UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

REMINGTON LODGING & HOSPITALITY, LLC,
d/b/a HYATT REGENCY LONG ISLAND
Employer[1]

and

Case No. 29-RC-089045

LOCAL 947, UNITED SERVICE WORKERS
UNION, INTERNATIONAL UNION OF
JOURNEYMEN AND ALLIED TRADES
Petitioner[2]

DECISION AND DIRECTION OF ELECTION

Remington Lodging & Hospitality, LLC ("Remington" or "the Employer") is engaged in providing hotel management services, including operating the Hyatt Regency Long Island hotel in Hauppauge, New York. On September 11, 2012,[3] Local 947, United Service Workers Union, International Union of Journeymen and Allied Trades ("the Petitioner") filed a petition under Section 9(c) of the National Labor Relations Act ("the Act"), seeking to represent certain employees employed by the Employer at the Hyatt Regency Long Island. The Petitioner subsequently amended its petition on September 21, and again on October 16. Essentially, the Petitioner seeks a unit of all full-time and regular part-time non-supervisory employees, excluding office clerical employees.

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1 The Employer's name appears as amended.

2 The Petitioner's name appears as amended.

3 All dates hereinafter are in 2012, unless otherwise indicated.

In order to understand the issues presented herein, a brief history of the case must be described. A hearing in this case originally took place on November 27 before Brent Childerhose, a Hearing Office of the National Labor Relations Board ("the Board"). Numerous issues arose, both during the hearing and in the parties' post-hearing briefs. The disputed issues included: whether the Petitioner is a labor organization as defined in Section 2(5) in the Act; whether the petitioned-for unit (excluding office clerical employees) is an appropriate unit for the purposes of collective bargaining; whether certain individuals (including housekeeping supervisors, restaurant supervisors, kitchen supervisors and front desk supervisors) are supervisors as defined in Section 2(11) of the Act; whether employees who work an average of 20 hours per week or less should be eligible as regular part-time employees; whether a company that provides banquet employees (Imperial Staffing) is a joint employer with Remington; and whether certain employees must be excluded as "confidential." On December 12, the Regional Director concluded that more evidence was needed to resolve those issues, and issued an order reopening the record.

However, before the hearing re-opened, the parties signed a stipulation which resolved most of the factual issues, including: the office clerical employees' separate community of interest from the petitioned-for employees, justifying their exclusion from the otherwise appropriate unit; the supervisory status of the previously-disputed supervisors; a formula for determining regular part-time status; and an agreement to exclude the banquet employees employed by Imperial Staffing.[4] The stipulation is hereby

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[4] Inasmuch as the allegedly "confidential" employees are excluded from the unit as office clerical employees, the confidential issue no longer needs to be addressed.

admitted to the record as Board Exhibit 3, and is attached to this Decision. Furthermore, the December 12 Order Re-Opening the Record and Notice of Hearing is hereby withdrawn.

The only remaining issue to be decided is whether the Petitioner meets the statutory definition of labor organization.

Pursuant to Section 3(b) of the Act, the Board has delegated authority in this proceeding to the undersigned Acting Regional Director.

For the reasons discussed below, I conclude that the Petitioner is a labor organization as defined in Section 2(5) of the Act. I will direct an election among the petitioned-for employees, as described in more detail below.

Labor organization status of Petitioner

Section 2(5) of the Act defines a labor organization as:

> any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The Petitioner's vice president, Jose Vega, testified that the Petitioner exists for the purpose of representing employees in dealing with their employers. Specifically, he stated that the Petitioner has negotiated collective bargaining agreements with more than 30 employers, including hotels, to improve employees' wages, benefits and other working conditions, and to represent employees in connection with grievances. Vega further testified that employees participate in the organization, for example, by attending its meetings.

In short, Vega's testimony establishes that the Petitioner exists for the purpose of dealing with employers concerning wages, grievances and other terms and conditions of employment, and that employees participate in the Petitioner's organization. Thus, the Petitioner clearly meets the broad definition of labor organization in Section 2(5) of the Act. *See also* Alto Plastics Mfg. Corp., 136 NLRB 850 (1962).

At the hearing, the Employer contended that Local 947 is not a labor organization because of an alleged unlawful act committed by husband of the Petitioner's president, Gloria Larrondo. The Employer's attorney attempted to ask Vega about this, but the Hearing Officer ruled that such questions were irrelevant to Local 947's status as a labor organization as defined in Section 2(5). The Hearing Officer allowed the Employer to make an offer of proof, but ultimately rejected the offer of proof and disallowed any further questioning on this issue.[5]

The Hearing Officer correctly ruled that such questions were irrelevant, and I hereby affirm his rulings. Contrary to the Employer's contentions, any alleged unlawful act by Larrondo's husband has no bearing whatsoever on whether the Petitioner meets Section 2(5)'s broad definition. Even if the facts proffered by the Employer were assumed to be true, it would not change the fact that the Petitioner exists for the purposes of dealing with employers and therefore meets Section 2(5)'s broad definition.

