. All job titles belonging to hourly Hotel employees – including the Front Office employees and the employees in the petitioned-for unit – are placed on a common wage scale, which is set by Marriott’s Area Director of Human Resources, based on Krone’s initial recommendation. (Tr. 26). Hotel employees are paid hourly and on a weekly basis, regardless of their department, and all non-managerial employees are required to record their time on the Kronos time system. (Tr. 31). All Hotel employees, regardless of department, are also eligible to receive substantially the same benefits package, including medical coverage. (Tr. 27).

## **II. ROOM OPERATIONS DEPARTMENT**

The Room Operations Department is a single operation comprised of two smaller departments called the Front Office and Housekeeping Departments, as reflected in the Hotel’s Organizational Chart. (E. Ex. 1; Tr. 25-26). The Front Office is generally responsible for greeting guests, processing reservations, checking guests in and out of the Hotel, and housing the AYS Agents, who communicate and dispatch other Hotel employees as necessary to make sure rooms are ready and guests’ needs are met. (Tr. Ex. 9). The Housekeeping Department is critically connected with this function, as it prepares and cleans guest rooms prior to, during, and after guests are at the Hotel. Since the Hotel is a large airport hotel which contracts with many airlines to provide large blocks of guest rooms, Room Operations is centered around the goal of ensuring the efficient turnaround of rooms, which inevitably involves both the processing and cleaning of the guest rooms in an efficient manner. (Tr. 71). As a result, the Front Office and

Housekeeping Department are part of a single integrated operation led by Ali Lahip (“Lahip”), Director of Room Operations. (Tr. 25). Lahip was offered his current position because he knows both the Front Office and Housekeeping departments so well, having previously served as the Director of Services for the Housekeeping Department.

As demonstrated by his detailed testimony, which often discussed the individual schedules, capabilities and assignments of specific employees under his supervision, Lahip actively manages both departments as a single operation on a day-to-day basis, centered around the operational goal of efficiently turning around rooms. To this end, Lahip is assisted by, and receives direct reports from, Shane Okumura (“Okumura”), the Front Office Manager, and from Amy Yoo (“Yoo”), the Director of Services for the Housekeeping Department. (E. Ex. 1; Tr. 48).

#### **A. The Front Office, Generally**

Almost all of the excluded employees at issue in this case are in the Front Office department under the Room Operations Department. The Front Office department is made up of the six non-supervisory classifications set forth below:

- **Front Desk Clerks/Agents (“Guest Services Representatives”)** are responsible for interacting with guests, responding to guest questions and other inquiries, assigning guests to rooms, processing guest room charges, and assisting other Front office employees as necessary. (Tr. 46; E. Ex. 3).
- **Night Auditors** have the same responsibilities as the Guest Services Representatives and are additionally responsible for auditing room rates, reviewing adjustments to room rates, and processing all Hotel receipts in the property management system. (Tr. 46; E. Ex. 4).
- **Guest Services Aides (“Bellmen”)** are responsible for assisting guests with their luggage, storing guests’ bags, offering the Hotel’s shoe shine service, delivering items to guest rooms upon request, and performing concierge services for guests. (Tr. 46; E. Ex. 8)
- **Rooms Controllers** are responsible for maintaining the Hotel’s contractual

accounts with airlines, processing reservations, controlling room inventory, and assisting the front desk when necessary. (Tr. 46; E. Ex. 5).

- **At Your Service Agents (“AYS Operators”)** are responsible for handling any and all internal and external calls at the Hotel, and were referred to as the “nerve center” of the Hotel. They are also responsible for checking in guests through the Hotel’s mobile check-in feature.<sup>4</sup> (Tr. 46; E. Ex. 6).
- **At Your Service Runners** are responsible for placing requested items such as rollaway beds, cribs, and refrigerators in guest rooms and responsible for delivering extra towels, bathrobes, toothbrushes and other items to guests. (Tr. 46; E. Ex. 9)

## **B. Integration and Common Supervision**

Lahip is involved in the day-to-day work of the Front Office and Housekeeping employees. Lahip is on the floor for much of the day, which means he observes and interacts with the Front Office employees and Housekeeping employees on a daily basis. He often attends the Housekeeping pre-shift meetings and Front-Office pre-shift meetings. Lahip actively participates in the resolution of employee issues in both the Front Office and Housekeeping. For example, given that he is on the floor much of the time, employees in both departments approach him with scheduling complaints and concerns. In these interactions, Lahip addresses the employee complaints or issues by actively involving himself in their resolution. Lahip also collaborates with Human Resources in the issuance of employee discipline for Front Office and Housekeeping employees.

