

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

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INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 99,

Petitioner,

Case No.: 05-RC-095207

-- and --

PYRAMID ACQUISITION II MANAGEMENT, LLC, d/b/a/
THE FAIRFAX AT EMBASSY ROW

Employer.

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**EMPLOYER'S REQUEST FOR REVIEW OF
THE DECISION OF THE REGIONAL DIRECTOR**

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Pursuant to Section 102.67 of the Rules and Regulations of the National Labor Relations Board, Pyramid Acquisition II Management, LLC (“Pyramid”), d/b/a/ The Fairfax at Embassy Row (“Employer,” “Fairfax at Embassy Row,” or “the Hotel”), through undersigned counsel, hereby submits its Request for Review of the Regional Director’s Decision and Direction of Election in Case No. 05-RC-095207 (“the Decision”).¹ This request for review is made on the grounds that the Decision is clearly erroneous on the record and is incompatible with precedent defining a supervisor under Section 2(11) of the National Labor Relations Act (“the Act”).

I. SUMMARY OF THE ARGUMENT

Following a representation hearing regarding a petition filed by the International Union of Operating Engineers, Local 99 (“Union” or “Petitioner”) seeking to represent full-time and regular part-time employees of the Employer engaged in engineering and maintenance, including engineers and painters (the “Petition”), the Regional Director issued the Decision stating that “[c]ertainly [the Engineering Supervisor] is widely regarded as a supervisor by management and employees. His pay is significantly greater than that of other employees, and he has some involvement in supervisory or managerial tasks such as hiring, discipline, and recommending wage increases.” (DD&E 17). Surprisingly, however, the Regional Director then found the record insufficient to allow a determination of the Engineering Supervisor’s supervisory status, and directed the Engineering Supervisor – Riery Carrasco – to vote under challenge.² This finding ignores a litany of instances in the record conclusively establishing that, in a short period of time, Mr. Carrasco has repeatedly exercised the primary indicia of

¹ In this request for review, the Employer and the Union are referred to as the “Parties.” The National Labor Relations Board is referred to as the “NLRB” or the “Board.” The Decision is cited “DD&E” and is attached hereto as Exhibit A. References to the hearing record are cited as “Tr.”; copies of each referenced page are attached hereto as Exhibit B. Employer exhibits from the hearing are cited as “Er. Ex.”; copies of each referenced page are attached hereto as Exhibit C.

² At the Hotel and during the hearing, Mr. Carrasco was referred to as “Jerry.”

being a statutory supervisor under the Act. (DD&E 17).

Since Mr. Carrasco's promotion to Engineering Supervisor in January 2011 there have been three hirings, and Mr. Carrasco formally interviewed and recommended two of those three. Mr. Carrasco has chosen from amongst qualified workers to perform a special project, for which he was solely responsible, and assigned the chosen worker overtime without the need for approval. This work was performed during weekend shifts, when Mr. Carrasco is the highest—and often sole—authority present. Mr. Carrasco has the authority to initiate progressive discipline and has counseled the only engineer in the Engineering Department to receive any discipline since he was promoted to a supervisory role.

The record evidence establishes that Mr. Carrasco plays an integral role in the hiring of the Engineering Department's employees, uses his independent judgment to effectuate work assignments, is alone responsible for the protection and maintenance of the Hotel during the weekends, and possesses the authority to effectuate discipline. Notwithstanding, this uncontroverted evidence the Regional Director found the record insufficient to allow a determination of the Engineering Supervisor's supervisory status, and directed the Engineering Supervisor to vote under challenge. (DD&E 2, 17).

In doing so, the Regional Director ignored controlling precedent, cherry-picked testimony, and created holes where none laid, on the substantial factual issue of whether the Engineering Supervisor is a supervisor under the Act. The record on this issue is clear and undisputed, not insufficient. Accordingly, the Decision must be reviewed and Mr. Carrasco should be deemed a supervisor excluded from the petitioned-for unit.³

³ An eligible voter was scheduled for vacation starting February 9, 2013. In the spirit of fostering an opportunity to vote for the entire petitioned-for unit, the election was scheduled for February 8, 2013.

