

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

JAKE'S 58 CASINO HOTEL,)	
)	
)	
and)	Case No. 29-RC-240966
)	
INTERNATIONAL UNION OF)	
OPERATING ENGINEERS, LOCAL 30)	
)	
Petitioner)	
)	

DECISION AND DIRECTION OF ELECTION

Jake's 58 Casino Hotel ("Employer") is engaged in the hotel and gaming industry. On May 7, 2019,¹ International Union of Operating Engineers, Local 30 ("the Petitioner") filed a petition under Section 9(c) of the National Labor Relations Act, seeking to represent a unit of employees including all full-time and regular part-time maintenance supervisors employed at the Employer's facility at 3635 Express Drive North, Islandia, New York, but excluding all office and professional employees, guards and supervisors as defined in Section 2(11) of the Act.

The Employer asserts that the petitioned-for unit is not appropriate because the maintenance supervisors are supervisors within the meaning of Section 2(11) of the Act.

A hearing was held before Francisco Guzman, a hearing officer of the National Labor Relations Board.

I find that the maintenance supervisors are not supervisors within the meaning of the Act. I will direct an election in an appropriate unit.

Facts

The Employer's Operation

The Employer operates a hotel and casino in Islandia, New York.

¹ All dates hereinafter are in 2019 unless otherwise indicated.

The maintenance department is responsible for the overall maintenance of the hotel. The maintenance department performs routine maintenance, including trash removal, sweeping the hallways, and cleaning the parking lot. In addition, the maintenance department addresses work orders that are sent to the supervisors via email. The maintenance department operates 24 hours a day in three shifts.

The maintenance department has a maintenance manager, a position which is currently vacant,² maintenance supervisors, the position at issue here, and maintenance associates. The maintenance associates report to the supervisors, who report to the manager, although they currently report directly to the director of hotel operations and security, Kathleen Parks, because the manager position is vacant. There are currently three maintenance supervisors, Ron Kline, Carlos Aviles, and Ralston Smith. Kline works on the 7 a.m. to 3:30 p.m. shift Tuesdays through Saturdays. Aviles works 3 p.m. to 11:30 p.m. Sundays through Thursdays. Smith is currently working on the weekends while he completes his HVAC certification. There is not a supervisor on every shift. The associates are represented by the Hotel Trades Council (“HTC”) pursuant to an industry-wide collective bargaining agreement. The maintenance supervisors and manager are not represented by the HTC.

In addition to the maintenance department, the front desk, housekeeping, and security departments report to director Parks.³ Parks reports to Chuck Kilroy, the Employer’s general manager. These other departments overseen by Parks are organized similarly to the maintenance department with a manager, approximately four supervisors, and associates. In the front desk and housekeeping departments, the associates are also represented by the HTC as part of the same bargaining unit as the maintenance associates.⁴ In the security department, the security officers are represented by a Teamsters local, but the supervisors and the manager are not represented by any union.

Supervisory Indicia

Hiring

Director Parks testified that people apply for maintenance positions on line. When looking to hire, Parks pulls the resumes of the people who apply for the position and she shares them with maintenance supervisors Kline and Smith, who interview people to see who would be a good fit. Kline makes a determination who to pre-interview from the resumes given to him by Parks. According to Kline, if he decides not to interview a candidate, that is the end of the candidate’s application.

Kline testified that he has made recommendations regarding hiring, stating that after he interviews, he and Parks have a conversation and he tells her his “feeling” about a candidate. When Kline interviews applicants, he gives them a “gaming packet,” containing an application for a gaming license, which is required for employment with the Employer. Kline testified that if he did not like a candidate, he would not give that person a gaming packet, but he has given everyone he has

² The manager position has been vacant since July 2018.

³ Parks is employed by Delaware North, which runs the casino and manages the hotel for the employer.

⁴ That collective bargaining agreement covers “all Hotel, Conference Center, Restaurant, BHT, Banquet, Casino, Hosts, Cashier, Guest Service Representatives, Housekeeping, Porter, Cleaners, Front Service, Driver, PBX, Front Desk, Engineering, Maintenance, Reservations, Banquets, Room Service, Kitchen, Stewarding, Food and Beverage/Bar/Dining Room (including in Casino), Employee Cafeteria, Laundry, Valet, Parking, Coat Check, Shipping and Receiving, Business Center, Audio Visual, Health Club, Spa, Minibar, and Concierge” employees employed by the Employer. Er. Ex. 16.

interviewed a packet. After being interviewed by the maintenance supervisor, Parks reinterviews people before hiring them.