In addition, Lahip assigns work tasks, and supervises the performance of employees in both the Front Office and Housekeeping on a day-to-day basis. Lahip testified that with respect to the Front Office employees, he commonly: (1) directs them to stock the gift shop, (2) directs

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<sup>4</sup> The AYS Agent is essentially known as the “PBX Operator” at other local Marriott hotels where the Union represents employees, as evidenced by Union’s own admission. (Tr. 104). The fact that the PBX Operators at those other locations do not perform mobile check ins (whereas the AYS Agent do) is a distinction without a difference, as the majority of the work performed by the AYS Agent is still the same work performed by the PBX Operator.

them to stand in front of their desk during slow periods to more proactively greet and engage with nearby guests, (3) corrects employees when their interactions with guests are not up to Marriott's high customer standards, and (4) ensures that the Hotel's policies, such as scheduling policies based on seniority, are administered consistently and fairly.

Lahip similarly supervises the Housekeeping employees. By way of illustration, Lahip testified that he is frequently approached by housekeepers on the floor for assistance, such as when housekeepers have issues with their laundry or room keys or when they need tools, uniforms, and supplies. In these instances, Lahip works to resolve these various housekeeping issues. He also observes housekeepers in the performance of their daily work and instructs and trains housekeepers on proper procedure to correct mistakes. For example, Lahip personally trains housekeepers on an as-needed basis on how to make a bed and clean the shower doors using proper techniques.

The AYS Runners exemplify the degree of integration between the Front Office employees and the Housekeeping employees. The AYS Runners are classified as Front Office employees. (Tr. 46; E. Ex. 9). However, they are *not* supervised by the Front Office. Instead, because they are so tightly integrated with Housekeeping, the AYS Runners are supervised by Yoo and the other Housekeeping supervisors. Just as with the rest of the Housekeeping department, Yoo is directly responsible for overseeing the AYS Runners' work, including by assigning them their daily work. Yoo is also responsible for completing the AYS Runner's annual performance appraisals. The AYS Runner classification is also tightly integrated into the Front Office, most notably with the AYS Agents, who constantly dispatch the AYS Runners to guest rooms for a variety of reasons throughout the day. (Tr. 64).

### **C. Contact and Interchange**

The Front Office employees work in what is the “epicenter” of the Hotel, through which all guest traffic and most employee traffic flows. The Front Office employees are problem solvers for both guests and employees. For example, the Front Office employees assist servers, working in the Hotel’s Hanger Steak Restaurant and M Club Lounge, whenever there is a problem with a guest’s bill, such as when the guest leaves the wrong (or no) room number. Likewise, the Front Office employees frequently coordinate with At Your Service Runners to deliver amenities to guests celebrating special occasions or who make other requests during their stay.

Among the Front Office employees, the AYS Operators are particularly interactive with their peers, being variously referred to as the “nerve center” of the Hotel’s operations due to their role in handling all internal and external calls at the Hotel. (Tr. 52). Since the Front Office and Housekeeping departments are part of the Room Operations Department helmed by Lahip, the employees in these departments work together very closely on a daily basis. Housekeepers and AYS Agents are in close contact throughout the day. Housekeepers will call AYS Agents to ask if a guest can be provided with certain requested amenities, such as rollaway beds. The AYS Agents, in turn, will make arrangements to provide these amenities, which are brought up to the rooms by the AYS Runners. Similarly, Housekeepers will call AYS Agents so that the AYS Runner can have an item removed from a particular room based upon a guest’s request. The Guest Services Aides sometimes ask for the assistance of the Lobby Housekeeper to address certain issues, such as cleaning up a large spill on the lobby floor.

The AYS Runners similarly interact with the Housekeeping Department in the performance of their duties, such as to find out if the housekeepers have already cleaned a particular room in order to go and place the requested item in the room.

The Guest Services Aides perform what is traditionally considered “blue collar” work, given that they are primarily engaged in completing physical tasks, such as assisting guests with their luggage, storing guests’ bags, and delivering luggage or other large items to guest rooms upon request. (E. Ex. 8) 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 Lahip and Okumura, the Front Office Manager.

Front Office employees are staffed around the clock, ensuring that every employee at the Hotel has the opportunity to interact with the Front Office employees on a regular and daily basis. These shifts also cause there to be times when the Front Office employees are called upon to handle what would normally be the tasks and duties of other departments, such as making middle-of-the-night room service calls or retrieving a guest’s forgotten boarding pass and ensuring that he receives it at the airport. (Tr. 106).

