UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

AIMBRIDGE EMPLOYEE SERVICE CORPORATION, D/B/A ALOFT CHICAGO O'HARE

and **CASE 13-CA-45561**

UNITE HERE LOCAL 450

COUNSEL FOR THE GENERAL COUNSEL'S MOTION TO TRANSFER PROCEEDINGS TO THE BOARD AND MOTION FOR SUMMARY JUDGMENT

Pursuant to Sections 102.24 and 102.50 of the Rules and Regulations of the National Labor Relations Board, Counsel for the General Counsel moves to transfer this case to the Board and moves for summary judgment. Respondent Aimbridge Employee Service Corporation, d/b/a Aloft Chicago O'Hare has refused to bargain with UNITE HERE Local 450 (the "Union") in order to test the Board's recent certification of that Union as the exclusive collective bargaining representative of Respondent's drivers. Thus, the case presents no genuine issues as to any material fact and the General Counsel is entitled to judgment as a matter of law.

In support of this Motion, Counsel for the General Counsel states the following:

1. On June 19, 2009, in Case 13-RC-21849, the Union filed a Petition pursuant to Section 9(c) of the Act seeking to represent drivers employed by Respondent at its facility in Rosemont, Illinois. A copy of the Petition is attached as Exhibit 1.

2. On July 31, 2009, the Region issued a Decision and Direction of Election. A copy of the Decision and Direction of Election is attached as Exhibit 2.

3. On August 14, 2009, Respondent filed with the Board its Request for Review of the Regional Director's Decision and Direction of Election to address the unit's community of interest issue. A copy of the Employer's Request for Review of the Regional Director's Decision and Direction of Election is attached as Exhibit 3.

4. On August 25, 2009, the Board issued an Order denying the Employer's Request for Review on the grounds that it raised no substantial issues warranting review. A copy of the Board's Order is attached as Exhibit 4.

5. Pursuant to the Regional Director's Decision and Direction of Election, an election was conducted on August 28, 2009. The Tally of Ballots for the election showed 18 votes for the Union, 5 votes against the Union, and 1 challenged ballot, a number insufficient to alter the outcome. A copy of the Tally of Ballots is attached as Exhibit 5.

6. Since objections to the election were never filed, on September 10, 2009, the Region issued a Certification of Representative and certified the Union as the exclusive collective bargaining representative of the employees in the following appropriate unit:

> All full-time and part-time housekeeping and laundry employees, including room attendants, laundry attendants, house attendants, overnight house attendants, and housekeeping supervisors employed by the employer at the Employer's facility located at 9700 Balmoral, Rosemont, Illinois; but excluding all other employees, managers, assistant managers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

A copy of the Region's certification is attached as Exhibit 6.

7. Pursuant to the Region's certification, the Union requested to meet and bargain with Respondent over the terms and conditions of employment for the Unit employees in telephone conversations on September 8, September 23, October 2, October 6 and October 8, 2009 with Respondent's Counsel and Respondent's General Manager Jeremy Schaeffer. Similarly, on September 24 and September 28, 2009, the union by telephone calls to Respondent's General manager Jeremy Schaeffer.

8. In an email dated November 24, 2009, Respondent informed the Region that it refused to recognize and bargain with the Union because "the Employer believed the bargaining unit approved by the Regional Director was not appropriate." A copy of this letter is attached as Exhibit 7.

9. Pursuant to an unfair labor practice charge filed by the Union on October 6, 2009, the Regional Director issued a Complaint and Notice of Hearing on November 27, 2009, alleging Respondent violated Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with the Union. Copies of the unfair labor practice charge, the Complaint and Notice of Hearing, and affidavits of service for those documents are attached as Exhibits 8-11.

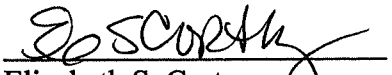
10. On December 9, 2009, Respondent filed an Answer to the Complaint, a copy of which is attached hereto as Exhibit 12.

11. In its Answer, Respondent admits all the allegations of the Complaint except those concerning the certification of the Union as the exclusive collective bargaining representative contained in Paragraph V of the Complaint. Respondent also admits in its Answer to Paragraphs VI (a) through (d) that it has refused to meet and bargain with the Union because it believes the Union has not been properly certified by the Board. Finally, Respondent repeats in its first Affirmative Defense that the Union has not been properly certified and further states in its second Affirmative Defense that the Board is not properly constituted as required by Section 3(b) of the Act and therefore does not have the authority to deny Respondent's Request for Review in Case 13-RC-21849.

12. Accordingly, because Respondent seeks to test the Board's certification of the Union, no genuine issues of fact are present in this case and summary judgment as a matter of law for the General Counsel is appropriate.

WHEREFORE, Counsel for the General Counsel respectfully moves that the Board grant the Motion to Transfer Proceedings to the Board and Motion for Summary Judgment, find all of the allegations of the Complaint to be true, and issue an appropriate Decision and an Order requiring Respondent to bargain in good faith with the Union, on request, for the period required by *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962), as the recognized collective bargaining representative in the certified Unit.

DATED at Chicago, Illinois, this 17th day of December, 2009.



Elizabeth S. Cortez
Counsel for the General Counsel
National Labor Relations Board
Region 13
209 S. LaSalle St., Suite 900
Chicago, IL 60604
Phone: 312-353-4174
Fax: 312-886-1341
E-mail: elizabeth.cortez@nlrb.gov

FORM NLRB-502
(3-98)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
PETITION

FORM EXEMPT UNDER 44 U.S.C. 3512

DO NOT WRITE IN THIS SPACE

Case No.	Date Filed
13-RC-21849	6/19/09

INSTRUCTIONS: Submit an original and 4 copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located. If more space is required for any one item, attach additional sheets, numbering item accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. **PURPOSE OF THIS PETITION** *(If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)* **(Check One)**

- [X] **RC-CERTIFICATION OF REPRESENTATIVE** - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- [ ] **RM-REPRESENTATION (EMPLOYER PETITION)** - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- [ ] **RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE)** - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- [ ] **UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES)** - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- [ ] **UC-UNIT CLARIFICATION** - A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees: *(Check one)* [ ] In unit not previously certified. [ ] In unit previously certified in Case No. _____
- [ ] **AC-AMENDMENT OF CERTIFICATION** - Petitioner seeks amendment of certification issued in Case No. _____ *Attach statement describing the specific amendment sought.*

2. Name of Employer	Employer Representative to contact	Telephone Number
ALOFT HOTEL/AIMBRIDGE HOSPITALITY	Jeremy Schaeffer	847-671-4444

3. Address(es) of Establishment(s) involved *(Street and number, city, State, ZIP code)*	Telecopier Number (Fax)
9700 BALMORAL ROSEMONT, IL. 60018	847-671-2955

4a. Type of Establishment *(Factory, mine, wholesaler, etc.)*	4b. Identify principal product or service
HOTEL	HOSPITALITY

5. Unit Involved *(In UC petition, describe present bargaining unit and attached description of proposed clarification.)*

Included: ALL FULL-TIME + Regular Part-Time HouseKeeping + Laundry Employees

Excluded: ALL OTHER EMPLOYEES, MANAGERS, ASST. MNGRS., OFFICE CLERICALS GUARDS, AND SUPERVISORS AS DEFINED IN THE ACT.

6a. Number of Employees in Unit:
Present: 24
Proposed *(By UC/AC)*:

6b. Is this petition supported by 30% or more of the employees in the unit?* [X] Yes [ ] No
*Not applicable in RM, UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER Item 7a or 7b, whichever is applicable.)

- 7a. [X] Request for recognition as Bargaining Representative was made on *(Date)* 5/21/09 + 6/3/09 and Employer declined recognition on or about *(Date)* NO REPLY *(If no reply received, so state.)*
- 7b. [ ] Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Name of Recognized or Certified Bargaining Agent *(If none, so state.)*	Affiliation
NONE	

Address, Telephone No. and Telecopier No. (Fax)	Date of Recognition or Certification

9. Expiration Date of Current Contract, If any *(Month, Day, Year)*	10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop *(Month, Day, and Year)*

11a. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes ____ No X	11b. If so, approximately how many employees are participating?

11c. The Employer has been picketed by or on behalf of *(Insert Name)* _____, a labor organization, of *(Insert Address)* _____ Since *(Month, Day, Year)* _____

12. Organizations or individuals other than Petitioner *(and other than those named in items 8 and 11c)*, which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. *(If none, so state.)*

Name	Affiliation	Address	Date of Claim / Telecopier No. (Fax)

13. Full name of party filing petition (If labor organization, give full name, including local name and number)
UNITE HERE LOCAL 450

14a. Address *(street and number, city, state, and ZIP code)*	14b. Telephone No. / 14c. Telecopier No. (Fax)
7238 W. Roosevelt Rd. Forest Park, IL 60130 P.O BOX 166	708 771-8700 / 708 771-8988

15. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when petition is filed by a labor organization)*
UNITE HERE

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name *(Print)*	Signature	Title *(if any)*
ALFONSO GARCIA	Alfonso Garcia	ORGANIZER

Address *(street and number, city, state, and ZIP code)*: 7238 W. Roosevelt Rd. Forest Park IL. 60130 P.O BOX 166

Telephone No. 708-771-8700

Telecopier No. (Fax) 708 [illegible]

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, S

EXHIBIT
1

UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

AIMBRIDGE EMPLOYEE SERVICE CORP.,
D/B/A ALOFT CHICAGO O'HARE

Employer

and **Case 13-RC-21849**

UNITE HERE Local 450

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on before a hearing officer of the National Labor Relations Board to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.[1]

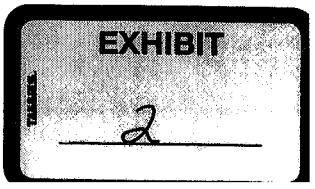
I. Issues

The primary issue raised in this case is whether the petitioned-for unit is an appropriate unit under Section 9(b) of the Act. The Petitioner, UNITE HERE, Local 450 (herein Local 450 or the Union), seeks to represent a unit of housekeeping and laundry employees employed by Aimbridge Employee Service Corp. d/b/a Aloft Chicago O'Hare (herein Aloft or the Employer). Local 450 asserts that the unit petitioned for, consisting of Aloft's employees in its "re:fresh" department, including the room attendants, laundry attendants, house attendants, and overnight house attendants, is an appropriate unit. There are approximately 24 employees in the unit sought by the Petitioner. The Employer contends that the petitioned-for unit of employees is inappropriate because the housekeeping and laundry employees lack a distinct community of interest without the front desk, van drivers, food and beverage, and maintenance employees. As such, the Employer asserts that the only appropriate unit should include all of the aforementioned

---

[1] Upon the entire record in this proceeding, the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
c. The labor organization involved claims to represent certain employees of the Employer.
d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.



employees. There are approximately 51 employees in the unit the Employer contends is appropriate.

The second issue raised in this case is whether the housekeeping supervisors—positions currently held by Peggy Camp and Dalia Frausto--are supervisors under Section 2(11) of the Act, as the Petitioner asserts, and should therefore be excluded from any unit found appropriate.

II. Decision

Based on the entire record[2] in this proceeding and for the reasons set forth below, I find that the housekeeping and laundry employees have a separate identity of functions, skills, and supervision, and that the petitioned-for unit is therefore an appropriate unit under Section 9(b) of the Act. I also find that the housekeeping supervisors are not supervisors as defined by Section 2(11) of the Act, and that they are eligible for inclusion in the unit determined to be appropriate.

Accordingly, IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following bargaining unit:

> All full-time and part-time housekeeping and laundry employees, including room attendants, laundry attendants, house attendants, overnight house attendants, and housekeeping supervisors employed by the Employer at the Employer's facility located at 9700 Balmoral, Rosemont, Illinois; but excluding all other employees, managers, assistant managers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

The unit found appropriate herein consists of approximately 26 employees for whom no history of collective bargaining exists.

III. Statement of Facts

The Employer is a hotel located in Rosemont, Illinois, near the Chicago O'Hare Airport and managed by Aimbridge Hospitality. Open since July 2008, the Employer is a 251 room hotel that offers a "hip, chic and intimate environment" that caters to hip, young business and transient travelers. Aloft is a limited service hotel as it does not have a full-service restaurant on its premises. Instead, it has a snack bar called "re:fuel" where guests may purchase frozen or pre-made food items that are assembled or heated in a prep area. In addition to re:fuel, guests can enjoy "wxyz" (hotel bar) where they can get a cocktail and then sit in the adjoining seating area or the lobby area referred to as "re:mix or "re:lax". Aloft's other guest amenities include "splash" (pool), "backyard" (outdoor seating area), "re:charge" (fitness center), and "tactic" (meeting rooms). The Employer prides itself on its unique branding, including the use of its unique "aloft lingo" that includes the hotel's signature greeting, "aloha," its signature scent

---

[2] The Employer submitted to a Motion to Amend the Reporter's Transcripts on July 17, 2009. The Regional Director has reviewed the proposed changes and have taken them into consideration in issuing this Decision and Direction of Election.

"vibrance" which is sprayed out of scent machines in the lobby and re:mix areas, and adhering to its core values: sassy, savvy and space.

The "back of the house" area of the hotel is an area that is open only to employees. The employees' break room "chill" is located in the back of the house and the employees' time clock is located inside chill. All hotel employees use chill, either before or after their shifts, or during their breaks and lunch to eat, socialize, watch television, or use the internet. There is also an employee bulletin board in this area on which employee birthdays, comment cards, pictures, job postings, and any other relevant announcements and upcoming events at the hotel are posted. The hotel's laundry area, referred to as "clean" is also located in the back of the house, making it easily accessible for bartenders to access clean rags and towels to use in the bar area as well as return the dirty ones to be cleaned. Bartenders do not have to check with anyone before getting clean towels or dropping off dirty ones. Also located in the back of the house is the assistant general manager's office, the housekeeping manager's office, and storage and supply rooms.

The Employer occasionally has events referred to as "all hands on deck" events, which require some participation by most of its employees. Such events may be banquet event orders, which are sold and organized by the Employer's sales department and then implemented by the necessary departments. Since Aloft is located close to Chicago O'Hare Airport, the Employer has agreements with airlines in cases of emergency where a large number of airline passengers need overnight accommodations. During these distressed passenger situations, the hotel may have to scramble to get a sufficient number of guest rooms available to incoming airline passengers. To that end, it might be necessary to have as many available employees assist in preparing the hotel and guest rooms for the passengers' arrival. The frequency of distressed passenger events are unpredictable and although these events could happen as often as once or twice a week, there are also weeks when such events do not occur at all.

A. Wages and Compensation

Of the hourly employees who are at issue in the instant case, the housekeeping and laundry employees' wages are the lowest, ranging from $9.00 per hour to $11.00 per hour. Ricardo Martinez, who has worked as the overnight house attendant since the hotel opened last year, earns $10.50 per hour, and occasionally gets a dollar or so in tips from the guests he drives to and from the airport during his overnight shift. Regular van drivers' wages start at $9.25 per hour plus tips from the guests. Food and beverage employees, which include the re:fuel attendant, cocktail servers, and bartenders, earn in the range of $8.75 per hour to $12.00 per hour plus tips. Front desk employees earn between $12.00 per hour to $13.00 per hour. The Employer's engineers are paid the highest wages, earning between $16.00 per hour and $18.00 hour. There is no evidence that employees who occasionally cross-over to assist in departments other than their own are paid any less or more for the time that they are performing work outside of their regular duties.

All full-time employees are eligible for the Employer's medical, dental, and vision plans, as well as a 50-percent discount on hotel rooms. The Employer holds quarterly meetings for all employees during which hotel's service scores are

communicated, employees' birthdays and anniversaries are celebrated, and employees' accomplishments are recognized. The focus of these events is more of a celebratory event for the employees aside from the employees' annual holiday party and summer barbeque.

B. Hours of Work

Although the hotel operates 24 hours a day, seven days a week, the evidence presented at the hearing establishes that employees in different department have their own schedules that are made by the respective supervisors in each department. Erma Flores, the housekeeping manager, is responsible for creating the housekeeping and laundry employees' work schedules each week. The housekeeping department starts at 8:00 a.m. on weekdays and 9:00 a.m. on weekends, with employees working in eight hour shifts. Room attendants, whose primary responsibility is to clean guest rooms, typically work from 8:00 a.m. to 4:30 p.m., although some may start and end later. Laundry attendants also work from 8:00 a.m.to 4:30 p.m., although there was some testimony that they may start earlier on occasion. House attendants work eight hour shifts from 7:00 a.m. to 11:00 p.m. and the overnight house attendant works from 11:00 p.m. to 7:00 a.m.