Director Parks testified that the supervisors have only interviewed candidates for hire in the absence of the maintenance manager.⁵ Accordingly, the maintenance supervisors have only interviewed a couple of candidates because there have only been a couple of hires since the maintenance manager left. Parks testified that she makes the ultimate decision regarding hiring. Kline testified that applicants he interviews are not always hired.

Discipline and Terminations

The maintenance supervisor's job description states that supervisors "[a]ssist with associate-counseling sessions, including all written, verbal corrective action and coachings." Er. Ex. 4. Director Parks testified that there have not been incidents of discipline in the maintenance department. Although one maintenance employee was terminated, the maintenance supervisors were not involved in that decision. Both Parks and maintenance supervisor Kline testified that the maintenance supervisors cannot suspend employees or issue written discipline. Parks could not recall a time that the supervisors issued a "formal corrective action." Both Parks and Kline testified that the maintenance supervisors could make recommendations regarding written discipline, but neither witness explained to what extent the Employer would rely on such recommendations. Parks stated that the maintenance supervisors have counseled employees. For example, supervisor Kline found an employee sleeping on the job. Kline woke the employee and gave him a cleaning task to perform. Kline reported the incident to Parks. According to Kline, he and Parks spoke about the employee sleeping while on duty and he made a recommendation regarding discipline. The record does not reveal whether the employee was disciplined or how the Employer made the determination to discipline or not. In addition, Parks testified that the supervisors had spoken to associates who had been late, but she could not provide specific examples. Parks testified that verbal warnings are not documented.

Parks testified generally about procedures that would be followed if an associate were disciplined under the Employer's collective bargaining with HTC, including conferring with the supervisors. Again, the record is not clear as to how the Employer would use the supervisors' input. Moreover, given her testimony that she could not recall examples of discipline in the maintenance department, I do not rely on this testimony as evidence of supervisory status under Section 2(11).

The Employer produced an email dated May 1, 2019, which supervisor Kline sent to director Parks and Daniel Freid, another representative of Delaware North. In that email, Kline complained that the maintenance associates on the overnight shift were not adequately cleaning the parking lot. Kline wrote "[I]ast time this occurred I had planned corrective action but I believe Kathy [Parks] took care of it." Er. Ex. 12. Kline testified that by "corrective action" he meant that he had planned to talk to the associates involved to tell them that he would have to report the problem to his superiors. Kline stated in the email that he works on the day shift and could not be responsible for employees on another shift. Er. Ex. 12. This email does not demonstrate that Kline issued or made an effective recommendation to issue discipline.

⁵ Parks could only recall one specific example of the maintenance supervisors interviewing a candidate, Marcus Guma, who was hired. She could not recall if Kline or Smith interviewed Guma.

Scheduling

Director Parks prepares the maintenance department schedules.⁶ The schedules are set unless an associate takes time off.

Time Off

Director Parks testified that she and the maintenance supervisors can sign time off requests for the associates. If an associate requests time off, she and the maintenance supervisor will discuss whether they have enough coverage to grant the requested time off. Supervisor Kline testified that he does not have the authority to approve time off and that he will not sign a time off request without permission to do so from Parks. On rebuttal, Parks denied that the supervisors need to get permission to authorize time off for associates. In an email dated September 28, 2019 to Parks, supervisor Kline stated that he wanted to speak to Parks about staffing and schedules in the maintenance department. Er. Ex. 11. Parks testified regarding that email that she had not met with Kline in a few days and so he reached out to her about meeting. Parks testified that she tries to speak with Kline daily, but did not provide information about the supervisors' scheduling authority.

The Employer presented several requests for time off that were signed by maintenance supervisors. Er. Ex. 5. All of these requests were for time off for maintenance supervisors Ronald Kline and Ralston Smith. Although it appears that these forms were signed by another maintenance supervisor, Parks testified that generally the maintenance manager would sign off on time off for the maintenance supervisors. Parks further stated that the Employer had "rectified" the situation and that Parks herself is currently signing the time off requests for the supervisors.