Lahip offered examples of employees permanently transferring into the Front Office from other departments in recent memory. With respect to temporary transfer, Lahip testified that there are at least 16 current employees who are double-coded to work both in the Front Office as well as other departments in the Hotel, including housekeeping. This double coding is important because it gives the Hotel the staffing flexibility to meet its staffing needs, particularly in times when the Hotel is functioning at 100% capacity and/or when there are large events held at the Hotel.

As can be seen, the Front Office employees, along with employees in the Housekeeping Department, and other employee classifications in the petitioned-for unit, play a crucial, inseparable role in the day-to-day operation and success of the Hotel.

#### **D. Shared Working Conditions**

In addition to the supervision they receive and the assistance they provide, the Front Office employees are also connected to employees in the petitioned-for unit by virtue of their shared working conditions. As mentioned above, the Hotel maintains uniform personnel policies with respect to wages, benefits, hiring and discipline. The Front Office employees, like most or all of the employees in the petitioned-for unit are subject to the common wage scale; are eligible for the same benefits; must abide by the Marriott employee handbook and the Hotel's LSOPs; receive training on Marriott's rules and policies; and are subject to the same disciplinary process when they commit violations of these rules and policies. Also like many of the employees in the petitioned-for unit, Front Office positions do not require any minimum level of training, education, or experience. This is also the case for employees in the Housekeeping Department, as well as Dishwashers and Banquet Servers. In addition, the Guest Services Representatives and Night Auditors use credit card readers and the same Point of Sale System – Micros -- as many employees in Food & Beverage to perform their daily tasks.

In all, the Front Office employees operate at the center of the Hotel. They share many of the same terms and conditions of employment as the employees in the petitioned-for unit and frequently interact with the petitioned-for employees.

#### **III. The Shipping & Receiving Attendant**

The Hotel employs one "Shipping & Receiving Attendant," who is responsible for, among other things, delivering merchandise to the appropriate department; receiving, storing, shipping, and delivering outgoing departmental packages and mail; ensuring safekeeping of packages; and communicating with guests regarding received packages. (E. Ex. 7).

The Shipping & Receiving Attendant handles mail packages, departmental supply deliveries, or Hotel-wide inventory across many departments. In the performance of these duties,

the Shipping & Receiving Attendant by necessity communicates across all departments, such as the Front Desk and anyone who receives mail on a daily basis, including guests. For example, if a guest approaches the Front Desk or Bell Desk to inquire about a package, the Shipping & Receiving Clerk interacts with employees at those desks and the guest regarding the package. The Shipping & Receiving Attendant utilizes the Property Management System software also used by the Guest Service Aides and AYS Agents.

The Shipping & Receiving Attendant, like the Front Office employees and the other employees in the petitioned-for unit, is subject to all of the same Marriott and Hotel rules, policies, processes, and training. The Shipping & Receiving Attendant is an hourly-paid employee whose wage is based on the common wage scale and who is eligible for the same benefits as everyone else. Also like the Front Office employees and others, there is no requirement that an applicant for the Shipping & Attendant position have any minimum level of education, experience, or training.

As with the housekeeping department employees, the Front Office employees, and other employees in the petitioned-for unit, the Shipping & Receiving Attendant position does not have an educational requirement, minimum years of experience requirement, or any training certifications requirement.

### **ARGUMENT**

The only appropriate unit in this case must include the Hotel's Front Office employees (including AYS Runners), and the Shipping & Receiving Attendant,. The Union's gerrymandered unit cannot be certified because it arbitrarily and irrationally excludes employees who share a community of interest with the employees in the petitioned-for unit based on these employees' regular interaction and interchange, common supervision, and substantially similar

or identical terms and conditions of employment. Most notably, the Union's proposed unit fails to take into account the fact that the Front Office and Housekeeping Departments are integrated with each other as part of the Hotel's Room Operations, and they are both integral to ensuring that rooms are efficiently cleaned and processed given that room turnover is especially important at this busy airport hotel. The Union's proposed unit is untenable, as it fails to account for the factual situation in which collective bargaining would have to function at the Hotel and thus undermines the Act's goal of promoting industrial stability. Certification of the petitioned-for unit in this case would thus create a unit that is inconsistent with the Act's mandates.

#### **IV. Legal Standard.**

As stated in the pre-hearing order, and consistent with applicable law, the Union bears the burden of proving that its petitioned-for unit is appropriate. See NLRB Hearing Officers Guide at 72 ("Conversely, when the unit sought is not presumptively appropriate, the burden is on the petitioner to present at least some evidence establishing the appropriateness of the unit, even where the employer takes no position as to the unit.") (citing *Allen Health Care Servs.*, 332 NLRB 1308 (2000)).