II. FACTUAL BACKGROUND

The record reflects the following facts: Pyramid, the Employer, is a subsidiary of Pyramid Hotel Group. Pyramid, based in Boston, Massachusetts, is an owner and/or manager of hotels and resorts throughout the United States. (Tr. 13:7-21). Pyramid became the employer at the Hotel in the summer of 2006. (Tr. 14:25-15:2). Upon transition and typical with normal practice in the hospitality industry, the prior operator of the Hotel removed all human resources documents. Consequently, upon Pyramid assuming operations of the Hotel every employee was required to complete new applications for employment. (Tr. 15:6-18).

On June 6, 2006, Riery Carrasco filled out a new application for employment with the Hotel. (Er. Ex. 1). The Hotel's prior operator employed Mr. Carrasco as an engineer. He applied for and was hired into the same position with Pyramid. (Tr. 15:20-25, 16:1-7). Upon his hire with Pyramid Mr. Carrasco received a wage rate of \$23.00 per hour. (Er. Ex. 9); (Tr. 36:13-25, 37:1-9).

A. *The Engineering Department*

Asoka Seneviratne is the Hotel's Director of Facilities. (Tr. 50:25-51:2, 71:21-24). Mr. Seneviratne and his Department oversee the maintenance and upkeep of the Hotel's 259 rooms, and the building's machinery. (Tr. 72:2-4). The Department includes: Mr. Carrasco, Edgardo Ayala ("Ayala"), Edwin Banzuelo ("Banzuelo"), James Bell ("Bell"), and Milton Mejia ("Mejia"). (Er. Ex. 4). These employees perform two types of tasks—maintenance and technical—depending on their skills and assignments. (Tr. 73:6-10). Banzuelo and Bell perform only maintenance work, such as responding to room calls from the guests when there is a stopped toilet, the television is not working, there is a flood in the room, or the toilet paper holder is loose. (Tr. 75:11-20, 140:15-24).

In light of their technical backgrounds, Ayala and Mejia complete a mixture of both maintenance and technical duties. (Tr. 76:21-77:2, 77:19-23). Technical tasks include projects such as repairing the Hotel's machinery, including the heat, ventilation, and air conditioning system ("HVAC"), the boiler, the thermostat, and the copper and PVC pipelines. (Tr. 76:1-11, 141:1-3).

The engineers are paid weekly. (Tr. 21:1-3). Presently, per hour, Mr. Carrasco earns \$28.83, Banzuelo earns \$18.00, Bell earns \$17.00, Ayala earns \$20.00, and Mejia earns \$17.50. (Er. Ex. 4).

B. Carrasco's Promotion to Engineering Supervisor

Toward the end of 2010, the Engineering Supervisor left the Hotel. (Tr. 89:4-9, 144:24-5, 145:1-3). On January 15, 2011 the Hotel promoted Mr. Carrasco to the position of Engineering Supervisor. (Er. Exs. 2, 3); (Tr. 17:2-22). Mr. Carrasco is considered a "corporate engineer," is universally certified to handle chlorofluorocarbon ("CFC") tools and supplies, and has a strong technical background in HVAC and refrigeration. (Tr. 89:13-15, 90:14-18).

Mr. Seneviratne testified that the Hotel decided to promote Mr. Carrasco to the position "given Jerry's background, given Jerry's experience in the [H]otel, the number of years, Jerry was the best choice to be considered for the position." (Tr. 89:9-12). Mr. Seneviratne went further to explain: "It is an important position in the [D]epartment. He is the main coordinator and he is the number one man for the [D]epartment head. So I had to fill that." (Tr. 144:25-145:1-3). This kind of authority is not new to Mr. Carrasco; he had been the Chief Engineering Manager at the Georgetown Inn before working at the Hotel. (Er. Ex. 7 at 2); (Tr. 89:15-16, 89:22-25, 90:7-11).

When Mr. Carrasco was promoted, he received an hourly rate increase from \$26.13 to \$28.13. (Er. Ex. 9). One year later, he received a second pay raise to \$28.83. (Er. Exs. 3, 4);

(Tr. 18:17-18, 21:10-13). Jan Weis, Pyramid's Regional Director of Human Resources, Mid-Atlantic Region, and co-manager of Human Resources at the Hotel, testified that Mr. Carrasco received a higher pay rate "because he has more responsibility and he has more authority." (Tr. 12:24-13:2, 14:19-24, 36:5-9).