According to the Employer's handbook, the department general manager is responsible for ensuring "appropriate staffing levels are met to permit use of [paid time off] benefit," and to monitor "unit usage to ensure managers are allowing the use of [paid time off] benefit as intended." Er. Ex. 16 at p. 29. The handbook does not specify a role for maintenance supervisors in granting time off.

Overtime

Director Parks testified that the supervisors may assign overtime to associates, which was disputed by maintenance supervisor Kline. Parks testified that the maintenance supervisors may assign overtime if someone calls in sick. Alternatively, the supervisors may decide that they have enough coverage for the day and do not need to cover the shift of an associate who is out. Parks testified that there are times that a supervisor will decide that s/he needs additional help and can call an associate in.

Supervisor Kline testified that he can assign overtime only with permission from Parks. On rebuttal, Parks denied that the supervisors need permission to assign overtime.

The Employer produced a number of emails or text messages which relate to overtime in the maintenance department. For example, the Employer provided a copy of a text message in which Parks asked maintenance supervisor Ralston Smith why he had given an associate four hours of

⁶ Although the maintenance supervisors' job description includes preparing work schedules, Director Parks testified that she prepares the schedule. Tr. at 45; Er. Ex. 4.

overtime. The text was sent on or about May 15, 2019, the day before the instant hearing. It appears to refer to overtime assigned on or about May 10 or 11, 2019. Smith responded, "because Ron took off and [R]oger would have [been] by himself." Er. Ex. 7. On November 26, 2018, Carlos Aviles, a maintenance supervisor, emailed Parks and told her that he "had [an associate] stay" to work on a project replacing cushions and chairs in the casino. Er. Ex. 10(a). The email does not provide any details about the assignment of that overtime or even specify the amount of overtime assigned. In another email dated January 2, 2019, Aviles informed Parks that an associate would be out and that two other associates would cover. Er. Ex. 10(e). This email also does not provide details or indicate that it was Aviles who assigned the overtime. In the May 1, 2019 email supervisor Kline sent to Parks and Freid regarding discipline referenced above, Kline stated that he could not adjust his own schedule to incur overtime. Er. Ex. 12. The record does not show that Freid corrected Kline's statement regarding overtime. Although there is some indication that the maintenance supervisors may assign overtime, especially given the text message produced, the record does not reveal any specific details about how the decision to assign overtime is made or executed.

Assignment of Work

Director Parks testified that when a work request comes in, the supervisor on duty would choose an available associate on that shift. Parks testified further testified "[d]epending on what it was, [a supervisor would choose the associate] who would have the capability for that project." Tr. at 61. Parks did not elaborate on how a supervisor would weigh such a decision or how frequently the supervisor assigned work based on skill as opposed to an associate's availability. The supervisors also assign routine maintenance, such as changing lightbulbs or replacing ripped seat covers, and routine cleaning, but she provided no information regarding how those assignments are made. Parks further explained that if a job came in that required additional skill, such a plumbing job, the supervisors could call in an outside vendor.⁷ In addition, supervisors have overseen large projects completed by outside vendors, such as an overhaul of the Employer's HVAC system.

Supervisor Kline testified that he makes assignments based on the priority of the work. For example, a work order for a leak would be given high priority. He did not explain how he decides to whom to assign each task.

Parks testified that the supervisor might also work on a given project with an associate.

Accountability

Parks testified that maintenance supervisors check associates work and are held accountable for the work that is done on their shifts, but she could not recall any incident where she had spoken to a supervisor about work on his or her shift. When asked if there had ever been a problem "that resulted in you having to hold a supervisor accountable for work done on their shift," Parks responded, "[n]ot that I can recall, no." Tr. at 83.

⁷ The Employer contends that the maintenance supervisors have the authority to hire outside vendors without authorization. Maintenance supervisor Kline testified that he has been disciplined for hiring vendors without permission. There is also evidence regarding the maintenance supervisors' authority to order supplies, such as protective gloves. This evidence is not indicative of supervisory authority under Section 2(11) of the Act.

Other Indicia

The supervisors do not adjust grievances. There is a program to reward employees with “chips” which employees can put in for a drawing each month. The Employer presented no evidence that the maintenance supervisors give employees these chips or otherwise reward employees. The supervisors do not evaluate employees.⁸

Secondary Indicia

Rates of Pay

The maintenance associates earn approximately \$18.20 per hour. The maintenance supervisors earn approximately \$20 to \$22 per hour.⁹ Supervisor Kline earns approximately \$20.20 per hour. The supervisors and associates punch the same time clock. The maintenance manager is a salaried position.