In cases where unit appropriateness is challenged, the Board examines "whether the employees in [the] petitioned-for group share a community of interest *sufficiently distinct* from the interests of employees excluded from the petitioned-for group to warrant a finding that the proposed group constitutes a separate appropriate unit." *PCC Structurals, Inc.*, 365 NLRB No. 160, slip op. at 6 (2017) (emphasis added). In making this determination, the Board considers whether the employees (1) are organized into a separate department; (2) have distinct skills and training; (3) have distinct job functions and perform unit work; (4) have frequent contact with other employees; (5) interchange with other employees; (6) have distinct terms and conditions of employment; and (7) are separately supervised. *Id.* at 11 (citing *United Operations, Inc.*, 338

NLRB 123, 123 (2002)) (reaffirming the Board’s “traditional community-of-interest factors” and emphasizing that excluded employees should remain excluded only if their interests are sufficiently distinct from those of the petitioned-for unit”).

The Board has found none of these factors to be dispositive. *See Publix Super Markets, Inc.*, 343 NLRB 1023, 1027 (2004) (finding no separate community of interest between two groups of employees because, *inter alia*, the groups evidenced “substantial functional integration”). The Board has also recently made clear that it “may find that the exclusion of certain employees renders the petitioned-for unit inappropriate even when excluded employees do not share an ‘overwhelming’ community of interest with employees in the petitioned-for unit.” *See PCC Structural, Inc.*, 365 NLRB No. 160, slip. op at 7. Rather, the Board will find that excluded employees should remain excluded only if “the petitioned-for employees share a community of interest *sufficiently distinct* from employees excluded from the proposed unit to warrant a separate appropriate unit.” *Id.* (emphasis added). Further, in the hotel industry, the Board applies the traditional community of interest criteria on a “case-by-case basis.” *See Westin Hotel*, 277 NLRB 1506, 1507–08 (1986).

**V. The Hotel’s Front Office Employees Possess a Sufficiently Similar Community of Interest with The Employees in The Petitioned-For Unit and Therefore Must Be Included in The Unit.**

**A. The Front Office Employees Satisfy the Majority of the Traditional Community of Interest Criteria.**

The record evidence shows that the Front Office employees frequently interact and work collaboratively to address problems throughout the Hotel with the employees in the petitioned-for unit. The record evidence shows further that the Front Office employees are hired, trained, paid, supervised, and disciplined pursuant to the same rules and policies and, in many instances, by the same supervisor, as a significant portion of the petitioned-for unit. The record therefore

establishes that the Front Office employees share a community of interest and that the interests of the Front Office employees are not *sufficiently* distinct from the interests of the employees included in the petitioned-for unit, and they therefore must be included in the unit in order to make it an “appropriate unit.” *See PCC Structural*s, 365 NLRB No. 160, slip op. at 6. This is so for the following reasons.

1. The Front Office Employees Are Subject to the Same or Substantially Similar Terms and Conditions of Employment as the Rest of the Hotel’s Employees.

The Front Office employees share many of the same or substantially similar terms and conditions of employment as other employees throughout the Hotel and in the petitioned-for unit. Common working conditions among employees weigh in favor of finding a community of interest. *See Servico, Inc.*, 214 NLRB 651, 652 (1974) (common working conditions of employees, among other factors, compelled conclusion that housekeeping employees did not enjoy a community of interest “sufficiently separate and distinct” from other employees throughout the hotel).

There are no differences between the Front Office employees and the employees included in the petitioned-for unit when it comes to the behavioral rules and policies by which they are expected to abide. *All* Hotel employees, regardless of department, are subject to the rules and policies contained in Marriott’s employee handbook and the Hotel-specific LSOPs. Front Office employees, like all other employees, receive a copy of the handbook and the LSOPs upon being hired and are subject to the same disciplinary consequences whenever they violate one or more of the rules or policies contained therein. The Hotel reinforces the rules and policies periodically throughout *every* employee’s tenure at the Hotel, including whenever employees are coached, trained, or otherwise disciplined. These rules and policies are set at the hotel or company level and do not differ between departments.

In addition to sharing the same work rules, all hourly employees – i.e., the Front Office employees and the employees in the petitioned-for unit – are on the same wage scale, as set by Marriott’s Area Director of Human Resources with the input of the Hotel’s Director of Human Resources. Individual department managers play no role in this process. All Hotel employees, regardless of department, are paid hourly and on a weekly basis, and non-managerial employees are required to record their time on the Kronos time system. All full-time employees are also eligible for overtime and receive substantially similar benefits, including medical coverage, “room nights” at the Hotel, and a 401(k) retirement plan.