As the Board said in Alto Plastics, *supra*:

> [I]t must be remembered that, initially, the Board merely provides the machinery whereby the desires of the employees may be ascertained, and the employees may select a "good" labor organization, a "bad" labor organization, or no labor organization, it being presupposed that employees will intelligently

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5 Although the Hearing Officer rejected Employer Exhibit 8 and stated that it should be placed in a "rejected exhibits" file, the reporting service mistakenly included it with the admitted exhibits. Employer Exhibit 8 should have been marked as "rejected," and I hereby amend the record accordingly.

> exercise their right to select their bargaining representative. In order to be a labor organization under Section 2(5) of the Act, two things are required: first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment. If an organization fulfills these two requirements, the fact that it is an ineffectual representative, ... that certain of its officers or representatives may have criminal records, that there are betrayals of the trust and confidence of the membership, or that its funds are stolen or misused, cannot affect the conclusion which the Act then compels us to reach, namely, that the organization is a labor organization within the meaning of the Act.

136 NLRB at 851-2.

Accordingly, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

Resolution of unit issues

As stated above, the Employer operates a Hyatt Regency hotel. There is no dispute that the operation includes two restaurants and "banquet" services for catered weddings and other large events. The Petitioner seeks to represent the following full-time and regular part-time non-supervisory employees employed by the Employer:

> Housekeeping department employees, including room attendants (housekeepers) and house aides.
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> Kitchen and restaurant employees, including pantry attendants, stewards, cooks, lead cooks, station cooks, sous chef, hosts, servers, server assistants (a.k.a., "bussers"), bartenders, and a purchasing/receiving clerk.
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> Banquet department employees, including banquet house aides.
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> Engineering department (maintenance) employees, including engineers I, engineers II and engineers III.
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> Front office employees, including front desk clerks, PBX phone system operators, lobby ambassadors, guest service aides (a.k.a. bell hops) and reservation agents.

The only non-supervisory employees excluded from the petitioned-for unit are office clerical employees, such as the assistant controller, general cashiers, accounting clerks, sales coordinators and a human resources clerical assistant. The parties ultimately stipulated that the office clerical employees do not share a sufficient community of interest with the other employees to include them in the otherwise-appropriate unit.

During the hearing the parties stipulated that people in the following job titles are excluded as managers and/or supervisors: front office manager, executive housekeeper, director of food and beverages, director of sales and marketing, director of engineering, controller, executive chef, and banquet manager. As the attached exhibit indicates, the parties also stipulated that housekeeping supervisors, front desk supervisors, restaurant supervisors and the kitchen supervisor/chef are supervisors as defined in Section 2(11) of the Act.

Furthermore, the record (including the parties' stipulation) indicates that banquet servers who are hired to serve food and drinks at banquet events are employed solely by Imperial Staffing, not by Remington. The only banquet employees which the Petitioner seeks to represent are those employed by Remington, such as banquet house aides who set up tables and chairs for the events. Thus, since the Petitioner does not seek to represent employees employed by Imperial Staffing, no "joint employer" issue needs to be addressed.[6]

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6 Similarly, there is no dispute that the Employer subcontracts its laundry and security work to other companies. There are no laundry or security employees employed by the Employer, and none sought by the Petitioner.

Finally, in terms of part-time status, the record indicates that the Employer employs three categories of employees. Status 1 employees average 30 or more hours of work per week; Status 2 employees average 21-29 hours per week; and Status 3 employees average 1 to 20 hours per week. In their post-hearing stipulation, the parties agreed that employees who work an average of 20 or more hours per week are regular part-time employees who share a community of interest with full-time employees, and are included in the unit. All employees who averaged 20 or more hours per week for a period of thirteen (13) weeks preceding this Decision will be eligible to vote in the election.

In sum, based on all the foregoing including the parties' stipulations, I find that the petitioned-for unit -- all full-time and regular part-time housekeeping, restaurant, kitchen, banquet, front desk and engineering employees employed by the Employer, but excluding office clerical employees, guards and supervisors-- is appropriate for the purposes of collective bargaining.

CONCLUSIONS AND FINDINGS

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

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The parties stipulated that Remington Lodging & Hospitality, LLC is a domestic limited liability company, engaged in providing hotel management services at hotels in numerous states, including the Hyatt Regency hotel involved in the instant

proceeding, located at 1717 Motor Parkway, Hauppauge, New York. During the past year, which period represents its annual operations generally, the Employer received gross revenues valued in excess of $500,000. During that same time period, the Employer also purchased and received at its Hauppauge, New York facility, goods and supplies valued in excess of $5,000 directly from entities located outside the State of New York.

Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act. It will therefore effectuate purposes of the Act to assert jurisdiction in this case.

3. I have found that Local 947, United Service Workers Union, International Union of Journeymen and Allied Trades is a labor organization as defined in Section 2(5) of the Act. It claims to represent certain employees of the Employer.

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

5. The parties stipulated to the appropriateness of the petitioned-for unit, as discussed *supra*. Accordingly, I hereby find that the following employees constitute a unit appropriate for the purposes of collective bargaining:

> All full-time and regular part-time[7] housekeeping employees, restaurant employees, kitchen employees, banquet employees, front desk employees and engineering employees employed by Remington Lodging & Hospitality, LLC, at its Hyatt Regency hotel located at 1717 Motor Parkway, Hauppauge, New York, but excluding all office clerical employees, guards and supervisors as defined in Section 2(11) the Act.

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[7] Employees who averaged 20 or more hours per week for a period of thirteen (13) weeks preceding the date of this Decision will be eligible to vote in the election.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether they wish to be represented for purposes of collective bargaining by Local 947, United Service Workers Union, International Union of Journeymen and Allied Trades. The date, time and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees 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 a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States who are employed in the unit may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the

election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Two MetroTech Center, 5th Floor, Brooklyn, New York 11201, on or before **January 10, 2013.** No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office

by electronic filing through the Agency's website, www.nrlb.gov,[8] by mail, or by facsimile transmission at (718) 330-7579. The burden of establishing the timely filing and receipt of the list will continue to be on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or electronic filing, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least three (3) working days prior to12:01 of the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

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8 To file the eligibility list electronically, go to www.nrlb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **January 17, 2013.** The request may be filed electronically through E-Gov on the Agency's website, www.nlrb.gov,[9] but may **not** be filed by facsimile.

Dated: January 3, 2013.

David Pollack
Acting Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201

[9] To file the request for review electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter, and is also located under "E-Gov" on the Agency's website, www.nlrb.gov.

NATIONAL LABOR RELATIONS BOARD
REGION 29

REMINGTON LODGING & HOSPITALITY, LLC,
d/b/a HYATT REGENCY LONG ISLAND,
Employer,

Case No. 29-RC-089045

and

LOCAL 947, USWU, INTERNATIONAL UNION OF
JOURNEYMEN AND ALLIED TRADES,
Petitioner.

STIPULATION RELATED TO UNIT DETERMINATION

IT IS HEREBY STIPULATED, by and between REMINGTON LODGING & HOSPITALITY, LLC, d/b/a HYATT REGENCY LONG ISLAND, Employer, and LOCAL 947, USWU, INTERNATIONAL UNION OF JOURNEYMEN AND ALLIED TRADES, Petitioner, that the following facts are true, and that the bargaining unit inclusions and exclusions are agreed to for the purpose of the NLRB Regional Director's DECISON AND DIRECTION OF ELECTION to be issued in the above-captioned matter:

(1) All nonsupervisory employees in housekeeping, front desk, restaurant, kitchen, and maintenance possess the functional integration and community of interests for inclusion in an appropriate bargaining unit, and all office clerical employees, e.g., controller, office employees, assistant controller, general cashiers, accounting clerks, sales coordinators, and human resources assistants are excluded as not possessing sufficient functional integration and community of interests to justify inclusion and therefore are excluded.

BOARD EXHIBIT 3

(2) All housekeeping supervisors (Yohenna Borrero, Percida Rosero, Matthew Faber), front desk supervisors (Eric Navarro, Erica Conn), restaurant supervisors (Allison Castaldo, Ronald Brady, James Morgan), and kitchen (chef Ralph DeLustro) are section 2(11) supervisors within the meaning of the Act, as they exercise the supervisory indicia set forth in Section 2(11) justifying exclusion from the Petitioner's petitioned-for bargaining unit.

(3) All regular part-time employees who work 20 or more hours a week possess sufficient functional integration and community of interest to justify inclusion in Petitioner's petitioned-for bargaining unit. All employees who averaged twenty (20) or more hours per week for a period of thirteen (13) weeks preceding the DDE will be eligible to vote in the election.

(4) All banquet employee and banquet servers employed by Imperial Staffing are to be excluded.

SO STIPULATED, this 2nd day of ~~December 27, 2012~~ January, 2013, by:

CRANER SATKIN SCHEER SCHWARTZ & HANNA

John Craner, for Local 947, USWU
320 PARK AVENUE
P.O. BOX 367
SCOTCH PLAINS, NJ 07076

908-322-2333
908-322-4916 (fax)

john.craner@css-pc.com

STOKES ROBERTS & WAGNER

Karl M. Terrell, for Remington
3593 Hemphill Street
Atlanta, GA 30337

404-766-0076
404-766-8823 (fax)

astokes@stokesroberts.com