Training

Supervisors and associates receive much of the same training. In 2017, maintenance supervisor Kline attended a “teambuilding” training with supervisors from other departments. Er. Ex. 2. Kline was the only member of the maintenance department to attend the training.

The supervisors have an office which is used by the supervisors and associates. The maintenance supervisors do not attend supervisory meetings.

Discussion

The Supervisory Authority Standard

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

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

The party asserting supervisory status has the legal burden of proving such status. *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001); *The Ohio Masonic Home, Inc.*, 295 NLRB 390, 393 (1989); *Tucson Gas & Electric Co.*, 241 NLRB 181 (1979). To prove supervisory status under Section 2(11), the party must demonstrate that the individual has the authority to take the enumerated actions, and that the individual employs “independent judgment,” which is “free from the

⁸ Although the maintenance supervisors’ job description includes evaluating employees, Director Parks testified that the Employer does not evaluate employees. Tr. at 102; Er. Ex. 4.

⁹ Counsel for the Employer attempted to refresh Parks’ recollection about exact rates of pay with a document that was not shown to counsel for the Union. I do not rely on the resulting testimony. Tr. at 146.

control of others” in the exercise of that authority. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 693 (2006). The Board has stated that “judgment is not independent if it is dictated by or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement.” *Id.* The authority to recommend effectively “generally means that the recommended action is taken with no independent investigation by superiors, not simply that the recommendation is ultimately followed.” *ITT Lighting Fixtures*, 265 NLRB 1480, 1481 (1982).

In addition, the Board may examine secondary indicia of supervisory status such as higher rates of pay, attendance at management meetings, and title. *See Airport 2000 Concessions, LLC*, 346 NLRB 958, 968 (2006). Secondary indicia alone will not support a finding of supervisory status in the absence of evidence that an individual satisfies some of the enumerated indicia. *See id.* The Board construes a lack of evidence of supervisory authority against the party asserting it. *See Armstrong Machine Co.*, 343 NLRB 1149, 1149 fn. 4 (2004); *In re Dean and Deluca New York, Inc.*, 338 NLRB at 1048. In this case, the Employer has not established that the maintenance supervisors are supervisors within Section 2(11) of the Act.

Hiring

With regard to hiring, the Employer has not presented sufficient evidence that the maintenance supervisors hire or make effective recommendations to hire employees within the meaning of Section 2(11). The maintenance supervisors have only interviewed a couple of candidates for hire since July 2018 while the maintenance manager position has been open. The record does not show that the supervisors make effective recommendations to hire employees. It is undisputed that Parks reinterviews candidates for hire. The Board has found that, without more, an alleged supervisor does not make effective recommendations regarding hiring if an acknowledged supervisor also interviews candidates. *See, e.g., Peacock Productions of NBC Universal Media*, 364 NLRB No. 104, slip op. at 4 (2016) (“A supervisor exercises the power to effectively recommend hire if the supervisor’s recommendations are followed with no independent investigation by superiors.”). The Employer has not established that the maintenance supervisors exercise supervisory authority by making effective recommendations to hire under Section 2(11).

Discipline

It is undisputed that the maintenance supervisors do not terminate, suspend, or issue written discipline to employees. The record does not demonstrate that the maintenance supervisors make effective recommendations regarding terminations, suspensions, or written discipline. Although there is evidence that the maintenance supervisors may verbally counsel employees, the Employer does not document verbal counseling or verbal warnings as discipline for employees. To satisfy the requirements of Section 2(11) of the Act, supervisory authority to discipline “must lead to personnel action without independent investigation by upper management.” *Veolia Transportation Services*, 363 NLRB No. 98, slip op. at 7 (2016), citing *Sheraton Universal Hotel*, 350 NLRB 1114, 1116 (2007), and *Beverly Health & Rehabilitation Services*, 335 NLRB 635, 669 (2001). “A warning may qualify as disciplinary within the meaning of Section 2(11) if it ‘automatically’ or ‘routinely’ leads to job-affecting discipline, by operation of a defined progressive disciplinary system.” *Veolia Transportation*, 363 NLRB No. 98, slip op. at 7, citing *Oak Park Nursing Care Center*, 351 NLRB 27 (2007) and *Ohio Masonic Home*, 295 NLRB 390, 393-94 (in which the Board found that warnings were not disciplinary

where the employer failed to demonstrate that it maintained a “defined progressive disciplinary scheme” in which warnings would “automatically affect job status or tenure”). The Employer has not established that the maintenance supervisors discipline employees or make effective recommendations regarding discipline within the meaning of Section 2(11).