In addition to the pay increase that Mr. Carrasco received with the promotion, he was also assigned his own office. (Tr. 18:23-25). Other than Mr. Seneviratne, none of the other engineers in the Department have their own office. (Tr. 19:1-2, 108:4-9).

The Hotel's Executive Office also began including Mr. Carrasco, with the title Engineering Supervisor and his Pyramid-provided cell phone number, on the Hotel's telephone directory that is circulated to all Hotel employees. (Er. Ex. 5); (Tr. 22:7-9, 24:6-16). This directory only lists the managers of the Hotel. (Tr. 22:18-20; 24:6-8). From the Engineering Department, only Messrs. Carrasco and Seneviratne are listed on the internal telephone directory. (Tr. 25:17-19). They are also the only two engineers with Pyramid e-mail addresses. (Er. Ex. 5); (Tr. 24:7-21).

Mr. Carrasco's e-mail address is linked to a Hotel BlackBerry, which he takes with him when he leaves the property. (Tr. 111:4-9, 112:4-7). In contrast, the engineers use BlackBerrys to receive work assignments, but their BlackBerrys do not have e-mail capability and they must remain on property. (Tr. 111:6-11, 111:13-15, 111:23-25).

Once promoted, Mr. Carrasco was given the keys to the Human Resources office. (Tr. 39:19-40:1-2). Only he and Mr. Seneviratne have this access. (Tr. 39:25-40:2). Ms. Weis explained, "No one else can do that." (Tr. 40:2). Mr. Carrasco is also one of three employees at the Hotel—the other two being Director of Facilities Seneviratne and Director of Rooms Gerard Folly—who have access to the Hotel's electronic lock system that controls access to each and

every guest room and restricted areas throughout the Hotel. (Tr. 108:13-20). The lock system is the key security system protecting the Hotel. (Tr. 110:12-14). Mr. Seneviratne testified that Mr. Carrasco's access to the lock system "entails huge responsibility for liability." (Tr. 110:17-20).

Mr. Carrasco has the same powers as other supervisors in the Hotel. He can complete coaching and counseling forms, which are Pyramid's mechanism for instituting progressive discipline. (Tr. 220:25-223:22).⁴ He also is tasked with ensuring that engineers fulfill their administrative duties. For instance, he was included on an e-mail from Ms. Weis to other department heads to remind their personnel to complete the Hotel's Employee Opinion Survey ("Survey"). (Er. Ex. 6); (Tr. 23:11-20). As a supervisor, the Hotel would hold Mr. Carrasco accountable if the engineers failed to complete the Survey. (Tr. 55:10-12, 56:7-16).

C. Carrasco's Role in Hiring, Assigning, Responsibly Directing, and Disciplining the Engineers

Mr. Seneviratne testified that "Jerry is my right-hand man, to put it shortly. And every decision I get in the [D]epartment, technically or administratively, I talk to Jerry." (Tr. 88:17-20). In that regard, Messrs. Seneviratne and Carrasco meet weekly to talk about the Engineering Department. (Tr. 95:1-3). The weekly meetings are necessary because Mr. Seneviratne and Mr. Carrasco split management responsibilities by working opposite shifts. (Tr. 95). Mr. Seneviratne works Monday through Friday while Mr. Carrasco works Friday afternoon through Monday. (Er. Ex. 13); (Tr. 97:6-9). Mr. Seneviratne explained, "On the weekends, Jerry is on his own." (Tr. 210:13). This means that on Saturday evenings – the Hotel's busiest night of the week – Mr. Carrasco is the "man in charge of the Hotel" and, as Mr. Seneviratne testified, "Jerry has the capacity to run the [H]otel on his own." (Er. Ex. 13); (Tr. 97:2-20, 162:6-14).

⁴ The Hotel follows a progressive discipline procedure, and discipline is communicated on a coaching and counseling form. (Tr. 221:2-7). The form indicates the employee's name, their position, their department, their date of hire, the incident date, an explanation of the incident, the disciplinary level of incident, and the managers' expectations of the employee. (Tr. 222:19-22, 223:1-3).