The hours of work for the food and beverage employees vary depending on their position. The cocktail servers and the bartenders work from 4:00 p.m. to midnight, while the re:fuel attendant works from 5:00 a.m. to 2:00 p.m., or as needed. The front desk has coverage 24 hours each day, seven days a week, and has agents who work in eight-hour shifts: 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 11:00 p.m., and 11:00 p.m. to 7:00 a.m. The regular van drivers only work between 5:00 a.m. to midnight and the overnight shift—from midnight to 5:00 a.m.—is covered by the overnight house attendant. The engineers and maintenance employees work eight hour shifts from 7:00 a.m. to 11:00 p.m. and like the van drivers, there is no engineer on duty during the overnight hours. During the overnight hours, the overnight house attendant occasionally deals with minor maintenance issues, such as unclogging toilets, changing the television remotes, or replacing a damaged refrigerator from a guest room with a functional one.

C. Supervision

The general manager, Jeremy Schaeffer, and assistant general manager, Scott Gibson, are the only ones at Aloft who have the authority to hire new employees, discipline and discharge employees, adjust employee grievances, and approve employee work schedules, promotions and transfers, and leaves of absence. Each department—housekeeping, engineering/maintenance, food and beverage, front desk—has its own supervisor or manager who attends weekly management meetings, prepares schedules of employees in his/her department (which are submitted to Schaeffer or Gibson for approval), and can recommend employees for discipline. Gibson supervises the re:fuel attendant and is responsible for the re:fuel schedule. Department managers can only resolve minor scheduling conflicts once a work schedule has been approved by Gibson or Schaeffer.

The Employer has a "Manager on Duty" program, or "MOD" program, during which one of the hotel's nine managers work as the on-site manager on duty from 3:00 p.m. Friday until noon on Sunday. Each of the nine managers—housekeeping manager, chief engineer, Aloha

desk manager, general manager, assistant general manager, and four sales managers[3]—rotate throughout the year, such that each manager is "on duty" approximately five times during the year. Each MOD is ultimately responsible for all departments during his or her duty and prepares a report of the weekend at the end of his or her shift.

The Employer's management team, made up of the individuals who do "MOD" duty, attend a management meeting every Thursday during which they discuss a number of issues, including budgets, customer service, hotel occupancy, upcoming events, and other concerns. The managers also nominate and vote on employee-of-the-month recognitions. Although there is some overlap of supervision, particularly during large or unexpected—or "all on deck"—events such as a New Year's Eve Party, or a "distressed passenger event," there is not substantial evidence that supervision across departments is a daily, or even regular, occurrence. For the majority of the time, employees are supervised and directed by their respective department's manager or supervisor.

Housekeeping Department Supervision

Erma Flores currently works as the manager of housekeeping and Peggy Camp and Dalia Frausto work as housekeeping supervisors. Camp and Frausto inspect guest rooms to make sure that cleaning is done properly and fill out paperwork if the work has not been properly. To that extent, their work is similar to Flores. However, there are duties that only Flores has the authority to perform as the manager. Flores is responsible for making the work schedule for all of the housekeeping and laundry employees, which she, like all other departmental managers, submits to Gibson for approval. Camp and Frausto do not make work schedules. Although Flores can recommend the discipline of an employee within her department, she does not have the authority to independently discipline or discharge employees, but must seek the approval of Gibson or the hotel's general manager. Once Gibson or the general manager approves the discipline of an employee, Flores then has the authority to sign the written warning and participate in a session with the disciplined employees. Camp and Frausto do not make the work schedules and have no authority to issue warnings or to discipline or recommend the discipline of housekeeping and laundry employees. Flores alone directs the work of the housekeeping and laundry employees, including the work of the overnight house attendant as it pertains to routine housekeeping responsibilities. None of these individuals—Flores, Camp or Frausto—have the authority to hire new employees because, as stated above, only Schaeffer and Gibson are responsible for making hiring decisions at the hotel.

D. Qualification and Training

The Employer contends that none of the positions at issue require any specific qualifications or skills, although certain positions are better filled with individuals who have certain skill sets. For example, Assistant Manager Gibson admitted that aside from the hotel's and his desire to have its employees trained for a variety of positions, the fact remains that the Employer would prefer to have a bartender who knows how to mix drinks, an engineer who has some knowledge of using tools and a general maintenance background, a front desk person who

[3] There is no dispute that these nine managers are supervisors under the Act and the parties so stipulated during the hearing.

can speak English and be able to easily communicate with guests and other people, and a driver who is licensed to drive. Although the Employer asserts that it is willing to train anyone who expresses the desire and willingness to work in a different position, the evidence shows that this is not common practice at the hotel and that permanent transfers of employees between different departments have been rare.

All employees who were hired prior to the hotel's opening received a three-day training, which included getting-to-know actvities and getting the staff familiar with Aloft's lingo and atmosphere. A couple of months after the hotel opened, all employees were given sexual harassment training. Employees hired since the opening of the hotel are given an orientation session pursuant to a new-hire checklist, which includes having the new employees review the Aloft brand and its core values. All employees receive an employee handbook and are subject to the house rules and a 90-day introductory period.

E. Job Functions, Interchangeability, Contact among Employees

All employees at Aloft wear uniforms. Aside from a pink square lapel pin with the lower case letter "a" on it, which represents "Aloft" or "Aloha" and signifies that they are employees, the employees all wear different uniforms based on the department in which they work. For example, all housekeeping employees, such as the overnight house attendant, wear grayish colored pants and a striped shirt. Front desk employees wear khakis and polo shirts; van drivers wear jeans and polo shirts; bartenders also wear jeans and polo shirts; and engineers wear jeans and blue denim shirts. The uniforms are issued to employees by the Employer and the employees are responsible for cleaning and maintaining them. During the occasions when an employee in one department performs the work in another department, that employee does not change uniform, but instead, remains in his usual uniform. For example, when the overnight house attendant drives the shuttle van during the night shift, he remains in his housekeeping uniform and does not change into the van drivers' uniform. Similarly, when he is switching out remote controls in a guest room or unclogging a toilet, he does not change into the uniform generally worn by the engineers.

The front desk is generally responsible for coordinating the needs of individual guests who come and stay at the hotel. For example, the front desk notifies housekeeping if extra towels need to be taken to a guest room, or maintenance if there is a problem somewhere in the building that needs to be repaired, or van drivers when guests need to be driven to the airport. During the overnight hours, the overnight house attendant has routine cleaning jobs that he is primarily responsible for, such as the public bathrooms, the lobby, the swimming pool, and the gym, as well as responding to guest requests, driving the shuttle van, and other random requests. On some occasions, front desk employees have driven the shuttle vans. Although the Employer asserted that drivers also work the front desk and that housekeeping employees drive vans, the evidence showed that in practice, regular van drivers and house attendants who occasionally drive shuttle vans do not, in fact, actually perform duties typical of front desk, or Aloha desk, employees. The evidence also clearly established that the majority of the housekeeping and laundry employees do not and have never driven shuttle vans or performed front desk duties. Part of this is attributed to the fact that front desk employees must be fluent in English and the

majority of housekeeping and laundry employees are fluent in Spanish only and speak very little English.

Aside from the occasional and random "all hands on deck" events such as a distressed passenger event or a large social function (like a New Year's Eve party), "transfers" between departments are merely temporary and not regular. Partly due to the fact that the hotel is relatively new and has only been operating for a year, there is no evidence of permanent transfers between departments or promotions within or outside of departments. Aside from several new hires, most employees work in the positions they were hired for at the time of the hotel's opening last summer. Despite the functional interchange that the Employer asserts, the evidence shows that in practice, most employees spend anywhere between 90 percent to 100 percent of their scheduled work time performing only their primary tasks—for example, room attendants spend 99 percent of their time cleaning rooms, drivers drive vans for 90 percent of their work time, and engineers spend 90 percent of their time performing maintenance and repairs. There is little evidence, if at all, of laundry attendants doing anything except laundry during their shifts.[4] Despite the Employer's broad assertions that front desk employees instruct housekeeping employees daily to drive the vans, the evidence establishes that only two housekeeping employees actually drive the shuttle vans (house attendants).

IV. Analysis

A. Appropriateness of Petitioned-for Unit

The Act does not require that the petitioned-for bargaining unit be the *only* appropriate unit, or the *ultimate* unit, or even the *most* appropriate unit; the Act only requires that the petitioned-for unit be an appropriate one, such that employees are insured "the fullest freedom in exercising the rights guaranteed by this Act." *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Tallahassee Coca-Cola Bottling Co.*, 168 NLRB 1037 (1967); *Morand Beverage Co.*, 91 NLRB 409 (1950), *enf'd.* 190 F.2d 576 (7th Cir. 1951). Thus, it is well-settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. *Rohtstein Corp.*, 233 NLRB 545, 547 (1977). The Board will pass only on the appropriateness of units that have been argued for, and the burden is on the party challenging the unit to show that the petitioned-for bargaining unit is inappropriate; if the unit sought by the petitioning labor organization is appropriate, the inquiry ends. *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988). If, however, it is inappropriate, the Board will scrutinize the employer's proposal. *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). Thus, the unit requested by a petitioning union is the starting point for any unit determination.

The Board has reasonably broad discretion in determining what constitutes an appropriate bargaining unit. *Overnite Transportation*, 322 NLRB at 724. See also

[4] The Employer asserted during the hearing that a laundry attendant recently expressed interest in driving vans and that the hotel was looking into accommodating this interest.. However, that an employee has interest in performing a job outside of his own department does not necessarily establish that the two positions—laundry and driving vans—are functionally interchangeable.

Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962). In defining the appropriate bargaining unit, the Board's focus is on whether the employees share a "community of interest." *Overnite Transportation*, 322 NLRB at 724. To that end, the Board considers the following community of interest factors: method of wages or compensation, hours of work, employment benefits, whether the employees have common supervision, the degree of dissimilar qualifications, training and skills, job functions, interchangeability and contact among employees, work sites, and other working terms and conditions. *Id.* See also *Kalamazoo Paper*, 136 NLRB at 137.

There is no question that the smooth operation of Aloft is dependent upon the cooperation and communication of all the employees who work at the hotel. However, the evidence does not reflect the close integration and functional interchange necessary to find the petitioned-for unit inappropriate. The Employer contends that the petitioned-for unit "simply cannot function independent of the front desk, van drivers, food and beverage, and maintenance employees." In the instant case, the evidence shows that the majority of the housekeeping and laundry employees have minimal contact with the other employees throughout the course of their work schedule. Although all employees use the same entrance into the hotel and the same break room, the issue of whether a group of employees shares a community of interest sufficient to justify representation separate from other employees must be determined more by evaluating their actual work functions rather than where they spend their brief break periods or the door through which they arrive at work. The evidence clearly shows that housekeeping and laundry employees, including the house attendants, on balance, share a community of interest with each other far beyond the incidental interchange that they share with the other employees at the hotel.

Although the overnight house attendant may have more than minimal contact with other employees due to the fact that his responsibilities include driving the shuttle and tending to minor maintenance issues in the absence of regular van drivers and the engineering department during the overnight hours, the weight of the evidence suggests that the house attendant shares a community of interest with the housekeeping and laundry employees in all other aspects of his work. Furthermore, aside from the briefest of testimony by Martinez that "somebody quit housekeeping and went to...driving the car [shuttle]" there is no evidence that there has been any permanent transfers in or out of the housekeeping department.

In *Holiday Inn-Troy*, 238 NLRB 1369 (1978), the Board held that the petitioned-for unit of housekeeping employees constituted a distinct department, performed manual tasks under separate supervision, and had minimal contact and interchange with other hotel employees, including front office and restaurant employees, such that a unit of housekeeping department employees constituted an appropriate unit. Although the Board in *Holiday Inn* acknowledged that there was evidence supporting the view that a facility-wide unit was appropriate, the Board ultimately determined that the housekeeping department employees have a separate and distinct community of interest which entitles them to representation apart from the other employees employed at the hotel. See also *Ramada Inns, Inc.*, 221 NLRB 689, 690 (1975) ("The Board has long since abandoned the view that only a hotelwide or motelwide unit is appropriate. Rather, the Board considers each case on the facts peculiar to it in order to decide wherein lies the true community of interest among particular employees and only if functions and mutual interest are highly integrated is an overall unit alone appropriate.").

Although the Employer asserts that managers for various departments, such as the director of sales, routinely directs the work of employees outside of the sales department, the evidence only shows that this is something that "she could, she may, she doesn't always but may do." Despite the Employer sweeping assertions about the interchangeability of job functions across the various departments, the evidence shows—and Gibson admitted—that the practical reality of the Employer's situation is that most, if not all, of the employees in the individual departments spend 90 to 100 percent of their work time performing their primary tasks. For example, room attendants spend 99% of their time cleaning rooms, van drivers drive vans for 90% of their work time, and engineers spend 90% of their time performing maintenance and repairs. Even the house attendants who spend part of their shift driving the vans, setting up meeting rooms, or performing minor maintenance duties, still spend significantly more than half of their time—about 60 to 70 percent—performing housekeeping work.

In *Ramada Inn West*, 225 NLRB 1279, 1280 (1976), the Board held that the petitioned-for unit of housekeeping and maintenance employees was an appropriate unit due to the lack of highly integrated job functions and mutuality of interests between the petitioned-for unit and the other hotel employees as to require their combination into a single unit. The record in the instant case clearly shows that almost all of the employees in the petitioned-for unit are separately supervised by Housekeeping Manager Flores, do not interchange with other employees on a regular basis, and for almost their entire work hours are engaged in the performance of distinctive manual functions in furtherance of the objectives and responsibilities of their respective departments. In the instant case, the evidence shows that the housekeeping and laundry department employees have a distinct and separate community of interest apart from the other hotel employees to justify separate representation. Although the housekeeping and laundry employees share some broad interests with the rest of the Employer's employees in promoting the hotel's operational philosophies, the weight of the evidence clearly establishes that the petitioned-for unit is an appropriate unit.

Based on the evidence presented by the parties, I find that the petitioned-for unit of housekeeping and laundry employees is an appropriate unit under Section 9(b) of the Act. Although a larger unit *may* also be appropriate, the Board only requires that a requested unit be *an* appropriate unit to proceed to an election for representation.

B. Supervisory Status of Housekeeping Supervisors

In the instant case, the Petitioner asserts that the housekeeping supervisors are supervisors under Section 2(11) of the Act and should not be included in any unit found to be appropriate. Section 2(11) of the Act defines "supervisor" as:

> Any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection

with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Pursuant to this definition, individuals are statutory supervisors if (1) they hold the authority to engage in any 1 of the 12 supervisory functions (e.g., "assign" and "responsibly to direct") listed in Section 2(11); (2) their "exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;" and (3) their authority is held "in the interest of the employer." *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006), citing *Kentucky River Community Care*, 532 U.S. 706, 713 (2001). Supervisory status may be shown if the putative supervisor has the authority either to perform a supervisory function or to effectively recommend the same. The burden to prove supervisory authority is on the party asserting it. *Oakwood Healthcare*, 348 NLRB at 687. See also *Kentucky River*, 532 U.S. at 711-12.

Based on the record, I find that the housekeeping supervisors are not 2(11) supervisors and should be included in a unit of housekeeping and laundry employees. As the facts discussed in detail above show, the housekeeping supervisors, currently Camp and Frausto, do not exercise any of the supervisory indicia required for such a determination. The housekeeping supervisors work shifts when Flores, the housekeeping manager, is on duty, such that they would not even be called upon to exercise any independent judgment. In addition, the Petitioner provides no evidence to show that these individuals perform any supervisory functions or even make effective recommendations in connection with supervisory indica to justify such a finding. Accordingly, Camp and Frausto should be included in the unit of housekeeping and laundry employees found to be appropriate in the instant case.[5]

V. Direction of Election

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

[5] I find it unnecessary to make a determination as to the supervisory status of the wxyz supervisor and the aloha desk supervisor as the bar employees and aloha or front desk employees are not included in the directed unit.

VI. Notices of Election

Please be advised that the Board has adopted a rule requiring election notices to be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to 12:01a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VII. List of Voters

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). The Regional Director shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, 209 South LaSalle Street, 9th Floor, Chicago, Illinois 60604, on or before August 7, 2009. No extension of time to file this list will be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VIII. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **August 14, 2009.**

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlrb.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

DATED at Chicago, Illinois this 31st day of July, 2009.