The Front Office department, like every other department at the Hotel, consists of full-time and part-time workers. In addition, both the Front Office department and the Housekeeping department employ “pool status” (i.e., “on-call”) employees who do not maintain a regular work schedule.

The Union argued on the record that the employees it was seeking to represent were in “blue collar” positions, whereas those it sought to exclude, such as the Front Office employees, were in white collar positions. The Guest Service Aide classification, which is part of the Front Office, is inarguably a blue collar job in that the position is responsible for opening doors for guests, transporting luggage to and from guest rooms, and assisting with luggage storage and retrieval. Yet, the Union dropped the Guest Services Aide position from the petitioned-for unit but later indicated at closing that it would be willing to proceed with a unit containing the Guest Services Aide classification. This is a concession on the Union’s part which shows that the Guest Services Aide classification has a community of interest with the other petitioned-for employees, despite being part of the Front Office. Moreover, any unit which includes the Guest Services Aides must, by necessity, also include the other Front Office employees because they

are tightly integrated. The Guest Services Aides are part of the Front Office and are supervised by the exact same individuals who supervise all other Front Office employees. They all attend the same staff meetings and have the same working conditions.

The similarity in employee working conditions, along with the centralized nature of the Hotel's hiring and disciplinary processes further demonstrate how any "appropriate unit" of Hotel employees must include the Front Office employees.

2. The Front Office Employees Frequently Interact with Other Employees Throughout the Hotel.

Marriott presented uncontroverted evidence that the Front Office employees frequently interact with the petitioned-for employees at the Hotel on a regular or daily basis. Such frequency of interaction weighs in favor of finding that the employees at issue share a community of interest. *See Golden Eagle Motor Inn*, 246 NLRB 323, 323 (1979) (finding that the "daily contact among the housekeeping and front desk employees," as well as the small confines of the motel, among other factors, led to the conclusion that the front desk employees had a "substantial community of interest" with those employees and were required to be in the unit).

Most of the Hotel's employees, including the vast majority of those in the petitioned-for unit, work in close physical proximity to each other. Although the Hotel is large, the Front Office employees work in the lobby on the first floor of the Hotel, just feet away from the Hotel's restaurant and lounge, and the Housekeeping lobby attendant services the entire area. As a result, there is constant contact between employees of all departments. The Front Office employees' interactions with the employees in the petitioned-for unit are also made possible by the fact that the Front Office employees work around-the-clock, allowing them to work with and assist all of the other departments throughout the Hotel on a regular basis. As a result, the Front

Office employees tend to interact very often with employees in the Housekeeping department, as those employees work shifts that overlap with the shifts worked by the Front Office employees.

That the Front Office employees interact with the petitioned-for employees on a regular basis is supported by the record evidence and testimony of Marriott's witnesses. For example, Lahip testified that the Front Office employees are often sought out by the servers working in the Hotel's restaurant and lounge to assist with the resolution of billing issues. The Front Office employees also frequently coordinate with the Hotel's Room Service employees to, for example, deliver amenities to guests celebrating special occasions. Within the Front Office department, the AYS Operators are particularly engaged with other employees throughout the Hotel. Lahip testified that the AYS Operators interact with housekeepers on a daily basis and are often contacted by the housekeepers to, for example, confirm whether guests have checked out of their rooms or whether items previously-delivered to certain rooms, such as roll-away beds or cribs, should be removed. The same is true of Room Service employees, who contact the AYS Operators whenever they have problems entering a room, such as when they encounter a "do not disturb" sign on the door of a room to which they need to gain access or whenever there are apparent discrepancies on their delivery list.

Due to the nature and extent of their interaction and common supervision, it is apparent that the Housekeeping employees are more tightly integrated with the Front Office employees than they are with other petition-for classifications in the Food & Beverage Department. *In contrast to the Front Office employees, the employees in the Food & Beverage Department do not share any common supervision with the Housekeepers and do not interact as frequently with them throughout the day.* As such, it would make little sense to exclude the Front Office employees from a unit with the Housekeepers while including employees from the Food &

Beverage department.