Since his promotion, Mr. Carrasco has recommended and interviewed two of the five current employees in the Engineering Department.⁵ (Tr. 41:6-14, 60:2-7). When Mr. Seneviratne was considering how to fill the role formerly held by Mr. Carrasco, he solicited Mr. Carrasco's input regarding whether the department was better suited with an experienced HVAC technician or an applicant with less experience but more open to training. (Tr. 103:15-23, 149:6-10). Mr. Carrasco suggested that a less experienced candidate would be the best fit. (Tr. 103:18-104:5). Based on this suggestion, Ayala was deemed a candidate. (Tr. 104:6-7).

Before the Hotel made any hiring decision, Mr. Carrasco interviewed Ayala, alone, for fifteen or twenty minutes. (Tr. 148:21-149:13, 155:15-21). The interview included questions regarding Ayala's technical abilities, background, and the work experience listed on his resume. (Tr. 155:24-156:8). Additionally, Mr. Carrasco interviewed Banzuelo before any hiring decision was made. (Tr. 150:24-25, 155:19-21). That interview also dealt with Banzuelo's technical abilities, background, and the work experience listed on his resume. (Tr. 154:24-156:8). At the outset of both interviews, Mr. Seneviratne introduced Mr. Carrasco to Ayala and Banzuelo by stating, "[T]hat's our supervisor." (Tr. 155:12-14).

On a day-to-day basis in his capacity as Engineering Supervisor, Mr. Carrasco walks through the Hotel by himself, inspecting the equipment in the building and on the rooftop, and ensuring that the Hotel's machinery is in working order. (Tr. 211:7-23, 213:8-14). If there is a challenging technical project, Mr. Carrasco has the authority and the skill to oversee its resolution on his own. (Tr. 211:24-25, 212:1-8, 212:13-16).

When Mr. Carrasco is the only manager on-site during weekends, he oversees the completion of special projects, such as running cables for security cameras. (Tr. 99:12-100:14-

⁵ The Hotel never relies on only one employee's hiring or firing recommendation. (Tr. 62:20-22, 151:7-16). In hiring, for example, the applicant must still pass a background check, be qualified under the Hotel's standards, pass a drug test, and have positive references. (Tr. 60:8-22).

16). He can select which engineers will work under his supervision on special projects, and has the exclusive authority to assign overtime hours. (Tr. 176:8-10, 177:10-12). For example, in December 2012, Mr. Carrasco asked Ayala to work on his off days to help run cables. (Er. Ex. 14); (Tr. 100:14-22, 152:24-153:9). Mr. Seneviratne testified that Mr. Carrasco could have chosen any engineer, including the technically-trained Mejia, but Mr. Carrasco viewed Ayala as **“the best man, the most - - capable man to do that job.”** (Tr. 100:20-22, 175:2-6, 177:17-19). Ayala was already scheduled to work 40 hours during those weeks, and was paid overtime for working the additional weekend shifts. (Er. Exs. 13, 14); (Tr. 176:4-7).

Mr. Seneviratne also testified about an instance when Mr. Seneviratne wanted to schedule an engineer (no longer with the Department), named Youth Hourn, for a Saturday shift, and Mr. Carrasco said that Hourn should not be scheduled because he was incapable of adequately performing the job. (Tr. 102:9-103:13). Mr. Seneviratne followed Mr. Carrasco’s recommendation and did not schedule Hourn. (Tr. 102:14-103:12, 164:3-17).

Mr. Carrasco oversees and trains engineers who work with him during the weekend shifts. (Tr. 113:25-114:9). Mr. Seneviratne testified: “He guide them. He watch them. I can clearly say about the cable project. Jerry would be down and Edgar would be up on the ceiling, you know.” (Tr. 203:12-14). If an engineer does not know how to perform a task, Mr. Carrasco is expected to instruct them. (Tr. 203:15-17). For instance, on Ayala’s first day, Mr. Carrasco familiarized him with the property. (Tr. 113:19-24).

Mr. Carrasco also counsels engineers to improve their performance, as he did with Bell, who received the only discipline given in the Department since Mr. Carrasco’s promotion. (Tr. 105:1-106-20). Indeed, Mr. Carrasco spoke with Bell and told him that “you either had to [have knowledge] or [be] a hard worker in order to get ahead.” (Tr. 106:9-20).