/s/ Joseph A. Barker

Joseph A. Barker, Regional Director
National Labor Relations Board
Region 13
209 South LaSalle Street, 9th Floor
Chicago, Illinois 60604

CATS — Unit – Other Scope/Definition

Blue Book - 177-8580-7000; 177-8501-4000; 440-1760-7801;

MATTHEW T. WAKEFIELD
KATHERINE A. HREN
BALLARD ROSENBERG GOLPER & SAVITT, LLP
500 N. Brand Boulevard, Twentieth Floor
Glendale, CA 91608-1097
Telephone: 818-508-3700
Facsimile: 818-506-4827

Attorneys for Employer
AIMBRIDGE EMPLOYEE SERVICE CORP.
d/b/a/ ALOFT CHICAGO O'HARE

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

AIMBRIDGE EMPLOYEE SERVICE CORP. d/b/a/ ALOFT CHICAGO O'HARE, Employer, and UNITE HERE! LOCAL 450, Petitioner	**NLRB CASE NO. 13-RC-21849** **EMPLOYER'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION**

///

///

///

///

///

///

///

///

///

EXHIBIT
3

TABLE OF CONTENTS

PAGE NO.

I. GROUNDS FOR REQUEST FOR REVIEW 1

II. INTRODUCTION 2

III. STATEMENT OF ISSUE 5

IV. PROCEDURAL HISTORY 5

V. SUMMARY OF FACTS 6

A. *Overview of Hotel Operations* 6

B. *As Part of the Hotel's Integrated Operations, Employees Engage in Overlapping, Interchangeable Tasks, and are in Regular Contact and Communication with Each Other* 8

1. *The Work of Housekeeping and Laundry Employees is Fully Integrated With the Work of Other Hotel Employees* 8

2. *Permanent and Temporary Transfers Regularly Take Place Throughout the Hotel* 17

C. *The Hotel's Centralized Administrations and Common Supervision* 17

1. *The General Manager and Assistant General Manager's Extensive Responsibility and Control of the Hotel* 17

2. *The High Degree of Common and Overlapping Responsibilities of Other Hotel Managers/Supervisors* 18

D. *All Departments Enjoy Similar Wages and Benefits, Skills, and Other Terms and Conditions of Employment* 20

1. *Similar Wages and Identical Benefits* 20

2. *Equal Skills* 21

3. *Similar Hours* 22

4. *Identical Training* 22

5. *Similar Uniforms* 22

6. *Similar Tools, Equipment and Supplies* 23

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

TABLE OF CONTENTS

PAGE NO.

E. *Other Similar Terms and Conditions of Employment* 23

VI. ARGUMENT 18

A. *The Board's Multi-Factor Traditional Community of Interest Test Overwhelmingly Demonstrates that All Front Desk, Housekeeping and Laundry, Food and Beverage, Van Drivers and Maintenance Employees Share a Substantial Community of Interest* 24

1. *The Extensive Functional Integration of the Hotel's Operations* 25

2. *The Substantial Interchange and Overlap of Employee Duties* 27

3. *The Significant Daily Contact and Interaction Between Hotel Employees* 30

4. *The High Degree of Common Supervision* 33

5. *The Centralized Administration of Personnel Policies and Procedures* 35

6. *Regular Permanent and Temporary Transfers of Employees Between Classifications* 35

7. *The Terms and Conditions of Employment For All Employees are Virtually Identical* 37

B. *The Bargaining History of Petitioner in Other Hotels is Not Controlling* 38

VII. CONCLUSION 39

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

TABLE OF AUTHORITIES

PAGE NO.

FEDERAL CASES

Atlanta Hilton and Towers
273 N.L.R.B. 87 (1984), *modified on other grounds*
275 NLRB 1413 (1985) 24, 25, 27, 30, 33, 35

Columbus Plaza Motor Hotel
148 N.L.R.B. 1053 (1964) 38

Golden Eagle Motor Inn
246 N.L.R.B. 323 (1979) 30

Holiday Inn Alton
270 N.L.R.B. 1405 (1984) 29

Holiday Inn Atlanta Northwest
214 N.L.R.B. 930 (1974) 28, 37

Holiday Inn, Pittsburgh
214 N.L.R.B. 651 (1974) 28, 31, 35, 37, 38

Holiday Inn Southwest
202 N.L.R.B. 781 (1973) 29

Holiday Inn Troy
238 N.L.R.B. 191 (1978) 32

Kalmamazoo Paper Box Corp.
136 N.L.R.B. 134 (1962) 24

LaRonde Bar & Restaurant, Inc.
145 N.L.R.B. 270 (1963) 38

May Dep't. Stores Co. v. NLRB
454 F. 2d 148 (9th Cir. 1972) 24

NLRB v. Lundry Packing Co.
68 F.3d 1577 (4th Cir. 1995) 24

Phoenician
308 N.L.R.B. 826 (1992) 34, 35

Ramada Beverly Hills
278 N.L.R.B. 691 (1986) 25, 33

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

TABLE OF AUTHORITIES

PAGE NO.

Ramada Inns, Inc.
221 N.L.R.B. 83 (1975) 30

Ramada Inn West
225 N.L.R.B. 1279 (197^) 26, 34

Sheraton Motor Inn
210 N.L.R.B. 790 (1974) 33

Stanford Park Hotel
287 N.L.R.B. 137 (1988) 36, 37

Westin Hotel
277 N.L.R.B. 1506 (1986) 37

FEDERAL STATUTES

29 U.S.C. § 159(b) 24

29 U.S.C § 9(c)(5) 4, 5

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

I. *GROUNDS FOR REQUEST FOR REVIEW*

Until now, it would have been difficult to conceive of a Regional Director issuing a decision that could be totally divorced from the evidentiary record and completely inconsistent with relevant Board law on the community of interest test. Regrettably, the Regional Director's Decision and Direction of Election ("DDE")[1] herein has converted what was previously inconceivable into a grave reality for the parties. Reading the DDE in view of the actual record and Board precedent leaves one to wonder why a hearing was even held. The DDE in this case:

- contains glaring factual inconsistencies and wholesale errors that exhibit a basic misunderstanding by the Regional Director of how a hotel functions;
- ignores numerous material facts that point directly to a conclusion opposite of that reached by the Regional Director;
- misconstrues and misapplies Board law;
- incorrectly cites the evidence presented; and
- fails to even address, let alone analyze, a majority of the community of interest factors.

It is abundantly clear that the writer of the DDE failed to accurately and completely review the record in his/her haste to issue this result-driven decision.[2] The net result is a unit created by the Regional Director that does not possess a separate community of interest.

Accordingly, pursuant to section 102.67 of the Rules and Regulations of the National Labor Relations Board, Aimbridge Employee Service Corp., d/b/a aloft Chicago O'Hare

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

[1] Attached as Exhibit A is a copy of the Regional Director's Decision and Direction of Election, which is cited herein as "DDE" followed by the page number(s). The Reporter's Transcript is cited herein as "Tr." followed by the page number(s). Board Exhibits are cited herein as "Bd. Ex." followed by the number(s). Employer Exhibits are cited herein as "Er. Ex." followed by the number(s). Union Exhibits are cited herein as "U. Ex." followed by the number(s).

[2] We do not wish for this Request for Review to appear as an attack on Regional Director Joseph Barker, with whom we have no personal dispute. Indeed, the Regional Director did not personally sign the decision, and we question whether he had the opportunity to review it, let alone any of the 257 pages of hearing transcript or the numerous exhibits that were admitted into evidence.

("Hotel" or "Employer") respectfully requests review of the Regional Director's Decision and Direction of Election on the following grounds: (1) a substantial question of law or policy is raised by both (a) the absence of, and (b) departure from, officially reported Board precedent; and (2) the Regional Director's decision on substantial factual issues is clearly erroneous on the record and such error prejudicially affects the rights of the Employer. The Employer requests the opportunity to orally argue this matter.

II. *INTRODUCTION*

The aloft Chicago-O'Hare is a functionally integrated and centralized hotel that has achieved success through its unique branding, intimate setting, and extraordinarily high level of guest service resulting from employees throughout the Hotel working together as a team. In his DDE, the Regional Director upheld the petitioned-for unit of housekeeping and laundry employees, thereby excluding and disenfranchising other Hotel employees who share an overwhelming community of interest with those in the petitioned-for classifications. In achieving his desired result, the Regional Director speciously concluded:

> I find that the housekeeping and laundry employees have a separate identity of functions, skills and supervision, and that the petitioned-for unit is therefore an appropriate unit under Section 9(b) of the Act.

(DDE 2)

The conclusion reached by the Regional Director clearly demonstrates, on its face, that only three of the numerous factors enumerated in Board precedent were evaluated in reaching the erroneous conclusion that the petitioned-for unit is appropriate. By way of example, some of the many errors made by the Regional Director which directly affect his ultimate determination, include the following:

- The Regional Director speciously attempted to reject the uncontroverted evidence of numerous permanent transfers when erroneously concluding that "aside from the briefest of testimony by Martinez that 'somebody quit housekeeping and went to . . .driving the car [shuttle]' there is no evidence that there has been any

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

permanent transfers in or out of the housekeeping department." (DDE 8) The record reveals numerous permanent transfers including "Gabriela" who works as a room attendant, laundry attendant, and also works in the grab and go snack area (re:fuel). (Tr. 80) Two house attendants routinely work as both house attendants and van drivers, and one former house attendant did the same. (Tr. 81) The record also reflects that two house attendants permanently transferred into the van driving position. (Tr. 81, 207, 220)

- The Regional Director completely omitted any reference to the numerous temporary transfers within the Hotel. Yet, the record demonstrates that temporary transfers occur every day. (Tr. 80-84, 88-89, 103-104, 191, 197-199, 207, 220)
- The Regional Director totally disregarded the record when concluding that "[t]here is little evidence, if at all, of laundry attendants doing anything except laundry during their shifts." (DDE 7) The record reveals numerous instances each day where laundry attendants perform work outside of traditional laundry work, including performing work in re:fuel, re:charge, wxyz, and other common areas of the Hotel. (Tr. 137-138, 139-141, 146-147)
- To further justify the unit created, the Regional Director erroneously concluded that employees do not share the same work schedules. (DDE 4) However, the record clearly reflects that all employees are scheduled based on Hotel occupancy, and generally in 8-hour shifts. (Tr. 42, 45, 188-189)
- Although the Hotel's use of Banquet Event Orders ("BEO") is significant evidence of the functional integration of the Hotel, the Regional Director failed to analyze their import, dedicating only one sentence in the DDE to their existence. (DDE 3) However, the record reveals that BEOs are used by numerous departments and employees, are communicated to employees and help ensure the smooth fluidity of operations between all employees. (Er. Ex. 5: Tr. 73-79)

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

- To further justify the erroneous conclusion reached, the Regional Director concluded that the events which require employees from housekeeping, laundry and other areas of the Hotel to work together (i.e., turning around meeting rooms, cleaning guest rooms when distressed passengers arrive, coordinating meeting rooms) are only "occasional" and "random," (DDE 3, 7) when the record reveals they happen at least once a week, if not more often. (Tr. 82-84, 87-89)
- The Regional Director erred in concluding, without any analysis, that the petitioned-for employees have separate supervision, when the record reflects the housekeeping manager has *very limited supervisory authority*. In this regard, the DDE fails to consider the general manager's and assistant general manager's roles in controlling nearly all supervisory decisions in the Hotel. (Tr. 59-60, 64-65, 68-69, 71)

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

The record evidence clearly establishes the integrated and centralized nature of the Hotel. The functional integration of the Hotel's operations, the high degree of common supervision, the uniform application of centralized human resources policies, the high degree of regular interchange and overlap of all operations employees, the substantial number of temporary and permanent transfers among classifications, the significant level of regular interaction, contact, and communication between all Hotel employees, the numerous common terms and conditions of employment shared by all employees, and the lack of an area pattern of bargaining, leads to the inevitable conclusion that the petitioned-for unit is entirely inappropriate under the Act. Indeed, it is inconceivable how the Regional Director reached his decision when the employees in the petitioned-for unit entirely lack any distinct community of interest separate and apart from other Hotel employees.

As demonstrated herein, the petitioned-for unit of employees is wholly inappropriate and is admittedly based solely on the extent of the Union's organizing efforts.[3] (Tr. 7) The only

[3] Section 9(c)(5) of the Act prohibits the Board from relying upon the extent of organization as the controlling factor.

logical conclusion that can be drawn from reading the DDE in light of the record is that the Regional Director desired to grant the petitioned-for unit, regardless of the record evidence that establishes the unit sought by the Union is clearly inappropriate. Section 9(c)(5) of the Act prohibits this type of result. Accordingly, we strongly urge the Board to grant this Request for Review and reverse the Regional Director's decision.

III. *STATEMENT OF ISSUE*

Whether a unit limited to only "housekeeping and laundry" employees is appropriate for collective bargaining, when the Employer operates a centralized and highly integrated Hotel, when the petitioned-for classifications are vital elements in the Hotel's unique service program, and when petitioned-for employees regularly transfer, interchange, contact, communicate, and generally share a community of interest with nearly all other employees of the Hotel?

IV. *PROCEDURAL HISTORY*

On June 19, 2009, Petitioner UNITE HERE! Local 450 ("Union" or "Petitioner") filed a Petition to represent only "all full time and part time housekeeping and laundry employees" of the Hotel, excluding "all other employees, managers, assistant managers, office clericals, guards, and supervisors as defined in the Act." (Bd. Ex. 1) On July 6 and 7, 2009, a hearing on the Petition was held in Chicago, Illinois.[4] Both parties submitted post-hearing briefs. On July 31, 2009 the Regional Director found the petitioned-for unit of employees appropriate, adding to the unit two housekeeping supervisors (inspectresses) that the Petitioner has attempted to exclude as purported Section 2(11) supervisors.[5]

The Region has established an election date of August 28, 2009.

---

[4] The parties stipulated that the Employer is an employer engaged in interstate commerce and the Petitioner is a labor organization under the Act. The parties also stipulated that there is no contract bar and that the Employer meets the jurisdictional standards of the Board. (Tr. 6, Bd. Ex. 2).