Given the frequency of interaction and engagement between the Front Office employees and the employees in the petitioned-for bargaining unit, this factor weighs in favor of finding that the petitioned-for unit cannot be an “appropriate unit” in the absence of the Front Office employees.<sup>5</sup>

3. The Front Office Employees Share a Common Supervisor with a Significant Portion of the Petitioned-For Unit.

a. *The Front Office Employees Are Part of the Room Operations Department and are Part of a Single, Integrated Operation with Included Employees.*

Both the Front Office department and the Housekeeping Department are supervised by Lahip as a single, integrated operation. Lahip testified that he was offered the Director of Room Operations position because he was knowledgeable in both departments, having previously served as Director of Services for the housekeeping department. He added that he was offered the position with the goal of making the departments to make them more efficient.

Thus, over one-third of the petitioned-for bargaining unit shares a common supervisor with the Front Office employees. Lahip gave extensive, detailed testimony about the identical roles he plays as manager of both sets of employees. He is primarily responsible for resolving issues regarding the day-to-day working conditions of employees in both departments. Employees in both departments regularly seek out Lahip for assistance in resolving scheduling issues and clarifying work processes. Lahip is also responsible for redirecting employees in the performance of their work, including hanging out new, temporary assignments whenever there is

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<sup>5</sup> The Housekeeping Department is more integrated with the Front Office than it is with the Banquet Service Department. This is illustrated when one weighs the fact that housekeeping employees only work as banquet servers approximately four times each year, against the fact that the housekeepers are managed by Lahip, who also manages the Front Office employees on a day-to-day basis.

a more urgent need elsewhere in the Hotel. Likewise, Lahip has and exercises the authority to verbally discipline both sets of employees, as well as to issue directives. In addition to Lahip's supervision, the Front Office employees are also required to follow the directives of managers in other departments, as well as the Hotel's General Manager.

Because the Front Office employees share a common supervisor with such a substantial portion of the petitioned-for unit, this factor weighs in favor of finding that the Front Office employees enjoy a community of interest not sufficiently distinct from that of the petitioned-for employees.

*b. AYS Runners Demonstrate that the Front Office and Housekeeping Department Are Fully Integrated, and By Necessity, a Unit that includes the AYS Runners Must Include the Front Office.*

For similar reasons as discussed above, the AYS Runners, which are part of the Front Office, share a strong community of interest with other employees in the petitioned-for unit, most notably with the employees in the Housekeeping Department. The AYS Runners share the same supervision as all other employees in the Housekeeping Department, are evaluated by the same manager as all other employees in the Housekeeping Department, and regularly interact with the Housekeeping Department. The AYS Runner classification is also tightly integrated into the Front Office, most notably with the AYS Agents, who constantly dispatch the AYS Runners to guest rooms for a variety of reasons throughout the day. Given that the AYS Runners are part of the Front Office, which is helmed by Lahip as a single integrated operation, any unit which includes the AYS Runners must, by necessity, also include the Front Office.<sup>6</sup>

*c. Guest Services Aides Are Fully Integrated with the Front Office*

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<sup>6</sup> On the first day of the hearing, the Union dropped the AYS Runner from the proposed unit, but at the close of the hearing, proposed an alternative unit which included the AYS Runner classification. The Union's inclusion of the AYS Runner in an alternative unit underscores that this classification does indeed share a community of interest with the petitioned-for unit.

*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.<sup>7</sup>

4. Many of the Front Office Employees Are Completely Interchangeable with Employees in the Petitioned-for Unit.

Interchange of personnel between departments weighs in favor of finding that a group of employees share a community of interest. *See, e.g., Atlanta Hilton & Towers*, 273 NLRB 87, 89 (1984), *modified on other grounds*, 275 NLRB 1413 (1985) (finding that “some interchange of personnel between departments, mainly under emergency situations,” along with other factors, evidenced the employer’s “highly integrated operation” and weighed in favor of ordering a single bargaining unit).

The evidence shows that there are a number of employees that work in different departments throughout the Hotel, further showing the integrated nature of the Hotel’s operations and showing significant permanent and temporary employee interchange. Lahip offered many examples of employees permanently transferring into the Front Office from other departments in recent memory. Lahip also testified regarding approximately 16 current employees who are

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<sup>7</sup> The Union similarly dropped the Guest Services Aides position from the proposed unit, but at the close of the hearing, proposed an alternative unit which included the Guest Services Aides. The Union’s inclusion of the Guest Services Aide in an alternative unit underscores that this classification does indeed share a community of interest with the petitioned-for unit.

double-coded to work both in the Front Office as well as other departments in the hotel, including housekeeping. This double coding is important because it gives the Hotel the staffing flexibility to meet its staffing needs, particularly in times when the Hotel is functioning at 100% capacity and/or when there are large events held at the Hotel. The Hotel is certainly a highly integrated operation, and like in *Atlanta Hilton*, employees at the Hotel are called upon to perform tasks and take on responsibilities that belong to employees in the petitioned-for unit and vice versa.