Assign and Responsibly Direct

With regard to the maintenance supervisors’ ability to assign or responsibly direct employees, assigning work generally refers to designating an employee’s place of work (such as department), an employee’s time (such as a shift), or assigning a significant task. In order to show that an alleged supervisor makes assignments and uses independent judgment in doing so, the individual must make a decision that is free from the control of others and also involves forming an opinion by discerning and comparing data. *See Springfield Terrace Ltd.*, 355 NLRB 937 (2010). “The assignment of tasks in accordance with an Employer’s set practice, pattern or parameters, or based on such obvious factors as whether an employee’s workload is light, does not require a sufficient exercise of independent judgment to satisfy the statutory definition [of a supervisor].” *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002). For example, assigning mechanics to perform routine maintenance tasks does not rise to this level of independent judgment. *See Oakwood Healthcare*, 348 NLRB at 689 (“ad hoc instruction that [an] employee perform a discrete task” does not establish supervisory authority).

In order to show that a supervisor has the responsibility to direct, that person must have the authority to direct the work, the authority to take corrective action if the work is not done, and there must be a prospect of adverse consequences for the putative supervisor if he or she does not take those steps. *Oakwood Healthcare*, 348 NLRB at 689-92. Again, in doing so, a supervisor must exercise independent judgment. *Id.* at 693.

Overtime and Time Off

It is undisputed that the maintenance supervisors do not set employees’ schedules or departments. Although there are limited examples of supervisors assigning overtime, again the record does not establish that the supervisors exercise supervisory authority under Section 2(11) of the Act when doing so. The Board has found that the authority to assign overtime may establish assignment authority within the meaning of Section 2(11), but only if the evidence shows that the putative supervisor can require employees to work overtime or come in when off-duty. *See Entergy Mississippi, Inc.*, 357 NLRB 2150, 2156–2157 (2011); *Golden Crest Healthcare*, 348 NLRB 727, 729 (2006); *Heritage Hall, E.P.I. Corp.*, 333 NLRB 458, 459 (2001) (in which the Board declined to find supervisory status where alleged supervisors “have no authority to require or order off-duty employees to fill a particular shift.”). The Employer has made no such showing in this case.

The record indicates that the maintenance supervisors may sign requests for time off from the associates, although their authority in this regard is not clear. The Employer’s handbook does not indicate that the maintenance supervisors have authority to grant time off. Parks testified that if an associate asks for time off, she and the supervisor will discuss whether they have enough coverage. The Board has found that using employee availability as a criterion when assigning schedules does not establish the existence of independent judgment. *See Springfield Terrace*, 355 NLRB 937, 943 (2010) (assigning work based on employee availability does not require independent judgment). The Employer has not shown that the maintenance supervisor exercise supervisory authority in granting time off.

Assignment of Tasks

With regard to assigning significant tasks to the maintenance associates, the Employer has not demonstrated that the maintenance supervisors assign work to the associates using any sort of independent judgment. Although the supervisors may prioritize the assignments themselves, giving priority to a leak for example, there is no evidence regarding how those tasks are assigned to the associates. Although Parks testified generally that the supervisors choose the associate that has the capability to complete a task, the record does not provide any specific information or examples of how the supervisors make that decision. Such conclusory testimony cannot support a finding of supervisory status. Moreover, the Board has held that basing an assignment of work on whether an employee is capable of performing the task does not involve independent judgment. *See Cook Inlet Tug & Barge, Inc.*, 362 NLRB No. 111, slip op. at 2 (2015) (“basing an assignment on whether an individual is capable of performing the job does not involve independent judgment.”). The lack of evidence that the maintenance supervisors exercise independent judgment in directing employees is fatal to a finding that they responsibly direct employees under Section 2(11) of the Act. *See Croft Metals, Inc.*, 348 NLRB 717, 722 (2006) (in which the Board declined to find supervisory status where there was no evidence “regarding the factors weighed or balanced by the [alleged supervisors] in making production decisions and directing employees.”). Moreover, much of the work performed by the associates is routine, such as cleaning the parking lot. Assignment of routine tasks does not support a finding of supervisory status. *See Panaro and Grimes d/b/a Azusa Ranch Market*, 321 NLRB 811 (1996) (exercise of supervisory authority under Section 2(11) cannot be routine).