[5] The Employer does not challenge and, thus, does not request review of the Regional Director's findings and conclusion that housekeeping supervisors are not supervisors under section 2(11) of the Act. (DDE 10)

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

V. *SUMMARY OF FACTS*

A. *Overview of Hotel Operations*

The Hotel,[6] which opened on July 24, 2008, distinguishes itself from all others by its unique branding and its extraordinary high level of guest service. (Tr.51) All employees work under one roof in the Hotel, which contains 251 guest rooms. As part of the Hotel's unique culture, distinctive nomenclature is used to set the Hotel apart from a traditional hotel. (Tr. 37) All employees are trained on "aloft lingo" which describes the appropriate "aloha" greeting and other terms used at the Hotel. (Tr. 37-39; Er. Ex. 2) The "aloft lingo" is posted on the all-employee bulletin board. (Tr. 39-40)

The Hotel employs approximately 51 employees,[7] plus nine stipulated Section 2(11) supervisors.[8] (Tr. 179, 32, 33, 34) These employees work in the areas of food & beverage, housekeeping and laundry, maintenance, front desk and van driving. These employees operate the Hotel 24 hours a day, 365 days a year. (Tr. 188-89)

The first floor of the Hotel includes the front desk (called the "aloha desk"), a bar and seating area (called "wxyz"), a lobby seating area (called "re:mix" or "re:lax") which contains a pool table and chairs, a grab-and-go snack area (called "re:fuel"),[9] two meeting rooms (called "tactic"), an indoor pool area (called "splash"), an outside seating area connecting wxyz and the pool (called the "backyard"), a fitness center (called "re:charge"), and some guest rooms. All of these areas are open to guests. (Tr. 10-18, Er. Ex. 1)

The first floor also includes the "back of the house" which is not open to guests, but is open to all employees. This includes a small area behind re:fuel that is used for assembling and

---

[6] The Hotel is located in Rosemont, Illinois, near Chicago-O'Hare airport and is managed by Aimbridge Hospitality. (Tr. 186)

[7] Employees are also known as "talent." (Tr. 37)

[8] The parties stipulated that the general manager, assistant general manager, director of sales, chief engineer, housekeeping manager, aloha desk manager, and the three sales managers are all Section 2(11) supervisors. (Tr. 32, 33, 34)

[9] The Hotel does not have a full service restaurant or kitchen. (Tr. 30)

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 North Brand Boulevard, Twentieth Floor
Glendale, CA 91203-9946

preparing food, a work area which includes the assistant general manager's office, the general manager's office, storage and supply rooms, the employee break room (called "chill"), the laundry area (called "clean"), and the housekeeping manager's office. (Tr. 19-29; Er. Ex. 1)

All employees access the Hotel through the ground floor employee entrance/exit that is adjacent to chill or through a second-floor bridge to a parking structure. (Tr. 25) Chill is the only employee break room at the Hotel, and is adjacent to the general manager's office. All employees use the only time-clock that is located in chill. The break room also contains a computer for employees to use, a television, table and chairs, employee lockers and an employee bulletin board. (Tr. 21-24) Another employee bulletin board is located in the back of the house, on the wall right next to the doorway to re:fuel. The second through sixth floors of the Hotel contain guest rooms, and some storage space used by the housekeeping and maintenance departments. (Tr. 121-22; Er. Ex. 1) All employees use the same service elevator, which is also shared with the guests. (Tr. 28)

The record reveals that all Hotel employees work in close proximity and are in regular contact with one another from the moment they punch the same time clock in chill, as they take breaks and meals together, and as they carry out their tasks throughout the Hotel during each shift. Moreover, the record reveals that the petitioned-for employees are in constant contact and communication with, and are physically crossing paths and working together with the front desk, maintenance, van drivers, and food & beverage employees. (Tr. 121-22, 147-48, 157-58, 220, 229-32)

The Hotel sets itself apart from other Hotels with its unique team approach to guest service. Assistant general manager Scott Gibson testified that the Hotel is a "hip, chic, unique hotel with a really intimate environment . . . ." (Tr. 30) He explained that "teamwork is definitely a necessity because you need everybody at the hotel involved in helping take care of these guests." (Tr. 30) The Hotel takes a unique approach to guest service and has adopted a brand philosophy of "ace-it-all-for-one." (Tr. 52) Mr. Gibson explained "that everybody, you know, we're all in this, as a team we're all in this together. We're a smaller hotel and it takes

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

help from everybody from each department in order to meet the guest's needs and take care of them." (Tr. 52) All employees work together in a spirit of "all hands on deck to make sure that we get things taken care of." (Tr. 31)

In accordance with this unique approach to guest services, the Hotel does not utilize name tags for its employees. Rather, all Hotel employees wear a pin which personifies the brand philosophy. The pin is square in shape and contains a lower case letter "a." The "a" stands for "aloft" or "aloha." (Tr. 53-54) It's the Hotel's philosophy that employees do not need name tags because they will introduce themselves at every interaction. (Tr. 53) All employees are to greet guests with an "aloha." (Tr. 40)

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

B. *As Part of the Hotel's Integrated Operation, Employees Engage in Overlapping, Interchangeable Tasks, and are in Regular Contact and Communication With Each Other*

1. *The Work of Housekeeping and Laundry Employees is Fully Integrated With the Work of Other Hotel Employees*

The record demonstrates a high degree of interchange and overlap of employee duties as well as regular contact and communication between all employees. *Contrary to the Regional Director's erroneous finding* that "housekeeping employees have minimal contact with the other employees throughout the course of their work schedule" (DDE 8), the records reveals that the overwhelming majority of all Hotel employee are working in close proximity and are in regular contact with one another. The very nature of the service provided to the guests require that employees from many areas work toward common goals. In this regard, as an example, the functional integration of the Hotel's operation is so ingrained that employees do not wear name tags which identify them by name or department. (Tr. 53-54) The Hotel's goal is to avoid situations where boundaries are erected so that guests are not afraid to ask for assistance of any employee. The Regional Director totally disregarded the numerous record examples of interchange and overlap of employees. Following are but a few examples:

Aloha Desk

Aloha desk talent regularly and routinely coordinate the team efforts of employees from housekeeping, maintenance, and food and beverage to meet the needs of the Hotel guests. Examples include having housekeeping employees deliver to guests towels, pillows, sheets, etc., or particular amenities for guests that are prepared by the front desk and delivered to guest rooms by housekeeping. They coordinate with maintenance and housekeeping employees to fix, repair or clean any items in guest rooms. Aloha desk talent also provides housekeeping with special instructions for VIP guest rooms or special items that need to be placed in a guest room, when guests are traveling with pets. The Hotel has an "ARF" program (Animals are Friendly) in which guests receive a dog bed, dog bowls, toys and treats for their dogs. The Hotel also caters to children and has a blow-up bed, games, and toys that are delivered to the guest rooms.[10] Housekeeping employees coordinate with the aloha desk to deliver these items to guest rooms. (Tr. 106, 144-45).

The aloha desk also coordinates the efforts of the go-go-drivers to ensure that airport shuttles are leaving on time and meet other guest needs. (Tr. 105). Aloha desk talent may request housekeeping employees to drive the van on a daily basis.[11] (Tr. 106) They may also request a maintenance employee to drive a van. (Tr. 104-05). Almost every employee will come in contact with the aloha desk during each shift.

Despite the numerous examples of housekeeping employees' regular interaction with the aloha desk talent, the Regional Director incorrectly concluded that the housekeeping and laundry employees have "minimal contact" with other employees. (DDE 8)

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

---

[10] Although such programs are paramount to the functional integration of the Hotel, the DDE is completely devoid of even so much as a mention of the ARF program, guest amenities, or catering to children, particularly the necessary efforts of employees from multiple classifications involved in coordinating and executing these programs.

[11] The DDE correctly states that the overnight house attendant drives the shuttle van, but conveniently leaves out that the aloha desk talent are the ones who coordinate shuttle runs and instruct the house attendants when they are needed to drive the van.

Banquet Event Orders

The Hotel's team approach is further exemplified by its utilization of "banquet event orders" (BEO) to communicate to all departments the needs of each group or event in order to coordinate all employees' efforts for each group. BEOs are discussed in management meetings and are posted on the all-employee bulletin board each week. They communicate matters such as room rates, room logistics, special rooming needs, transportation requirements, parking concerns, baggage handling needs and charges, meeting space requirements, food and beverage plans, special set up needs, service requirements, audio-visual equipment needs, etc. (Tr. 73-79; Er. Ex. 5)

The Hotel typically refers to such events as an "all hands on deck" event which requires all employees from every classification to pitch in and help make the event run smoothly. (Tr. 78-79)

Although BEOs are highly significant to the functional integration of the Hotel, the Regional Director failed to analyze their import, dedicating only one sentence in the DDE to their existence. (DDE 3) The Regional Director completely omitted important facts about the use of BEOs at the Hotel, including that such information is communicated to all employees each week, via posts on the employee bulletin board. (Tr. 77)

Splash

House attendants and laundry attendants[12] stock the towels in splash and clean the furniture. Maintenance employees maintain the pool, test chemicals in the pool, power wash the deck and maintain the life preservers and other items on the rack on the wall in splash. (Tr. 137, 138)

[12] Despite the clear evidence to the contrary, the Regional Director erroneously makes a "factual" finding that "[t]here is little evidence, if at all, of laundry attendants doing anything except laundry during their shifts." (DDE 7)

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

Tactic Meeting Rooms

The record reveals numerous occasions where employees in the petitioned-for unit regularly interact with other employees while performing tasks in the tactic meetings rooms. For instance, house attendants are responsible for setting up the tactic meeting rooms. (Tr. 91) Re:fuel attendants work side by side with house attendants in setting up those rooms. (Tr. 82) The re:fuel attendants stock the meeting rooms with food and beverages at the same time as house attendants are setting up the room. Maintenance employees provide electrical and AV needs for the guests using the tactic rooms. (Tr. 138-139) Re:fuel and house attendants work side by side in this fashion on at least a ***weekly*** basis. (Tr. 87) *Contrary to the evidence on the record, the Regional Director incorrectly concludes that these events are "occasional" and "random."* (DDE 7)

Additionally, when one of the tactic rooms has two events scheduled in the same day, the Hotel often needs a quick turn over of the room. (Tr. 88) When turning over a room, employees remove previous food, tables and chairs and then set up the room according to the new meeting group's requests and needs. (Tr. 88) Everyone helps out to accomplish this. Maintenance employees, house attendants, bartenders, and van drivers all help to turn over a meeting room. (Tr. 88-89)

The Regional Director completely omits any discussion of the coordination efforts involved in the preparation, execution, and turnover of the tactic meeting rooms even though such efforts are vital to the functional efforts of the Hotel.

re:fuel

Re:fuel attendants prepare the food for the re:fuel grab-and-go area. Re:fuel attendants and cocktail servers stock the re:fuel area. Re:fuel attendants, house attendants, and laundry attendants[13] all clean the re:fuel area and the prep area adjacent to re:fuel. Re:fuel attendants

[13] The Regional Director incorrectly cites the evidence presented and erroneously makes a factual finding that "[t]here is little evidence, if at all, of laundry attendants doing anything except laundry during their shifts" despite the evidence of laundry attendants performing work in re:fuel. (DDE 7)

clean the prep area on a daily basis, which includes a sink, dishwasher, and small kitchen. The re:fuel pantry or prep area is re-stocked on a daily basis by re:fuel attendants, cocktail servers, and sometimes van drivers. Re:fuel attendants order the inventory for the re:fuel area. (Tr. 139-41) Bartenders frequent the re:fuel area to retrieve beer kegs or any food items and to clean any dirty dishes. (Tr. 140) *The DDE is completely devoid of any discussion of the interaction among employees in the re:fuel area.*

re: charge

House attendants and laundry attendants[14] clean the equipment in the gym and bring towels to re:charge. Maintenance employees maintain and repair any gym equipment. (Tr. 141)

wxyz

Bartenders, cocktail servers, and barbacks routinely work in wxyz. House attendants regularly mop behind the bar. Bartenders, cocktail servers, and house attendants all regularly remove trash from the area, wipe down tables, and remove glasses used by guests. (Tr. 141-42) When an event or party is taking place in wxyz, a house attendant is specifically assigned to work the event. (Tr. 79) They help remove glasses, throw out garbage, clean any spills, and work "hand in hand with the cocktail servers and bartenders" who are also cleaning up and removing glasses. (Tr. 79) On occasion, a re:fuel attendant will also be assigned to work the event. (Tr. 141-43) *Despite this uncontroverted evidence, the Regional Director fails to even discuss, yet alone analyze the functional integration and duties of the house attendant in working with bartenders, cocktails servers, and re:fuel attendants.*

Cleaning Guest Rooms

Given the Hotel's close proximity to Chicago-O'Hare Airport, a significant part of the Hotel's business arises from distressed passengers. A distressed passenger is an individual who missed a connecting flight, or whose flight has been cancelled due to weather or other unforeseen

[14] Despite the clear evidence that laundry attendants perform work in re:charge, the Regional Director erroneously makes a "factual" finding that "[t]here is little evidence, if at all, of laundry attendants doing anything except laundry during their shifts." (DDE 7)

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

circumstances. When this happens, distressed passengers are brought to the Hotel in large groups on very short notice. The Hotel has agreements with the airlines to provide rooms in these circumstances. However, it is very difficult to predict occupancy when this occurs. (Tr. 30-31)

When this occurs, all employees on site are needed to clean guest rooms when the Hotel does not have enough clean rooms to accommodate all of the guests arriving from the airlines. On these occasions, employees from aloha desk, maintenance, housekeeping, and others pitch in to clean a room. These employees are performing the typical functions of a re:fresh attendant, such as stripping beds, making beds, cleaning the bathroom, and anything else needed to be done to clean a guest room. (Tr. 82-83) The distressed passenger scenario arises typically once a week, but there are occasions when it occurs more frequently. (Tr. 83-84). Mr. Gibson explained: "It's a small hotel, everybody needs to do everything or we can't function. So, that's, we can only schedule, you, people to do what we think is going to happen and if something happens we're pulling everybody trying to make it happen." (Tr. 104)

Although the existence of the distressed passenger situation is significant evidence of the functional integration and overlap of employee duties, the Regional Director fails to analyze its import and dismisses its significance by classifying these events as "unpredictable." (DDE 3)

Driving Vans

Several different classifications of employees drive the shuttle vans, in addition to the go-go-drivers. For example, house attendants regularly drive the van. Overnight house attendant Ricardo Martinez testified that he started driving the van on his first day of work and routinely drives the van each night. (Tr. 221, 235) He testified that he drives the van "quite a lot." (Tr. 221) He also testified that another house attendant, Jose, also regularly drives the van. (Tr. 221-222) Housekeeping employees *drive the van every day*. (Tr. 45-46)

Although these facts are paramount in demonstrating overlap and interchangeability of job functions, the Regional Director discounts their significance by concluding that a "majority of the housekeeping and laundry employees do not and have never driven shuttle vans." (DDE

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

6) *The Regional Director also completely ignores uncontroverted evidence in concluding that house attendants only "occasionally" drive the vans.* (DDE 6)

In addition to house attendants driving the van, various other employees drive the vans. Maintenance employees drive the vans frequently. (Tr. 84, 104-05) The Hotel has four people who work at both the aloha desk and as van drivers. (Tr. 103) A laundry attendant recently expressed interest in driving the van, and the Hotel is looking into providing him with extra hours in that capacity. (Tr. 221)

re:mix/re:lax

House attendants and laundry attendants[15] clean the lobby area around the aloha desk. (Tr. 143-44) Aloha desk talent clean and mop the area around the aloha desk. House attendants or laundry attendants clean the public restrooms on the first floor. (Tr. 146)

Backyard

House attendants or laundry attendants[16] clean the furniture in the backyard, take out trash and empty cigarette ashtrays, while maintenance employees power wash the cement patio and maintain the outdoor fireplace in the backyard. (Tr. 146-47)

Clean

Bartenders and servers pick up clean rags and drop off dirty rags in clean (the laundry area). (Tr. 147-48) House attendants go to this area to obtain any cleaning products or chemicals they need, pick up or drop off linens, or obtain a bucket or mop. (Tr. 148) Van drivers go to clean to pick up rags and chemicals to clean the vans. They obtain all purpose spray, deodorizer, and window cleaner from clean and must specifically request a laundry attendant to mix the cleaner they are required to use. (Tr. 148-49)

---

[15] Despite the clear evidence to the contrary, the Regional Director erroneously makes a "factual" finding that "[t]here is little evidence, if at all, of laundry attendants doing anything except laundry during their shifts." (DDE 7)

[16] Once again, in the face of contrary evidence, the Regional Director erroneously makes a "factual" finding that "[t]here is little evidence, if at all, of laundry attendants doing anything except laundry during their shifts." (DDE 7)

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

The DDE is completely devoid of any reference to the numerous contacts employees outside of the petitioned-for unit have with the laundry attendants in clean.

Maintenance Integration

The Hotel's maintenance engineers work throughout the Hotel performing work in every area, engaging in tasks which frequently overlap those of other classifications, particularly in housekeeping. (Tr. 121) Maintenance employees also maintain equipment in the housekeeping department. (Tr. 121-122) Mr. Martinez, an overnight house attendant, testified that he routinely engages in the same tasks as maintenance employees, such as unclogging toilets, changing the television remotes, and changing out a refrigerator in a room because it is damaged. (Tr. 243) As reflected on the maintenance request form, these are the same tasks which are assigned to the maintenance employees. (Er. Ex. 6) Like the housekeeping employees, the evidence reveals that maintenance employees also replace batteries on remote controls and unclog drains and toilets. Maintenance engineers also perform deep cleaning and power washing in splash and re:charge, alongside housekeeping employees. The maintenance engineers also service housekeeping employees' vacuum cleaners and carts, as well as the equipment in clean. (Tr 122)

Despite the substantial evidence in the record regarding the integration of maintenance employees with employees in the petitioned-for unit, the DDE not only fails to analyze these facts, but fails to even identify their existence in the record.

Employee Requests for Maintenance

Any employee, including those in housekeeping, aloha desk, and maintenance, may complete a maintenance request form which may be given to a department head, the chief engineer or the aloha desk to address. (Tr. 150; Er. Ex. 6) Both aloha desk and housekeeping employees have copies of maintenance request forms. Thus, any employee may report to maintenance such things as broken doors, faucets, toilets, safety latches, furniture, or areas in need of paint. (Er. Ex. 6)

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

Communication Devices

The Hotel issues two-way radios to the aloha desk talent, go-go-drivers, house attendants, housekeeping supervisors, and maintenance employees so that each of these classifications may effectively communicate with each other and have open communication between the whole team.[17] (Tr. 157-58) For example, if the front office receives a call from a guest needing extra towels, an aloha desk employee will call either housekeeping or a maintenance engineer to have the towels delivered to the room. Likewise, if a guest complains to an aloha desk employee that there is a problem with their television or a light is out, the aloha desk employee will call a maintenance engineer on the radio to address the issue.