Thus, there was evidence presented at the hearing that if the Front Office employees are excluded from the unit, it will create a situation where employees will potentially, within the same shift, perform some work (Front Office work) that is not covered by a CBA and some work (non-Front Office work they are qualified to perform) that is covered by a CBA. This is untenable.

5. The Front Office Employees Are Required to Possess Many of the Same Skills and Much of the Same Training as Employees in Other Departments.

Finally, the Front Office employees are subject to the same skills and training requirements as other employees in the petitioned-for unit. Notably, there is no minimum level of education, experience, training necessary, or other specialized knowledge required to be hired as a Front Office employee, which is true of many of the positions in the petitioned-for unit, including the entire housekeeping department, as well as for employees working as Dishwashers and Banquet Servers.

With respect to training, all Hotel employees, regardless of department, are required to undergo the same “core training programs” upon hire, including training on, *inter alia*, harassment prevention, business ethics, privacy, and customer service. Employees also receive the same safety and customer service training, as well training on Marriott’s culture, brand

history, and the Hotel's rules and policies.

The similarity in required skills and training among the departments, and the lack of any necessary certifications or level of education or experience, weighs in favor of finding that the interests of the Front Office employees are not *sufficiently distinct* from those of the employees in the petitioned-for unit.

**B. The Union's Argument Regarding "Area Standards" is Unavailing and Does Not Compel a Contrary Result.**

To the extent that the Union argues that there is an "area practice" of not including the Front Office employees in the same unit as the petitioned-for employees, that argument is unavailing. While the Board has sometimes found that an industry or area practice may be considered in deciding unit appropriateness, the Board has, at the same time, stressed that unit appropriateness is to be decided on a case-by-case basis. *See Westin Hotel*, 277 NLRB at 1507–08. Given the substantial community of interest that the Front Office employees at *this* Hotel share with the employees in the petitioned-for unit in *this* case, the Regional Director should not be influenced by the make-up of the bargaining units at other hotels in the Union's jurisdiction.

The Union cited two cases on the record that purportedly support its argument regarding area practices, *Omni International Hotel* and *In Re Lodgian*. However, both are distinguishable from the instant case. First, in *Omni International Hotel*, the Board relied on, *inter alia*, the "pattern of area bargaining of separate maintenance units" to justify its decision that the hotel's engineering department employees enjoyed a "sufficiently distinct community of interest" to warrant separate representation from the maintenance employees. *Omni Int'l Hotel*, 283 NLRB 475, 479 (1987). However, the Board emphasized that unit determinations in the hotel industry are made on a "*case-by-case basis*, utilizing the same traditional community-of-interest criteria used in other industries." *Id.* at 475 (emphasis added). Thus, rather than turning solely on area

bargaining patterns, the Board's decision in *Omni* took into account the following: (1) the engineering department employees were separately supervised; (2) the engineering department supervisor was responsible for interviewing all engineering department applicants and making the final hiring decisions for his department; (3) engineers employed skills unique to their classification; (4) engineers were required to have a minimum of one year of prior experience in the engineering classification; (5) engineers earn the highest hourly wage rate among non-supervisory employees; and (6) although engineers occasionally assisted employees from other departments with various tasks, they did so only "sporadic[ally]." *Id.*

The Board's decision in *Omni* therefore did not turn on the "area standard" but rather on the fact that the employees at issue did not share a sufficient community of interest with the employees in the petitioned-for unit. For the reasons discussed above, that is not the case here given the overwhelming evidence that the Front Office employees do frequently interact with other employees throughout the Hotel, share common supervision with over one-third of the bargaining unit, and do not possess any special skills, training, or education to perform their jobs.

Likewise, in *In Re Lodgian*, the Regional Director stated that he found the "area practice in the hotel industry" to be "highly significant" to his decision that front office department employees should be excluded from the bargaining unit. *In Re Lodgian, Inc.*, 332 NLRB 1246, 1253 (2000). Once again, however, the Regional Director's decision did not turn solely on the "area practice." On the contrary, the Regional Director specifically noted that he did not find a "high degree of integration of functions and mutuality of interest between the front office employees . . . and the other hotel employees the Petitioner seeks to represent to require their inclusion in the same unit." *Id.* *In re Lodgian* is therefore distinguishable for the same reasons as *Omni*; the Front Office employees *in this case* do not suffer from the same defects as the front

office employees considered by the Regional Director in *that* case. Here, the Hotel's Front Office employees *are* highly integrated with the employees in the petitioned-for unit, as discussed in detail above.