In addition to having the authority to direct the work, an alleged supervisor must also have the authority to take corrective action if the work is not done, and there must be a prospect of adverse consequences for the putative supervisor if he or she does not take those steps. *Oakwood Healthcare*, 348 NLRB at 689-92. Although Parks testified that supervisors check associates work and are held accountable for the work that is done on their shifts, she could not recall any incident where she had spoken to a supervisor about work on his or her shift. When asked if there had ever been a problem “that resulted in you having to hold a supervisor accountable for work done on their shift,” Parks responded, “[n]ot that I can recall, no.” Tr. at 83. The record evidence does not demonstrate that the maintenance supervisors direct or assign work or are held accountable for the work of others in this case.

There is no evidence that the maintenance supervisors exercise any other primary indicia of supervisory authority. The Employer has not presented evidence that the maintenance supervisors transfer, suspend, lay off, recall, promote, discharge, reward, or discipline other employees. Absent evidence of primary supervisory indicia, I have not considered any secondary indicia of supervisory status in this case. I find that the Employer has not established that the maintenance supervisors are supervisors within the meaning of Section 2(11) of the Act.

Community of Interest Considerations

There is record evidence indicating that the maintenance supervisors may share a community of interest with the maintenance associates who are part of the bargaining unit represented by HTC. The

supervisors spend a certain amount of time working along side the associates completing the same tasks. They earn similar hourly wages and punch the same time clock. They also share common supervision and centralized human resources. Despite this evidence, no party contends that the maintenance supervisors must be included in the larger unit represented by HTC. Although the Region served HTC with an intervenor letter before the hearing, HTC did not appear at the hearing and has not sought to intervene in this case.

In *PCC Structural, Inc*, 365 NLRB No. 160 (2017), the Board reviewed the community of interest standards for proposed bargaining units and concluded that “nothing in [that] decision provides for the Board to reject an appropriate petitioned-for bargaining unit on the basis that a larger unit is *more* appropriate.” *Id.*, slip op. at 12 (emphasis in the original). The Board further noted that it retains the discretion to approve a unit described in a petition “provided that the unit’s appropriateness is supported by the record and that the petitioned-for unit will help to ensure employees their fullest freedom in exercising rights protected by the Act.” *Id.*, slip op. at 10. Absent evidence that the maintenance supervisors constitute a unit that would be inappropriate for collective bargaining, I will direct an election in an appropriate unit.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this proceeding, the undersigned finds and concludes as follows:

1. I find that the rulings made by the Hearing Officer at the hearing are free from prejudicial error and hereby are affirmed.

2. The record indicates that Jake’s 58 Casino Hotel, a New York corporation with an office and place of business located at 3635 Express Drive North, Islandia, New York where it is engaged in the hotel and gaming industry. During the 12-month period ending April 30, 2019, the Employer, in course and conduct of its industry operations, derived gross revenue in excess of \$500,000. During that same annual period, the Employer, purchased and received products, goods, and materials valued in excess of \$5,000 directly from outside the State of New York.

Based on the foregoing, I find that Jake’s 58 Casino Hotel is engaged in commerce within the meaning of the Act. It will therefore effectuate the purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I hereby find, that International Union of Operations Engineers, Local 30 is labor organization as defined in Section 2(5) of the Act. It claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. I find that the employees in the following unit constitute an appropriate unit for the purposes of collective bargaining:

All full-time and regular part-time maintenance supervisors employed by the Employer at its 3635 Express Drive North, Islandia, New York facility, but

excluding all other employees, guards, and supervisors as defined by Section 2(11) of the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 30.

A. Election Details

The election will be held on **July 2, 2019**, from 3:00 p.m. to 4 p.m., in Room 415 of the Employer's facility located at 3635 Express Drive North, Islandia, New York.

B. Voting Eligibility

Eligible to vote are those in the units who were employed during the payroll period ending **June 16, 2019**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **June 24, 2019**.¹⁰ The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed. Notices will be posted in English and Spanish.

¹⁰ The Petitioner waived its right to have the voter list for ten days prior to the election.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Brooklyn, New York, on June 20, 2019.



Kathy Drew-King
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