Communication among and between employees also occurs through use of the two employee bulletin boards in the back of the house. BEOs are posted on the bulletin board, as well as any other information which is relevant to all employees. (Tr. 22-23, 77)

Miscellaneous contacts

Numerous other contact and communication occurs between employees at the Hotel. For instance, Mr. Martinez testified that, as a house attendant, he communicates with other non-housekeeping employees when they ask him to take out garbage or perform other tasks. (Tr. 220) He explained that he travels to all parts of the Hotel during his shift and there is no restriction on where he can go within the Hotel. (Tr. 220)

Mr. Martinez testified that he regularly socializes with other employees who work at night on his shift, including maintenance employees. (Tr. 229, 231-32) He explained that he has little contact or interaction with other housekeeping employees during his shift (Tr. 234), yet the Regional Director concluded that housekeeping employees have minimal contact with other employees. (DDE 8) The record reveals that Mr. Martinez has the most contact with the aloha desk because they send him to take things up to guest rooms. (Tr. 229)

[17] All evidence of such communication is curiously omitted from the DDE.

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

Thus, it is apparent that the Regional Director ignored the numerous record examples of interchange and overlap of employee duties to reach his result-driven decision.

2. *Permanent and Temporary Transfers Regularly Take Place Throughout the Hotel*

The Hotel encourages and promotes both permanent and temporary transfers among the various classifications in the Hotel. (Tr. 191, 197-99) Accordingly, since the Hotel opened less than one year ago, several Hotel employees have transferred between various classifications and several others serve in a dual capacity at the Hotel. "Gabriela" works as a room attendant, laundry attendant, and also works in re:fuel. (Tr. 80). Two house attendants routinely work as both house attendant and go-go driver, and one former house attendant did the same. (Tr. 81) The record reflects that two house attendants permanently transferred into the go-go van driving position. (Tr. 81, 207, 220) Four individuals at the Hotel are assigned to work at both the aloha desk and as van drivers. (Tr. 103-04)

The Regional Director completely disregarded this evidence when concluding that "aside from the briefest of testimony by Martinez that 'somebody quit housekeeping and went to. . . driving the car [shuttle]' there is no evidence that there has been any permanent transfers in or out of the housekeeping department." (DDE 8) The foregoing instances of recorded temporary and permanent transfers do not reflect those habitual and frequent daily instances in which employees work outside their regular classifications to ensure a job is done quickly and seamlessly. In addition, the foregoing instances do not reflect the consistent, ongoing daily overlap and interchange of all the employees at the Hotel that cannot be recorded by a time clock. (See Section V.B.1 above).

C. *The Hotel's Centralized Administration and Common Supervision*

1. *The General Manager and Assistant General Manager's Extensive Responsibility and Control of the Hotel*

The Regional Director erroneously found that housekeeping and laundry employees are subject to separate supervision. (DDE 5, 9) The record reveals that the Hotel's management

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

team is highly centralized in the general manager and assistant general manager who ultimately control nearly every aspect of Hotel operations and supervision.

The Hotel's management team is comprised of nine managers including the general manager, assistant general manager, housekeeping manager, director of sales, chief engineer, aloha desk manager, and three sales managers, all of whom oversee the operations of the Hotel. (Tr. 31) The general manager and assistant general manager[18] are responsible for the overall operations of the Hotel during the week. The general manager and assistant general manager are the only managers authorized to hire new employees. (Tr. 59) They are also the only managers authorized to discharge employees. (Tr. 64-65) Likewise, they are the only managers authorized to take disciplinary action against employees. (Tr. 64-65, 68) The general manager and assistant general manager are the only ones who have authority to adjust employee grievances. (Tr. 68-69) While the other seven managers can adjust only minor grievances, such as an employee's request to modify his/her schedule or to provide an employee with basic tools for the job, the general manager and assistant general manager are the only ones who may determine rates of pay, promotions/transfers, and leaves of absence. (Tr. 59-60, 67-69) They are the only ones who can approve employee work schedules. (Tr. 71)

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

2. *The High Degree of Common and Overlapping Responsibilities of Other Hotel Managers/ Supervisors*

Contrary to the Regional Director's finding that there "is not substantial evidence that supervision across departments is a daily, or even regular, occurrence" (DDE 5), the record reveals that managers regularly direct employees from all different departments. For instance, all nine managers rotate responsibility as manager on duty ("MOD") each weekend. The MOD stays onsite at the Hotel from 3:00 p.m. on Friday until 12:00 noon on Sunday. (Tr. 89) Each MOD has overall responsibility for Hotel operations during his/her weekend. Thus, the MOD is responsible for supervision of all aloha desk talent, van drivers, food & beverage, housekeeping

[18] Mr. Gibson is also responsible for the human resources and payroll functions. (Tr. 9)

and laundry, and maintenance employees. All nine managers participate in the MOD program and typically are assigned to oversee the Hotel approximately five times each year. (Tr. 89, 90)

The purpose of the MOD program is to make sure the Hotel runs smoothly during all hours and to provide managers with a comfort level in leading and guiding employees in all departments. (Tr. 91) Each MOD must complete an MOD report at the end of the weekend. (Tr. 91) The expectation of the MOD program is that the MOD will direct the work of employees in every department of the Hotel. (Tr. 91, 159)

The record is filled with examples of managers supervising employees in other departments. For instance, the MOD instructs housekeeping, maintenance, and food and beverage employees concerning setting up the tactic meeting rooms or arranging parties or bar events. The MOD directs aloha desk talent in preparing amenities for particular guests. The MOD directs re:fresh attendants to clean particular rooms, including to prepare rooms a certain way for particular guests. (Tr. 91, 92).

The record further reveals that the director of sales[19] routinely directs aloha desk employees in the preparation of amenity or gift bags for guests and also directs housekeeping employees to prepare specific rooms when VIP guests are arriving or to prepare rooms in a particular fashion. (Tr. 92) Likewise, the housekeeping manager regularly directs employees from different departments, such as aloha desk talent on what rooms needed to be blocked or to drive the van as needed. (Tr. 92-93)

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

[19] In reaching his conclusion that managers from various departments do not direct the work of employees outside their department, the DDE states that "[a]lthough the Employer asserts that managers from various departments, such as the director of sales, routinely directs the work of employees outside of the sales department, the evidence only shows that this is something that 'she could, she may, she doesn't always but may do." In yet another attempt to reach a result-driven decision, the Regional Director omits all of the evidence which shows that managers (including the director of sales) direct the work of employees outside their departments on a routine basis, as demonstrated above.

Despite these numerous examples, the Regional Director mistakenly concluded that "there is not substantial evidence that supervision across departments is a daily, or even regular, occurrence." (DDE 5)

In addition to overlapping supervisory responsibilities of each manager, the Hotel also has weekly management meetings of the general manager, assistant general manager, aloha desk manager, housekeeping manager, and chief engineer. This group of managers meets every Thursday to discuss such topics as budgets, hotel occupancy, and upcoming meetings or events. (Tr. 31-32, 72). Depending upon the event, the managers will discuss what needs to be done as a team to accomplish the event. (Tr. 72) In addition, the general manager, assistant general manager, director of sales, chief engineer and housekeeping manager nominate employees for an employee of the month recognition program. (Tr. 56-57) While the DDE briefly mentions the occurrence of these management meetings, the Regional Director completely fails to analyze their significance and impact on common supervision among employees both inside, and out of the petitioned-for unit.

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

D. *All Departments Enjoy Similar Wages and Benefits, Skills, and Other Terms and Conditions of Employment*

1. *Similar Wages and Identical Benefits*

In an attempt to distinguish the wages of housekeeping employees, the Regional Director incorrectly found that housekeeping employees' wages are the lowest. (DDE, 3) To achieve this manipulated result, the Regional Director omits the fact that room attendants receive tips, and incorrectly states that the wages of go-go drivers *start* at $9.25 per hour, plus tips. The Regional Director fails to accurately reflect the record facts. The record reveals that housekeeping and laundry employees are paid $9.00 to $13.00 per hour, with re:fresh attendants also receiving tip income. (Tr. 94, 136-37). Van drivers (known as go-go-drivers) are paid $9.00 to $9.25 per hour plus gratuities. (Tr. 130-31). Contrary to the Regional Director's conclusion, go-go-drivers' wages are capped at $9.25 per hour, they do not start at $9.25 per hour.

Aloha desk talent are paid $12.00 to $13.00 per hour. (Tr. 130) Food and beverage employees (bartenders, cocktail servers and barbacks) earn between $8.75 and $12.00 per hour plus tips. (Tr. 94, 130, 136-137). Maintenance employees are paid $16.00 to $18.00 per hour. (Tr. 130) Accordingly, the evidence revealed that housekeeping employees do enjoy *similar* wages with the other Hotel employees.

The Regional Director correctly found that "all full-time employees are eligible for the Employer's medical, dental, and vision plans, as well as a 50-percent discount on hotel rooms." (DDE 3) Additionally, all employees are eligible for identical fringe benefits, such as paid vacations, sick days, holidays, and leaves of absence. Further, all employees are offered the same discounts on food and beverages. (Tr. 62-63, 118) All employees are invited to attend the same annual holiday party and annual summer party or event. (Tr. 158) The Hotel also recognizes an Employee of the Month for the entire Hotel. (Tr. 56-57). The management team reviews the nominations and determines a winner. All employees attend quarterly employee meetings where an award for employee of the month is given out and the Hotel celebrates employees' birthdays and anniversaries. These meetings are also used for employees to celebrate together as a team their successes and to reward employees. In addition, one of the purposes of these meetings is to communicate any relevant information to employees and relay the Hotel's service scores. (Tr. 57-58)

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

2. *Equal Skills*

The Regional Director failed to acknowledge the high degree of similarly of skills among Hotel employees. The record reveals that limited skills are required for housekeeping and laundry employees, as well as barbacks and re:fuel attendants. (Tr. 111, 195-196, 203-204)

Other than the ability to speak English and have an outgoing personality, no other skill level is required for aloha desk talent. (Tr. 111-12, 169-70) Likewise, go-go-drivers do not require any special skills, other than holding a driver's license. (Tr. 204-05) Thus, there is no significant difference is skill levels among the petitioned-for classifications of housekeeping

employees and those of the numerous other employees with whom housekeeping employees perform duties in the Hotel's integrated operation.

3. *Similar Hours*

It is unfortunate how the Regional Director could find that "employees in different departments have their own schedules." (DDE 4) Quite the contrary, the uncontradicted testimony of Mr. Gibson is that "all employees are scheduled based on Hotel occupancy." (Tr. 42, 188-89) To that end, nearly all employees work varied hours, but generally in eight hour shifts. (Tr. 42, 188-189) Mr. Gibson explained that aloha desk talent are on property twenty-four hours a day, seven days a week, scheduled in eight-hour shifts. (Tr. 45) Likewise, housekeeping employees are scheduled 24 hours a day and house attendants are scheduled in eight-hour shifts to cover operations 24 hours a day. Laundry and re:fresh attendants are scheduled for eight-hour shifts, generally working between 8:00 a.m. and 5:00 p.m. (Tr. 114-66)

4. *Identical Training*

The Regional Director completely glossed over the identical training provided to all employees. Approximately two weeks before the Hotel opened in July 2008, all employees attended a 3-day orientation/training, which covered such topics as teamwork, guest service and core values. (Tr. 50) Additionally, all employees receive the same sex harassment training. (Tr. 55)

5. *Similar Uniforms*

All employees wear a variation of the same themed uniform provided by the Hotel. For example, aloha desk talent wears khaki pants and a polo shirt. Housekeeping employees wear khaki pants and a striped shirt. Van drivers wear jeans and a polo shirt. Maintenance employees wear jeans and a jean shirt. Bartenders and cocktail servers wear jeans and a polo shirt. (Tr. 132-133) All employees are provided an aloft pin that they are required to wear. (Tr. 53)

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

6. *Similar Tools, Equipment and Supplies*

The Regional Director also failed to mention nearly all employees utilize similar tools, equipment, and supplies. Room attendants, van drivers, house attendants re:fuel attendants, bartenders and cocktail servers all use the same cleaning product which is created by laundry attendants in clean. (Tr. 147-149) Many employees, including aloha desk talent, go-go-drivers, house attendants, housekeeping supervisors, and maintenance employees carry radios. (Tr. 157-158) Cocktail servers, bartenders, re:fuel attendants, house attendants and laundry attendants all use the same linens and rags. (Tr. 147-148) Additionally, maintenance and room attendants share the same storage space. (Tr. 122)

E. *Other Similar Terms and Conditions of Employment*

All employees are subject to the same hiring criteria and the general manager and assistant general manager must authorize the hiring of any new employee (Tr. 59-60) All newly hired employees, regardless of classification or department, are subject to the same new-hire orientation. (Tr. 60-61) All employees attended the same 3-day orientation/training which covered such topics as teamwork, guest service and core values. (Tr. 50) Once hired, all employees, regardless of classification, are subject to a 90-day introductory period. (Tr. 63)

The Regional Director correctly found that "[a]ll employees receive an employee handbook and are subject to the house rules and a 90-day introductory period." (DDE, 6)

Additionally, only one time clock is used and all employees are paid on the same payday under the same payroll system. (Tr. 64) All employees receive the same sex harassment training. (Tr. 55)

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

VI. *ARGUMENT*

A. *The Board's Multi-Factor Traditional Community of Interest Test Overwhelmingly Demonstrates That All Front Desk, Housekeeping and Laundry, Food and Beverage, Van Driver, and Maintenance Employees Share A Substantial Community of Interest*

Section 9(b) of the National Labor Relations Act grants the Board the power to determine "the unit appropriate for purposes of collective bargaining." 29 U.S.C. § 159(b). In making unit determinations in the hotel industry, the Board applies a case by case approach to traditional community of interest factors, the same as in other industries. *See Atlanta Hilton and Towers*, 273 NLRB 87, 90 (1984), *modified on other grounds* 275 NLRB 1413 (1985). The Board traditionally applies a multi-factor test to determine whether a group of employees share a sufficient community of interest to form an appropriate unit. In *Kalmamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962), the Board enumerated the factors to be considered in determining whether a petitioned-for-unit is appropriate: integration or interchange of work functions; amount of contact with other employees; common supervision; similar degree of qualifications; training and skills; similar job functions; similar wages or compensation; common hours of work; common employment benefits; location of work; and history of bargaining.

Section 9(c)(5) of the Act prohibits the Board from making a unit determination based predominantly on the extent of a union's success during an organizing campaign. *NLRB v. Lundy Packing Co.*, 68 F.3d 1577, 1580 (4th Cir. 1995); see *May Dep't Stores Co. v. NLRB*, 454 F.2d 148 (9th Cir. 1972) ("Giving the petitioning union precisely what it wants just because it asks for it is the same as giving controlling weight to the extent the union organized a group of employees.").

Here, the Regional Director completely disregarded Board precedent, relying on only a few of the enumerated factors above in reaching its decision. The Regional Director incorrectly found the petitioned-for unit appropriate because they purportedly have "separate identity of functions, skills and supervision." (DDE 2). The Regional Director ignored the numerous other Board factors.

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

1. *The Extensive Functional Integration of the Hotel's Operations*

The evidence of functional integration of the Hotel's operation is overwhelming. The record is replete with examples of employees working together to carry out the Hotel's integrated guest services operation throughout the Hotel. In *Atlanta Hilton and Towers*, 273 NLRB 87 (1984), in finding an overall unit of employees to be the only appropriate unit, the Board found that the hotel's operations were "closely coordinated and functionally integrated," and found that each department cooperated with the others to provide services to the guests. *Id.* at 88. Specifically, it found the interrelation of employees and the hotel's internal communication system as primary evidence of functional integration. *Id.*

Here, even more so than in *Atlanta Hilton*, the work of all employees is closely coordinated and functionally integrated, through the use of all employee quarterly meetings, BEOs, employee bulletin boards, "all hands on deck" events, the distressed passenger situations, and communication systems like the two-way radios[20], employee bulletin boards, all employee meetings, etc. Every day, virtually every classification of employee works with others from throughout the Hotel to carry out the Hotel's team approach to guest service.