Moreover, to the extent the Union argues that the Stipulated Election Agreement in case 21-RC-232647 somehow establishes an area standard to justify the exclusion of the Front Office employees from the unit, this argument is completely unavailing for two main reasons. First, the unit composition issue in that case was not litigated by the parties in a Board proceeding, and the issue was certainly not decided by the Regional Director. As such, there was no finding from the Agency as to whether the proposed group constituted a separate appropriate unit under *PCC Structural*s. Second, the unit in that case was located in completely different area – it involved a hotel in Irvine, California and involved a different Local than in the instant proceeding. Hence, the Stipulated Election Agreement is not relevant to showing any kind of area standard with respect to the unit of employees located in downtown San Francisco which the Union seeks to represent.

**VI. The Hotel's Shipping & Receiving Attendant Possesses a Sufficiently Similar Community of Interest with The Employees in The Petitioned-For Unit and Therefore Must Be Included in The Unit.**

The Shipping & Receiving Attendant also shares a community of interest with the petitioned-for employees. The Shipping & Receiving Attendant by necessity communicates across all departments, such as the Front Desk, the Bell Desk, and all other departments to deliver and receive packages throughout the day. He utilizes the Property Management System software also used by the Guest Service Aides and AYS Agents in the performance of his duties. Like the Front Office employees and the other employees in the petitioned-for unit, this classification is subject to all of the same Marriott and Hotel rules, policies, processes, and training, is an hourly position based on a common wage scale, and is eligible for the same

benefits as everyone else. Also like the Front Office employees and others, there is no requirement that an applicant for the Shipping & Attendant position have any minimum level of education, experience, or training. The Union's proposed alternative unit, which includes the Shipping & Receiving Attendant, underscores that this classification does indeed share a community of interest with the petitioned-for unit.<sup>8</sup>

**VII. If an Election is Directed, It Should Be Held on Either March 21, March 28 or April 11, 2019**

Either March 21, March 28, or April 11 are the most appropriate dates on which to hold an election – if one is so ordered – because it will allow the greatest number of Hotel employees the best and most convenient opportunity to vote and will provide both the Hotel and the Union with sufficient time to state their positions, especially given the size of the petitioned-for unit.

The Final Rule states that the regional director, in selecting the date for an election, should consider the “desires of the parties, as well as the factors outlined in Section 11302.1 of the Casehandling Manual for Representation Proceedings (“Casehandling Manual”). *See* NLRB Casehandling Manual Part Two Representation Proceedings § 11302.1 (2017); *see also* Final Rule, Representation Case Procedures, 79 Fed. Reg. 74308 at 74318. The Casehandling Manual provides, in relevant part, that “the regional director should avoid scheduling the election on dates . . . on which past experience indicates that the rate of absenteeism will be high, or on days that many persons will be away from the facility on company business or on a vacation.” *See* Casehandling Manual § 11302.1.

We propose an election on any of the above-referenced dates because it is payday, and it will ensure the greatest turnout of employees. We have confirmed a vacant room is currently

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<sup>8</sup> At the closing of the hearing, the Union stated on the record that it would be willing to proceed with a unit that contains AYS Runners, Guest Service Aides, and the Shipping & Receiving Attendant.

available on those proposed dates for purposes of holding an election. In addition, if the Regional Director orders an election that includes the Front Office employees, AYS Runners, and Shipping & Receiving Attendant, the petitioned-for unit will be expanded. Each of these newly-included employees is entitled to a reasonable period of time in which to hear from the Union and the Company, and to make a reasoned, informed decision regarding how to vote.

Accordingly, in order to give the Hotel employees a full and fair opportunity to vote in the election, the date of the election – if one is ordered – should be set for either March 21, March 28, or April 11, 2019 from 6:00 a.m. to 10:00 a.m., 1:00 p.m. to 4:00 p.m., and 4:30 p.m. to 6:30 p.m. in the Newport Room, with an employee eligibility date to be determined.

### **CONCLUSION**

The objective – and, in all material respects, unrefuted – evidence in this case proves that the Front Office employees, (including AYS Runners), and Shipping & Receiving Attendant work regularly and extensively with the vast majority of the petitioned-for unit and that any unit certified that excludes these employees would undermine the purposes of the Act and create industrial strife. For all of the aforementioned reasons, any unit found appropriate in this case must include all of the Hotel’s Front Office employees (including AYS Runners), and Shipping & Receiving Attendant.

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Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Employer's Closing Brief was filed today, March 7, 2019, using the NLRB's e-Filing system, and was served by email, on the same date, upon the following:

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