Similarly, in *Ramada Beverly Hills*, 278 NLRB 691 (1986), an overall hotel unit was found to be the only appropriate unit for collective bargaining. The Board found that the hotel was a "functionally integrated enterprise whose purpose was to provide lodging, dining and related services to guests." The Board noted the centralized control of day-to-day operations and the hotel's centralized formulation of personnel practices. The hotel's operational structure consisted of an executive committee comprised of all hotel department heads. The Board also noted that the hotel's front desk employees were the "hub" of the operation. *Id.* at 693. Combining these factors, the Board in *Ramada* concluded that "it is simply inappropriate to

[20] The Regional Director completely ignores evidence that room attendants, along with van drivers, aloha desk talent and engineers communicate with one another on a daily basis through the use of two-way radios. (Tr. 157-58)

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 North Brand Boulevard, Twentieth Floor
Glendale, CA 91203-9946

carve out individual units without regard to the extensive *functional integration* and confluence of employee concerns" present in the hotel. *Id.* (emphasis added).

The Regional Director provided absolutely no explanation for his conclusion that "the evidence does not reflect the close integration and functional interchange necessary to find the petitioned-for unit inappropriate." (DDE 8) As explained above, the record is filled with evidence reflecting the extensive functional integration of the Hotel. Perhaps more troubling is the fact that the Regional Director asserts in a conclusory fashion that "the issue of whether a group of employees shares a community of interest sufficient to justify representation separate from other employees must be determined more by evaluating their actual work functions" (DDE 8) yet the DDE completely fails to address the numerous work functions actually performed by housekeeping and laundry employees, as reflected in the record. Thus, such a "factual" finding by the Regional Director has no basis of support.

Additionally, the Regional Director does not even attempt to distinguish, let alone mention, the number of Board decisions detailed above in reaching his erroneous conclusion. Rather, the Regional Director misplaced reliance on *Ramada Inn West* 225 NLRB 1279 (1976), and completely misapplied the Board's precedent. In *Ramada Inn West*, the Board found that a petitioned-for unit of housekeeping and maintenance employees was appropriate. The Board concluded that there was not a high degree of integration of functions and mutuality of interest between the requested housekeeping and maintenance department employees and the other motel employees as to require their combination in a single unit. In reaching this conclusion, the Board relied, in part, on the fact that the housekeeping and maintenance department employees did not normally perform services for other departments of the motel and were separately supervised.

Here, the facts are distinguishable from those in *Ramada Inn West* in that the petitioned-for-unit of housekeeping and laundry employees routinely perform services for other departments of the Hotel. For example, house attendants regularly work in wxyz at parties and events, drive vans and set up meeting rooms in tactic. House attendants routinely engage in tasks that are performed by the maintenance department, including changing light bulbs, unclogging

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

drains, changing batteries in remotes and removing refrigerators from rooms. Additionally, laundry attendants routinely work in the lobby, re:fuel, splash, wxyz and other common areas of the Hotel, a fact which was never even mentioned by the Regional Director.

All the factors considered by the Board in *Ramada Beverly Hills* are present here. Indeed, there exists here operations that are centralized day-to-day in the general manager and assistant general manager, centralized personnel practices, and a number of classifications of employees that operate as a team at the Hotel. The record reveals that almost all employees come in contact with the aloha desk on a daily basis and employees from all classifications routinely work in different areas of the Hotel. The Regional Director erroneously concluded that "the majority of the housekeeping and laundry employees have minimal contact with the other employees throughout the course of their work schedule." (DDE 8) This "factual" finding is devoid of reality. The record contains examples, too numerous to list, demonstrating the frequent contact of petitioned-for employees with employees outside of the petitioned-for unit. The Union's own witness testified that as a houseman, he has almost no contact with any housekeeping or laundry employees and has the most contact with aloha desk talent who assign him tasks on a daily basis. [21]

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

2. *The Substantial Interchange and Overlap of Employee Duties*

It is clear that all Hotel employees are involved in providing guest services through a team approach. This team approach results in substantial overlapping job duties and significant interchange of all employees. In *Atlanta Hilton and Towers*, 273 NLRB at 87, the Board relied in part upon the "interchange of personnel between departments, mainly under emergency circumstances." *Id.* at 89-90. The Board noted, for example, accounting personnel worked as bartenders and credit personnel worked as hostesses. Accounting personnel also assisted the

[21] The Regional Director paid lip service to this important evidence, arbitrarily concluding that while this witness may have more than minimal contact with other employees, "he shares a community of interest with the housekeeping and laundry employees in all other aspect of his work." (DDE 8) However, the Regional Director did not identify what "other aspects" of his work to which he was referring.

housekeeping department during an ice storm. Housekeeping employees also filled in at the laundry and uniform room. In addition, housekeeping employees "occasionally" substituted for lobby porters.

Here, like in *Atlanta Hilton and Towers*, significant interchange occurs when the Hotel is flooded with distressed passengers, necessitating that maintenance employees, aloha desk talent, and house attendants all assist in cleaning guest rooms. Similarly, any employees on property help with "tight turn-overs" in the tactic meeting rooms. On other occasions, go-go drivers answer phones at the aloha desk, and maintenance employees, house attendants and aloha desk talent drive routinely drive vans. The record clearly establishes that there is a substantial interchange of personnel between departments, as existed in *Atlanta Hilton and Towers*.

Similarly, in *Holiday Inn—Atlanta Northwest*, 214 NLRB 930 (1974), in finding an overall unit of employees to be the only appropriate unit, the Board relied in part on the overlapping job duties between the front desk clerks—which, as here, the Petitioner sought to exclude—and the remaining unit employees. The Board noted that when the porter-bellman were unavailable, the front desk clerks provided bell services. In addition, the front desk clerks retrieved sheet and towels and performed other duties necessary to make up the rooms for incoming guests, handled requests for roll away cribs and on occasion, would adjust television set and room temperature. *Id.* at 930.

Additionally, in *Holiday Inn, Pittsburgh*, 214 NLRB 651 (1974), in finding the petitioned-for unit of housekeeping employees to be inappropriate, the Board found that the only appropriate unit consisted of all employees at the facility. The Board relied in part on the employees' overlapping duties and functions. The Board noted, for example, the porters spent a majority of their time driving the employer's van to and from the airport, and on occasion the desk clerks also drove the van to the airport. The desk clerks were also called upon to clean guest rooms on occasion. *Id.* at 651.

Similarly, here, house attendants, maintenance employees and aloha desk talent all routinely drive the Hotel's van to and from the airport. Despite the evidence that house

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

attendants drive the shuttle van on a daily basis, the Regional Director described this activity as occurring only on "occasion." This manipulated twist of the record evidence was used by the Regional Director in concluding a lack of interchange and overlap of job duties.

In *Holiday Inn Alton*, 270 NLRB 1405 (1984), the Board dismissed a petition that included only housekeeping employees. In dismissing the petition, the Board recognized that desk clerks, bellmen and banquet housemen "regularly and frequently interchange duties with the housekeeping employees." *Id.* at 1405. The Board also pointed to the fact that desk clerks, bellmen and banquet housemen had similar responsibilities and performed many of the same duties as housekeeping employees. Bellmen helped clean the main lounge and helped deliver rollaways, cribs and linens. The banquet housemen had the same responsibilities with respect to maintaining and servicing the banquet and meeting room as did the maids and housekeeping men in the guestroom area. The Board concluded that in light of this overlap of duties and other common terms of conditions of employment, the petitioned-for unit was inappropriate and should be broadened to include at least the additional employee classifications described.[22]

Here, much the same as *Atlanta Hilton*, *Holiday Inn—Atlanta Northwest*, *Holiday Inn, Pittsburgh*, and *Holiday Inn Alton*, the record demonstrates a high degree of interchange and overlap of employee duties. Like those described in *Atlanta Hilton and Towers*, the Hotel regularly experiences similar emergencies leading to the distressed passenger situation where all employees on site must stop what they are doing and clean guest rooms for unanticipated guests. Van drivers, engineers, and house attendants all clean guest rooms in these situations. Aloha desk talent, cocktail servers and house attendants all drive the Hotel's van when needed. Cocktail servers, bartenders, re:fuel attendants, house attendants and laundry attendants all clean common areas in the Hotel, including removing garbage, wiping down tables, mopping floors

[22] Additionally, in *Holiday Inn Southwest*, 202 NLRB 781 (1973), the Board included maintenance men and bellmen in the petitioned-for unit of housekeeping employees because on occasion the maintenance men and bellmen cleaned guest rooms.

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

and removing glasses. Both house attendants and maintenance employees are called upon to replace the batteries in the remote control, change light bulbs, or plunge a toilet.

In *Ramada Inns, Inc.*, 221 NLRB 83 (1975) the Board found a unit of housekeeping and laundry employees to be inappropriate without the addition of maintenance and bellman. The Board found the "the maintenance men and bellman must included in the requested unit of manual hotel employee because, despite their apparent separate supervision, they perform manual hotel functions and regularly and frequently interchange duties with the housekeeping and laundry employees." *Id.* at 691.

Here, *as in Ramada Inns, Inc.*, there is a substantial amount of interchange of functions between the housekeeping department and other Hotel employees. Conveniently, the Regional Director did not include a discussion of any of the foregoing Board decisions and either ignored the substantial evidence of employee interchange or downplayed its significance.

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

3. *The Significant Daily Contact And Interaction Between Hotel Employees*

In *Golden Eagle Motor Inn*, 246 NLRB 323 (1979), the Board relied on the fact that housekeeping and front desk employees were frequently in contact with one another in concluding that front desk employees should be included in a petitioned-for unit of only housekeeping employees. Specifically, as here, the housekeeping and other employees frequented the front desk to get coffee or amenities that needed to be delivered to the room, or to check in before taking guests to a destination in the van.

In *Atlanta Hilton*, 273 NLRB at 97, the Board relied in part upon the "frequent contact" between employees from different departments. For example, front office cashiers issued keys to food and beverage employees, restaurant cashiers, housekeeping, engineering, and laundry employees. *Id.* at 89-90. When picking up reports and reading registers, night auditors came into contact with restaurant employees. Restaurant cashiers occasionally assisted hostesses in the dining rooms. When bringing and picking up laundry, employees from various departments came into contact with laundry employees. Housekeeping employees maintained contact with

front desk employees regarding room status and house counts, with food and beverage employees when they cleaned the restaurants, and with public facilities employees when they cleaned meeting room areas. Food and beverage employees maintained contact with the front office regarding house counts and guest lists. They also maintained contact with restaurant cashiers, night auditors, and inventory control employees. Food and beverage employees also maintained contact with housekeeping employees in setting up VIP rooms. Restaurant cashiers came into contact with operators in verifying guest room numbers. Housekeeping employees came into contact with operators regarding message lights and damaged or missing room telephones. *Id.*

As in *Golden Eagle Motor Inn* and *Atlanta Hilton*, the record herein demonstrates that Hotel employees have a great deal of daily contact with each other in the regular course of performing their job duties. For example, all employees are in contact with the front office concerning various guest requests, coordination of van shuttle rides and delivering guest amenities. Housekeeping and maintenance employees also are in contact with the aloha desk talent when cleaning that area,[23] emptying the trash, or performing other maintenance tasks. All employees are in contact with the laundry employees as they pass through that area to obtain cleaning supplies, request a cleaner be mixed together, or when picking up and dropping off rags. All employees pass by laundry when heading to the employee break room and time-clock. Housekeeping employees also are in contact with maintenance employees in the guest rooms and work side by side in re:charge, tactic and splash. Housekeeping employees are in contact with bartenders, cocktail servers, bar-backs and re-fuel attendants when working an event at wxyz. Employees from housekeeping, wyxz and front desk regularly have contact with the re:fuel attendants. House attendants are in regular contact with aloha desk talent to coordinate shuttle

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

[23] In finding only an overall unit appropriate in *Holiday Inn Pittsburgh,* 213 NLRB at 651-52, the Board discussed the role of housekeeping employees in cleaning areas of the hotel other than guest rooms, such as the lobby. Here, laundry attendants and house attendants clean common areas of the Hotel on a daily basis, including re:fuel, wxyz, re:mix/re:lax, public restrooms and lobby areas.

rides, deliver amenities to guest rooms or deliver any other guest item. Employees from engineering, front desk, housekeeping and van drivers are in contact when cleaning guest rooms for distressed passengers and when setting up or turning over a tactic meeting room. All employees are in contact with each other through quarterly all employee meetings, holiday parties, employee summer events, and in the common break room and smoking area. The list of regular contacts in the Hotel is almost endless.

The Regional Director fails to identify these numerous contacts between employees. Perhaps the most egregious misstatement of evidence occurred when the Regional Director found that "[t]here is little evidence, if at all, of laundry attendants doing anything except laundry during their shifts." The record contains at least eight different routine instances of laundry attendants performing work other than traditional laundry room functions, performing work in areas other than "clean" and working hand-in-hand with employees from other departments.

Moreover, the Regional Director's reliance on *Holiday Inn – Troy*, 238 NLRB 191 (1978) is entirely misplaced. In *Holiday Inn – Troy*, the Board found a unit of housekeeping employees to be appropriate, based in part on the absence of transfers in or out of the housekeeping department and the minimal contact that housekeeping employees had with other employees. In particular, the Board stressed that housekeeping employees used the building's side entrance, reported directly to a housekeeping room and took their breaks in that same housekeeping room. None of these factors are present here. Rather, here, there are numerous transfers in and out of the housekeeping department, and housekeeping and laundry employees have substantial contact with other employees at the Hotel. For instance, "Gabriela" works as a re:fresh attendant, laundry attendant and re:fuel attendant. Two current house attendants and one former house attendant work/worked as a house attendant and van driver. One house attendant permanently transferred into the go-go-van driving position. The list of temporary transfers in and out of the housekeeping department are numerous. Additionally, here, the housekeeping employees have substantial contact with other employees. Mr. Martinez, overnight house attendant, testified that he has the most contact with the aloha desk on a daily basis, as they are

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

the ones that request he perform various tasks throughout the Hotel. Similarly, house attendants and laundry attendants have regular contact with employees in other departments, when driving vans, and when cleaning wxyz, re:fuel, re:mix/re:lax and other common areas of the Hotel. Housekeeping employees also use the same entrance as other employees, and take their breaks with other employees in chill.

4. *The High Degree Of Common Supervision*

The Board in *Atlanta Hilton*, 273 NLRB at 88, also found significant the hotel's centralized management and control over supervisory capacities. Here, the general manager and assistant general manager provide common supervision of the Hotel, with the rotating MODs covering on weekends. MOD and other department heads are regularly directing the work of employees in different departments.

In *Ramada Beverly Hills*, 278 NLRB at 691, the administration and operation of the hotel was highly centralized due to the general manager's role and responsibility. His final authority to approve all new hires and terminations and the operation of the executive committee were cornerstones of the Board's finding that only an overall unit was appropriate. Here, as in *Ramada Beverly Hills*, the general manager and assistant general manager must approve all new hires, terminations, disciplinary action, work schedules, and leave of absence requests and are the only two managers who have the authority to adjust employee grievances. Further, the department heads meet on a weekly basis to discuss and plan strategies regarding anything that pertains to the overall management of the Hotel. Additionally, department heads routinely direct the work of employees from different departments. For example, the director of sales directs housekeeping, maintenance and wxyz employees when coordinating events or meetings in tactic. The housekeeping manager directs aloha desk talent regarding specific room blocks and VIP guests.

In *Sheraton Motor Inn*, 210 NLRB 790 (1974) the Board expanded the unit to include kitchen, restaurant, lounge and banquets departments, finding a unit of only employees from the

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

dining room and lounges to be inappropriate. In reaching its decision to expand the unit, the Board relied, in part, on the employer's use of a "MOD Squad" system of management, whereby managers are left with prime responsibility over the hotel when other managers are absent from the facility. The MOD Squad program in *Sheraton Motor Inn* is similar to the MOD program utilized at the Hotel, whereby the MOD will direct the work of employees in every department of the Hotel.

The DDE is devoid of a mention, let alone any discussion of the foregoing decisions. The Regional Director does not even make a feeble attempt to distinguish long standing Board precedent to the facts on the record.

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9945

The only decision the Regional Director points to on this issue is *Ramada Inn West* 225 NLRB 1279 (1976). However, he completely misconstrues its directives. In *Ramada Inn West*, the Board found that a petitioned-for unit of housekeeping and maintenance employees was appropriate. The Board concluded that there was not a high degree of integration of functions and mutuality of interest between the requested housekeeping and maintenance department employees and the other motel employees as to require their combination in a single unit. In reaching this conclusion, the Board relied, in part, on the fact that the housekeeping and maintenance department employees were separately supervised. Here, the Regional Director misconstrues the evidence by concluding that "almost all of the employees in the petitioned-for unit are separately supervised by Housekeeping Manager Flores." (DDE 9) The housekeeping department is not separately supervised, as were the departments in *Ramada Inn West.* Here, while the housekeeping manager possesses some limited authority over the department, the general manager and assistant general manager are the only ones who have the ability to hire, discipline, terminate, set wages, or other terms and conditions of employment. Indeed, the housekeeping manager is required to get approval from the general manager and/or assistant general manager when creating work schedules for employees.[24]

[24] The Regional Director fails to address the pivotal decision in *Phoenician,* 308 NLRB 826 (1992), whereby in expanding the petitioned-for unit of golf course maintenance employees

The Board also relied, in part, on the fact that the housekeeping and maintenance department employees did not normally perform services for other departments of the motel. The record here establishes that housekeeping and laundry employees frequently and routinely perform tasks in various different areas of the Hotel.

5. *The Centralized Administration Of Personnel Policies and Procedures*

In *Ramada Beverly Hills*, the Board noted the hotel personnel department's centralized handling of "recruitment, training, record keeping and the administration of personnel policies and benefits on a hotel-wide basis." These policies included the postings of job vacancies and centralized payroll system, common fringe benefits, vacation pay, insurance, sick pay, holiday pay, and leaves of absence.

The *hotel*-wide policies present in *Ramada Beverly Hills* likewise clearly exist at the Hotel under the control of the general manager and assistant general manager. All employees are subject to the same hiring process and new hire orientation. Thereafter, all employees must complete a 90-day introductory period, regardless of their positions. All employees are subject to the same fringe benefits, are issued the same Employee Handbook and are expected to comply with the same rules and policies. The Regional Director pays lip service to these record facts but gives them no weight.

6. *Regular Permanent and Temporary Transfers of Employees Between Classifications*

Hotel employees regularly transfer between the various classifications. In *Atlanta Hilton*, 273 NLRB at 89, and in *Holiday Inn, Pittsburgh*, 214 NLRB at 652, the Board relied upon evidence of a number of transfers between classifications in finding that only an overall unit was appropriate. Here, the record reveals a significant number of employees who have permanently

---

at that hotel to include all landscaping employees, the Board discounted the fact that each group had separate immediate supervision. Rather, the Board emphasized the common supervision at a higher level of management. *Id.* at 827.

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

transferred between classifications. The record also reveals regular and frequent temporary transfers among employees.

For instance, numerous employees serve in a dual capacity at the Hotel. "Gabriela" works as a room attendant, laundry attendant and also works in re:fuel. Two current house attendants and two former house attendants routinely work/worked as a house attendant and van driver. The Hotel had one house attendant who permanently moved into the go-go van driving position. Four individuals at the Hotel are assigned to work at both the aloha desk and as van drivers. The Regional Director omitted all of these instances, claiming that "aside from the briefest of testimony by Martinez that 'somebody quit housekeeping and went to. . . driving the car [shuttle]' there is no evidence that there has been any permanent transfers in or out of the housekeeping department."

The temporary transfers within the Hotel are too numerous to list. Some include, a house attendant engaging in the same tasks as maintenance employees, such as unclogging toilets, changing the television remotes, and changing a refrigerator from a room; van drivers assisting with answering phones at the aloha desk; aloha desk talent assisting with driving the vans; maintenance employees driving the vans or assisting with meeting room set up; maintenance employees, aloha desk talent and house attendants cleaning rooms during distressed passenger events and assisting with the set-up of a meeting or event, or the tight turn of a tactc meeting room; house attendants and re:fuel attendants specifically assigned to work an event in wxyz.[25]

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

---

[25] In *Stanford Park Hotel*, 287 NLRB 137 (1988) the Board found the petitioned-for unit of housekeeping and maintenance employees to be an appropriate unit. In reaching this conclusion, the Board relied on a number of factors. First, the Board noted that there was minimal evidence of either housekeeping or maintenance employees performing the functions of employees in other classifications. For example, a front desk employee was asked to clean a guest room only approximately once a week, and other employees performed housekeeping and maintenance functions on an infrequent basis.

Here, the record reveals numerous instances where employees from all classifications clean guest rooms in the distressed passenger scenario which occurs at least once a week, and often more frequently. Cocktails servers, bartenders and front desk employees routinely clean common areas of the Hotel, wipe tables and remove glasses, as do housekeeping and laundry employees. Second, in finding that a unit of housekeeping and maintenance was appropriate in

7. *The Terms and Conditions Of Employment For All Employees Are Virtually Identical*

In *Westin Hotel*, 277 NLRB 1506 (1986), in finding an overall unit to be the only appropriate unit, the Board emphasized that the terms and conditions of employment applied equally to all employees. Similarly, in *Holiday Inn—Atlanta Northwest*, 214 NLRB at 930, the Board relied on the fact that all employees were hourly paid, and shared the same fringe benefits provided by the employer. Here, all employees in question are hourly paid,[26] use the same time clock, enjoy the same fringe benefits and other policies, and use the same employee entrance. All employees wear similar uniforms and the aloft / aloha pin, and share the same one and only break room. In addition, all employees at the Hotel participate in the same new hire orientation, are subject to a 90-day introductory period, follow the same Employee Handbook and must attend sex harassment training.

In *Holiday Inn, Pittsburgh*, 214 NLRB at 651, the Board noted the common working conditions and frequent contact inherent in the facility, thereby finding a community of interest

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

Stanford Park Hotel, the Board found the evidence of permanent transfers among any of the classifications in the overall unit to be minimal at best, finding only two instances, both of which involved "promotions." Here, the record reveals several transfers or persons working in dual capacities. For instance, a house attendant was transferred to a van driver position. "Gabriela" was hired in housekeeping and now works as a re:fuel attendant, re:fresh attendant and house attendant. Front desk agents, house attendants and engineers all drive the van. Aloha desk talent also work in wxyz and van drivers assist the aloha desk. Lastly, the Board in *Stanford Park Hotel* found that a number of department heads, including the executive housekeeper, possess the authority to hire employees and had authority to determine whether an applicant possessed the requisite qualifications for the position. Here, neither the housekeeping manager or any other department head has the ability to hire employees, fire employees, or discipline employees. The general manager and assistant general manager are the only managers authorized to hire employees, fire employees, or take disciplinary actions against employees. Similarly, they are the only two managers who have authority to adjust grievances, determine rates of pay, make promotions/transfers, approve work schedules and approve leaves of absence.

Consequently, the factors which weighed in favor of creating a unit of only housekeeping and maintenance employees in *Stanford Park Hotel* do not exist in this case.

[26] The only apparent term of employment which is not identical for all Hotel employees is the rate of pay per hour. However, the range for all employees is very close. *See Holiday Inn Pittsburgh,* 214 NLRB at 652 (finding wage rates to be "substantially similar" where they ranged from $1.07 per hour plus tips to $600 per month).

sufficient to rule against separating these employees. The employer in that case had one payroll and bookkeeping system and a common payday. Time records also existed for employees submitted on the same time sheet. Fringe benefits were provided equally including group insurance plans, vacations, holidays, sick leave and other benefits. *Id.* at 652. Here, likewise, the Hotel has one payroll and bookkeeping system, and all employees use the same time clock and are paid on common paydays. All Hotel employees enjoy the same insurance, vacations, holidays, sick leave, and other benefits.

B. *The Bargaining History of Petitioner in Others Hotels is Not Controlling*

Petitioner introduced ambiguous evidence that it has bargaining units elsewhere which are similar to that petitioned-for herein. Specifically, Union organizer Michael Somone testified that the typical bargaining units represented by Local 450 varies from hotel to hotel. (Tr. 209). Regardless, the Regional Director did not even mention any of the evidence presented on this issue.

At one time, "the Board decided that it would find a unit appropriate, though less than hotel-wide in scope, where it conformed 'to an existing and well-defined area practice.'" *Columbus Plaza Motor Hotel*, 148 NLRB 1053 (1964) (quoting *LaRonde Bar & Restaurant, Inc.*, 145 NLRB 270, 272 (1963)). Indeed, "[m]ore relevant was the *stability* of bargaining relations inherent in the area's historic unit patterns." *LaRonde Bar & Restaurant, Inc.*, 145 NLRB at 272 (emphasis added).

In *Columbus Plaza*, the Board found appropriate a hotel-wide unit that excluded only front office employees based on the existing and well-defined area practice at that time among six Columbus hotels which had collective bargaining agreements with the Hotel Employees Restaurant Employees Union (now UNITE HERE!). 148 NLRB at 1055. However, here, Union witness Somone testified that the Union now represents approximately 20 hotels in the greater Chicago area and most of them include food and beverage and housekeeping employees. (Tr. 209-10) Thus, here, the petitioned-for unit does not conform to any "existing and well-defined

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

area practice." *See The Westin Hotel O'Hare*, 13-RC-20135 (1999), *review denied* (2000) (other bargaining units were found not to be controlling.)

VII. *CONCLUSION*

As established herein, the record evidence and relevant Board precedent demonstrate that a unit limited to housekeeping and laundry employees is entirely inappropriate under the Act. We respectfully request that the Board grant this Request for Review and reverse the Regional Director's decision.

Dated: August 14, 2009

BALLARD, ROSENBERG, GOLPER, & SAVITT
MATTHEW T. WAKEFIELD
KATHERINE A. HREN

By: _____
KATHERINE A. HREN
Attorneys for Employer
AIMBRIDGE EMPLOYEE SERVICE CORP.
d/b/a ALOFT CHICAGO O'HARE

BALLARD ROSENBERG GOLPER & SAVITT LLP
500 NORTH BRAND BOULEVARD, TWENTIETH FLOOR
GLENDALE, CA 91203-9946

BALLARD ROSENBERG GOLPER & SAVITT LLP
10 UNIVERSAL CITY PLAZA, SIXTEENTH FLOOR
UNIVERSAL CITY, CA 91608-1097

PROOF OF SERVICE

I am over the age of eighteen years and not a party to the within action; my business address is 500 N. Brand Blvd., 20th Floor, Glendale, California 91203.

On August 14, 2009 I served the following document(s) described as

EMPLOYER'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Patrick J. Calihan
Attorney at Law
53 West Jackson Blvd., Suite 1534
Chicago, Illinois

Phone: 312-922-3113

Joseph A. Barker
Regional Director
National Labor Relations Board, Region 13
209 South LaSalle Street, 9th Floor
Chicago, Illinois 60604

☒ **BY MAIL:** I am "readily familiar" with Ballard Rosenberg Golper & Savitt's practice for collecting and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Glendale, California, on that same day following ordinary business practices.

☐ **COURTESY COPY VIA FACSIMILE:** At or before 5:00 p.m., I caused said document(s) to be transmitted by facsimile. The telephone number of the sending facsimile machine was (818) 506-4827. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The document was transmitted by facsimile transmission, and the sending facsimile machine properly issued a transmission report confirming that the transmission was complete and without error.

☐ **BY FEDEX:** I deposited such document(s) in a box or other facility regularly maintained by the overnight service carrier, or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier with delivery fees paid or provided for, addressed to the person(s) being served.

☐ **BY PERSONAL SERVICE:** I personally delivered such envelope(s) directly to the person(s) being served.

I declare under penalty of perjury that the foregoing is true and correct under the laws of the United States of America.

Executed on August 14, 2009 at Glendale, California.

Linda Gibson

Linda Gibson

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AIMBRIDGE EMPLOYEE SERVICE
CORP., D/B/A ALOFT CHICAGO O'HARE
Employer

and Case 13-RC-21849

UNITE HERE LOCAL 450
Petitioner

ORDER

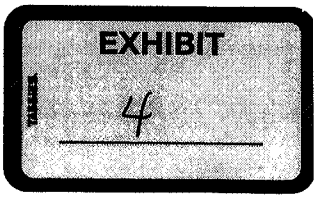
The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.[1]

WILMA B. LIEBMAN, CHAIRMAN

PETER C. SCHAUMBER, MEMBER

Dated, Washington, D.C., August 25, 2009.

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed 77 U.S.L.W. 3670 (U.S. May 22, 2009) (No. 08-1457); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), rehearing denied No. 08-1878 (May 20, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petitions for rehearing denied Nos. 08-1162, 08-1214 (July 1, 2009).



FORM NLRB-760
(12-82)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

DOCKETED
DATE FILED
06/19/2009

AIMBRIDGE EMPLOYEE SERVICE CORP., D/B/A ALOFT CHICAGO O'HARE **EMPLOYER**	Case No. **13-RC-21849**
AND	Date Issued 08/28/2009
UNITE HERE LOCAL 450 **PETITIONER**	**Type of Election: (Check one:)** ☐ Stipulation ☐ Board Direction ☐ Consent Agreement ☒ RD Direction Incumbent Union *(Code)*
	(If applicable check either or both:) ☐ 8(b) (7) ☐ Mail Ballot

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters 26
2. Number of Void ballots 0
3. Number of Votes cast for **PETITIONER** 18
4. Number of Votes cast for
5. Number of Votes cast for
6. Number of Votes cast against participating labor organization(s) 5
7. Number of Valid votes counted (sum of 3, 4, 5, and 6) 23
8. Number of Challenged ballots 1
9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 24
10. Challenges are ~~(not)~~ NOT sufficient in number to affect the results of the election.
11. A majority of the valid votes counted ~~plus challenged ballots~~ (Item 9) has (~~not~~) been cast for **PETITIONER** Local 450

For the Regional Director
REGION 13

Elizabeth Gallivan

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For EMPLOYER

For PETITIONER

For

For

EXHIBIT
5

FORM NLRB-4279 RC—RM—RD

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

Aimbridge Employee Service Corp., d/b/a Aloft Chicago O'Hare **Employer** **AND** **Unite Here Local 450** **Petitioner**	**TYPE OF ELECTION** *(CHECK ONE)* ☐ CONSENT ☐ STIPULATED ☑ RD DIRECTED ☐ BOARD DIRECTED **CASE NO. 13-RC-21849**	(ALSO CHECK BOX BELOW WHEN APPROPRIATE) ☐ **8(b)(7)**

CERTIFICATION OF REPRESENTATIVE

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots Shows that a collective-bargaining representative has been selected. No timely objections have been filed.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots have been cast for

UNITE HERE LOCAL 450

and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit.

> **All full-time and part-time housekeeping and laundry employees, including room attendants, laundry attendants, house attendants, overnight house attendants, and housekeeping supervisors employed by the Employer at the Employer's facility located at 9700 Balmoral, Rosemont, Illinois; but excluding all other employees, managers, assistant managers, office clerical employees and guards, professional employees and supervisors as defined in the Act.**

Signed at Chicago, Illinois, on September 10, 2009.

/s/ Joseph A. Barker
Joseph A. Barker
Regional Director, Region 13
National Labor Relations Board

EXHIBIT
6

Cortez, Elizabeth

From: Matthew T. Wakefield [mwakefield@brgslaw.com]
Sent: Tuesday, November 24, 2009 12:28 PM
To: Cortez, Elizabeth
Subject: Aimbridge Employee Service Corp. d/ba/ aloft Chicago O'Hare; NLRB Case 13-CA-45561

Elizabeth,

I received your voicemail message. This is to confirm our discussion yesterday in which I advised that the employer is refusing to bargain with the union because the employer believes the bargaining unit approved by the Regional Director is not appropriate. While I understand the employer notified the union of such, I do not have any written confirmation of that.

Matt Wakefield | Ballard Rosenberg Golper & Savitt, LLP | Cell 818-219-3278

This Message Contains Information Which May Be Confidential And Privileged.
Unless You Are The Addressee (Or Authorized To Receive For The Addressee),
You May Not Use, Copy Or Disclose To Anyone The Message Or Any Information
Contained In The Message.
If You Have Received The Message In Error, Please Advise
The Sender By Reply E-Mail info@brgslaw.com, And delete The Message.
Do Not Forward Without Author's Permission.

Thank You Very Much.

EXHIBIT
7

INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C 3512

DO NOT WRITE IN THIS SPACE	
Case 13-CA-45561	Date Filed 10/6/09

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: ALOFT HOTEL/Aimbridge Hospitality

b. Tel. No.: 847-671-4444

c. Cell No.:

d. Address *(Street, city, state, and ZIP code)*: 9700 Balmoral Rosemont, IL 60018

e. Employer Representative: Jeremy Schaeffer

f. Fax No.: 847-671-2955

g. e-Mail:

h. Number of workers employed: 24

i. Type of Establishment *(factory, mine, wholesaler, etc.)*: Hotel

j. Identify principal product or service: Hospitality

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

Within the last 6 months the above employer has interfered with the rights of the employees; and refuses to bargain collectively with the certified representatives of his employees; to wit, by refusing to meet, or even return phone calls. In violation of the Act 8(a)(1) & (5).

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*: UNITE HERE Local 450

4a. Address *(Street and number, city, state, and ZIP code)*: 7238 W. Roosevelt Rd., Forest Park, IL 60130

4b. Tel. No.: 708-771-8700

4c. Cell No.:

4d. Fax No.: 708-771-8988

4e. e-Mail:

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*: UNITE HERE

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By Pat Calihan *(signature of representative or person making charge)* Patrick J. Calihan (Bus. Ag. Alpha so) *(Print/type name and title or office, if any)*

Address 7238 W. Roosevelt Rd., Forest Park, IL 60130 Oct 6, 09 *(date)*

Tel. No.: 708-771-8700

Office, if any, Cell No.:

Fax No.: 708-771-8988

e-Mail:

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

EXHIBIT 8

United States Government
NATIONAL LABOR RELATIONS BOARD
Region 13
209 South LaSalle Street – 9th Floor
Chicago, Illinois 60604
Telephone (312) 353-7570 Fax (312) 886-1341

October 6, 2009

Mr. Jeremy Schaeffer
Aloft Hotel/Aimbridge Hospitality
9700 Balmoral
Rosemont, IL 60018

Re Aloft Hotel/Aimbridge Hospitality
Case 13-CA-45561

Board Agent Elizabeth Cortez
Telephone (312)353-4174
E-Mail Elizabeth.Cortez@nlrb.gov
Supervisor - Richard Kelliher-Paz

Gentlemen:

This is to inform you that a charge, a true copy of which is enclosed, was filed in the above-entitled matter. Also enclosed is a statement (Form NLRB-4541) briefly setting forth our investigation and voluntary adjustment procedures.

I would appreciate receiving from you by October 20, 2009, a full and complete written account of the facts and a statement of your position with respect to the allegations of the charge. Also, please complete and return one copy of the enclosed questionnaire regarding commerce information (Form NLRB-5081). Please be aware that a failure to provide this information promptly may result in the issuance of an investigative subpoena for this information without prior notice.

The case has been assigned to the above-listed Board agent. When the Board agent solicits relevant evidence from you or your counsel, I request and strongly urge you or your counsel to promptly present to the Board agent any and all evidence relevant to the investigation. It is my view that a refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily. Full and complete cooperation includes, where relevant, timely providing all material witnesses under your control to a Board agent so that witnesses' statements can be reduced to affidavit form, and providing all relevant documentary evidence requested by the

FILING DOCUMENTS WITH REGIONAL OFFICES: The Agency is moving toward a fully electronic records system. To facilitate this important initiative, the Agency strongly urges all parties to submit documents and other materials (except unfair labor practice charges and representation petitions) to Regional Offices through the Agency's E-Filing system on its website: http://www.nlrb.gov.(See Attachment to this letter for instructions). Of course, the Agency will continue to accept timely filed paper documents.

EXHIBIT
9

Board agent. The submission of a position letter or memorandum, or the submission of affidavits not taken by a Board agent, does not constitute full and complete cooperation. Further, please be advised that we cannot accept any limitations on the use of any evidence or position statements that are provided to the Agency. Thus, any claim of confidentiality cannot be honored except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. In this regard, we are required by the Federal Records Act to keep copies of documents used in furtherance of our investigation for some period of years after a case closes. Further, we may be required by the Freedom of Information Act to disclose such records upon request, absent some applicable exemption such as those that protect confidential financial information or personal privacy interests (e.g., Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4)). Accordingly, we will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the foregoing laws, regulations, and policies. Please state the case name and number on all correspondence.

If you or witnesses that you wish to present during the investigation have limited English proficiency, you may request translation assistance. Any such request should be made to the assigned Board agent as early in the investigation as possible.

Attention is called to your right, and the right of any party, to be represented by counsel or other representative in any proceeding before the National Labor Relations Board and the courts. In the event that you choose to have a representative appear on your behalf, please have your representative complete Form NLRB-4701, "Notice of Appearance," and forward it promptly to this office.

Please be advised that, under the Freedom of Information Act, unfair labor practice charges and representation petitions are subject to prompt disclosure to members of the public upon request. In this regard, you may have received a solicitation by organizations or persons who have obtained public information concerning this matter and who seek to represent you before our Agency. You may be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board; their information regarding this matter is only that which must be made available to any member of the public.

The office of the National Labor Relations Board is located on property of the United States government. Accordingly, visitors to the NLRB office are required to exhibit appropriate behavior. In particular, Federal law prohibits visitors to the NLRB office from carrying firearms or other dangerous weapons; any violation is subject to a fine and/or imprisonment for a period of up to five years. 41 CFR § 102.74.440. Prohibited weapons include but are not limited to guns and any gun parts or accessories; ammunition; and knives or other razor blades. Federal law also prohibits visitors to the NRLB office from exhibiting disorderly conduct or loitering where the conduct disrupts the work of NLRB employees or prevents members of the public from receiving NLRB services. 41 CFR § 102.74-390. Finally, federal law prohibits visitors to the NLRB office from creating any hazard on property to persons or things, and stealing any property of the United States government. 41 CFR §102.74.380. In the event a person violates these or other applicable provisions, he or she will be removed from the Chicago Regional Office; may be banned from visiting the Regional office in the future; and the NLRB or law enforcement agencies may pursue any and all of the other applicable penalties as provided by Federal law.

Customer service standards concerning the processing of unfair labor practice cases have been published by the Agency and are available from the Agency's website at www.nlrb.gov. Your cooperation in this matter is invited so that all facts of the case may be considered.

Sincerely,

Joseph A. Barker
Regional Director

Enclosures

I CERTIFY THAT I served the above-referenced charge on October 6, 2009, by postpaid regular first class mail on the addresses named together with a transmittal letter of which this is a true copy.

Denise Gatsoudis
(Signature)

Subscribed and sworn to before me on October 6, 2009.

Roberta Davis
(Designated Agent)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

AIMBRIDGE EMPLOYEE SERVICE CORPORATION, D/B/A ALOFT CHICAGO O'HARE

and **CASE 13-CA-45561**

UNITE HERE LOCAL 450

COMPLAINT

UNITE HERE Local 450, herein called the Union, has charged that Aimbridge Employee Service Corporation, d/b/a Aloft Chicago O'Hare, herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 et seq. Based thereon the General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board issues this Complaint and alleges as follows:

I

The charge in this proceeding was filed by the Union on October 6, 2009, and a copy was served by regular mail on Respondent on October 6, 2009.

II

(a) At all material times, Respondent, a Texas corporation has been engaged in the hotel/hospitality industry including operating a hotel located in Rosemont, Illinois, herein called Respondent's facility.

(b) During the past calendar year, a representative period, Respondent, in conducting its business operations described above in paragraph II(a), has received gross revenues in excess of $500,000.

(c) During the past calendar year, a representative period, Respondent, in conducting its business operations described above in paragraph II(a), purchased and received goods at Respondent's facility from points located directly outside the State of Illinois in excess of $50,000.

(d) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

EXHIBIT
10

III

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

IV

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Jeremy Schaeffer	General Manager
Scott Gibson	Assistant General Manager

V

(a) The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and part-time housekeeping and laundry employees, including room attendants, laundry attendants, house attendants, overnight house attendant, and housekeeping supervisors employed by the Respondent at its facility located at 9700 Balmoral, Rosemont, Illinois; but excluding all other employees, managers, assistant managers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) On June 19, 2009, pursuant to a petition that was filed in Case 13-RC-21849, a representation election was conducted among the employees in the Unit, and a majority of the Unit designated and selected the Union as their exclusive representative for the purposes of collective bargaining with Respondent.

(c) On September 10, 2009, the Union was certified as the exclusive collective bargaining representative of the Unit.

(d) At all times since September 10, 2009, based on Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of the Unit.

VI

(a) On September 8, September 23, October 2, October 6, and October 8, 2009, the Union, by telephone calls to Respondent's Counsel and Respondent's General

Manager Jeremy Schaeffer, requested that Respondent meet and bargain collectively with the Union as the exclusive collective bargaining representative of the Unit.

(b) On, September 24, and September 28, 2009, the Union, by telephone calls to Respondent's General Manager Jeremy Schaeffer, requested that Respondent meet and bargain collectively with the Union as the exclusive collective bargaining representative of the Unit.

(c) Since September 8, 2009, and continuing to date, Respondent has refused to recognize and bargain with the Union as the exclusive collective bargaining representative of the Unit.

(d) Respondent's purpose in refusing to bargain is to test the certification the Board issued in Case 13-RC-21849.

VII

By the conduct described above in paragraph VI, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act, and affecting commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged in paragraphs VI and VII, the General Counsel seeks an Order requiring Respondent to bargain in good faith with the Union, on request for the period required by *Mar Jac Poultry Co.,* 136 NLRB 785 (1962), as the recognized bargaining representative in the appropriate unit. The General Counsel seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before December 11, 2009 or postmarked on or before December 10, 2009.** Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at http://www.nlrb.gov, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of

more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to Motion for Default Judgment, that the allegations in the complaint are true.

Dated at Chicago, Illinois, this 27th day of November, 2009.

Joseph A. Barker, Regional Director
National Labor Relations Board
Region 13
209 South LaSalle Street, 9th Floor
Chicago, IL 60604

Attachments
H:\R13COM\Complaints\CPT.13-CA-45561.Aloft.doc November 27, 2009

FORM NLRB-877
(4-84)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

ALOFT HOTEL/AIMBRIDGE HOSPITALITY

and

UNITE HERE LOCAL 450

Case 13-CA-45561

DATE OF MAILING November 27, 2009

AFFIDAVIT OF SERVICE OF COMPLAINT

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by certified mail upon the following persons, addressed to them at the following addresses:

Mr. Jeremy Schaeffer
Aloft Hotel/Aimbridge Hospitality
9700 Balmoral
Rosemont, IL 60018

Rec'd 12/1/2009

Matthew T. Wakefield, Esq.
Ballard Rosenberg Golper & Savitt, LLP
500 North Brand Boulevard
Twentieth Floor
Glendale, CA 91203

Rec'd 12/7/2009

Mr. Patrick J. Calihan, Esq.
UNITE HERE Local 450
53 W. Jackson Blvd.
Suite 1112
Forest Park, IL 60130-2472

Rec'd 12/16/2009

Mr. Alfonso Garcia
Business Representative
UNITE HERE Local 450
7238 W. Roosevelt Rd.
Forest Park, IL 60130

Rec'd 12/7/2009

Subscribed and sworn to before me this 27th **day of** November, 2009	**DESIGNATED AGENT** /s/ Roberta Davis **NATIONAL LABOR RELATIONS BOARD**

EXHIBIT
11

MATTHEW T. WAKEFIELD
KATHERINE A. HREN
BALLARD ROSENBERG GOLPER & SAVITT, LLP
500 North Brand Boulevard, Twentieth Floor
Glendale, CA 91203-9946
Telephone: 818-508-3700
Facsimile: 818-506-4827

Attorneys for Respondent
AIMBRIDGE EMPLOYEE SERVICE CORP.
d/b/a/ ALOFT CHICAGO O'HARE

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 13

AIMBRIDGE EMPLOYEE SERVICE CORPORATION, d/b/a ALOFT CHICAGO O'HARE, Respondent and UNITE HERE LOCAL 450 Charging Party	Case No. 13-CA-45561 **ANSWER OF RESPONDENT TO COMPLAINT**

///

///

///

///

///

///

///

///

EXHIBIT
12

Pursuant to sections 102.20 and 102.21 of the Rules and Regulations of the National Labor Relations Board, Aimbridge Employee Service Corp., d/b/a aloft Chicago O'Hare ("Respondent") answers the Complaint in the above-captioned matter as follows:

1. Answering paragraph I, Respondent admits that it was served with a copy of the charge by mail on or about October 6, 2009. Respondent lacks sufficient information and belief to enable it to respond to the remaining allegations and, on that basis, denies each and every remaining allegation set forth therein.

2(a). Answering paragraph II(a), Respondent admits the allegations set forth therein.

2(b). Answering paragraph II(b), Respondent admits the allegations set forth therein.

2(c). Answering paragraph II(c), Respondent admits the allegations set forth therein.

2(d). Answering paragraph II(d), Respondent admits the allegations set forth therein.

3. Answering paragraph III, Respondent admits the allegations set forth therein.

4. Answering paragraph IV, Respondent admits the allegations set forth therein.

5(a). Answering paragraph V(a), Respondent denies each and every allegation set forth therein.

5(b). Answering paragraph V(b), Respondent admits the allegations set forth therein.

5(c). Answering paragraph V(c), Respondent admits the allegations set forth therein.

5(d). Answering paragraph V(d), Respondent denies each and every allegation set forth therein.

6(a). Answering paragraph VI(a), Respondent admits that the Union has requested to bargain and that Respondent has declined. Except as expressly admitted, Respondent denies each and every remaining allegation set forth therein.

6(b). Answering paragraph VI(b), Respondent admits that the Union has requested to bargain and that Respondent has declined. Except as expressly admitted, Respondent denies each and every remaining allegation set forth therein.

6(c). Answering paragraph VI(c), Respondent admits the allegations set forth therein.

6(d). Answering paragraph VI(d), Respondent admits the allegations set forth therein.

7. Answering paragraph VII, Respondent denies each and every allegation set forth therein.

WHEREFORE, Respondent prays that the Complaint be dismissed in its entirety.

AFFIRMATIVE DEFENSES

1. The certified unit of all full-time and part-time housekeeping and laundry employees does not constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

2. The National Labor Relations Board is not properly constituted as required by Section 3(b) of the Act; the Board did not have the authority to deny Respondent's Request for Review in Case 13-RC-21849.

Dated: December 9, 2009

Respectfully submitted,

BALLARD, ROSENBERG, GOLPER & SAVITT, LLP
MATTHEW T. WAKEFIELD
KATHERINE A. HREN

By: _____
Katherine A. Hren
AIMBRIDGE EMPLOYEE SERVICE CORP.
d/b/a/ ALOFT CHICAGO O'HARE

PROOF OF SERVICE

On December 9, 2009, I served a copy of this **ANSWER OF RESPONDENT TO COMPLAINT** via e-mail to Patrick Calihan, Esq., counsel for Charging Party, at pcalihan@sbcglobal.net.

I declare under penalty of perjury that the foregoing is true and correct under the laws of the United States of America. Executed on December 9, 2009, at Glendale, California.

By: _____
Katherine A. Hren

391942.1

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **Counsel for the General Counsel's Motion to Transfer Proceedings to the Board and Motion for Summary Judgment** was electronically filed with the Executive Secretary of the National Labor Relations Board on December 17, 2009, and that, pursuant to Section 102.114 of the Board's Rules and Regulations as revised January 23, 2009, a true and correct copy of that document was served to the parties listed below via the method listed below on that same date.

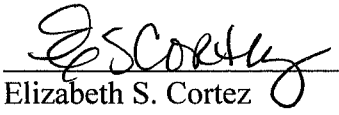
E-Mail & Certified Mail

Matthew T. Wakefield, Esq.
Ballard Rosenberg Golper & Savitt, LLP
500 North Brand Boulevard
Twentieth Floor
Glendale, CA 91203
E-mail: mwakefield@brgslaw.com

Patrick J. Calihan, Esq.
UNITE HERE Local 450
53 W. Jackson Blvd.
Suite 1112
Forest Park, IL 60130-2472
E-mail: pcalihan@sbcglobal.net

Mr. Alfonso Garcia
Business Representative
UNITE HERE Local 450
7238 W. Roosevelt Rd.
Forest Park, IL 60130
E-mail: localoffice450@gmail.com

Certified Mail
Jeremy Schaeffer
Aloft Hotel/Aimbridge Hospitality
9700 Balmoral
Rosemont, IL 60018



Elizabeth S. Cortez
Counsel for the General Counsel
National Labor Relations Board, Region 13
209 S. LaSalle St., Suite 900
Chicago, IL 60604
Phone: 312-353-4174
Fax: 312-886-1341
E-mail: elizabeth.cortez@nlrb.gov