The engineers and the painter, as well as the Hotel employees, recognize Mr. Carrasco as their supervisor. In response to the Hearing Officer's question, "And who is your supervisor", Terrazas testified, "Jerry Carrasco and Asoka." (Tr. 231:3-4). When asked again by the Hearing Officer, Terrazas confirmed, "Asoka and Jerry." (Tr. 232:20-21). When Terrazas works on the weekends, Mr. Carrasco is his supervisor. (Tr. 254:21-23). If Terrazas has any down time, he "especially" asks Mr. Carrasco. (Tr. 244:6-7). Terrazas asks Mr. Carrasco for time off for a holiday or doctor's appointment (Tr. 244:23-245:1), and knows that the engineers do as well. (Tr. 247:18-248:8).

III. BASIS FOR REVIEW

The Board must grant this request for review of the Decision. The Regional Director created substantial questions in law and policy by wholly disregarding clear and undisputed facts in the record establishing that the Hotel's Engineering Supervisor is a supervisor under the Act. 29 CFR § 102.67(c).⁶

A. *Definition of a Supervisor*

The Act excludes from its definition of "employee" any individual employed as a supervisor. 29 U.S.C. § 152(3). The Act defines a supervisor as:

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

29 U.S.C. § 152(11).

An individual need only exercise one of the functions enumerated in Section 2(11) to be found to be a supervisor. See NLRB v. Kentucky River Cmty. Care, Inc., 532 U.S. 706, 712

⁶ In light of Canning v. NLRB, --- F.3d ---, 2013 WL 276024 (D.C. Cir. Jan. 25, 2013), the Hotel reserves its right to claim the current Board lacks a proper quorum to exercise jurisdiction over this Request for Review.

(2001); Schnurmacher Nursing Home v. NLRB, 214 F.3d 260, 264 (2d Cir. 2000); Butler-Johnson Corp. v. NLRB, 608 F.2d 1303, 1306 n.4 (9th Cir. 1979) (“The enumerated functions in Section 2(11) are to be read in the disjunctive, and the existence of any of them, regardless of the frequency of their performance, is sufficient to confer supervisory status”) (citations omitted).

Indeed, individuals who effectively supervise even one other employee are statutory supervisors and may not be included in any certified bargaining unit. See, e.g., Jack Holland & Son, Inc., 237 NLRB 263 (1978); Cartwright Hardware Co., 229 NLRB 781 (1977), enforced in part and denied in part, 600 F.2d 268 (10th Cir. 1979).

B. *Mr. Carrasco Effectively Recommends Hiring Decisions*

In Oakwood Healthcare, Inc., 348 NLRB 686, 693 (2006), the Board explained that when an employee exercises his or her authority to recommend a person for hire, the employee may be called upon to assess the applicants’ experience, ability, attitude, and character references, among other factors. In such an instance, the putative supervisor’s hiring recommendations likely involve the exercise of independent judgment. Id. at 693. Mr. Carrasco’s role in hiring the Engineering Department personnel satisfies the test articulated in Oakwood.

Mr. Carrasco interviewed both Ayala and Banzuelo. The respective interviews lasted fifteen to twenty minutes in length and included questions regarding Ayala and Banzuelo’s backgrounds and work experience.⁷ (Tr. 145:21-149:13, 155:15-18). Mr. Seneviratne testified that Mr. Carrasco’s recommendations and opinions during the hiring process are “highly respected.” (Tr. 149:23-25). Mr. Seneviratne’s description of Mr. Carrasco’s role in the Hotel’s hiring of Ayala is telling:

⁷ Mr. Carrasco was not called to testify. There was no showing that he was unavailable to testify. Accordingly, it can be inferred that his testimony would have been unfavorable to the Petitioner’s cause. See Martin Luther King Nursing Center, 231 NLRB 15 n.1 (1977).

A. [W]hen Jerry got promoted, we had the position of that Jerry was holding before vacant.

Q. Okay.

A. Which was engineer, but he was the refrigeration/air conditioning technician. So me and Jerry were talking about which route we should take. We can take a well-experienced guy perhaps like Jerry and pay the same level of money, or we can take a lesser person with a good solid background and some qualifications and groom him to take that job. And then so we had two people that we were thinking about. And I said, Jerry, what do you think? And the very word Jerry said was, Asoka, we'll go for the second option. We take a guy who has been to college, who has done some work, we train him. And very word he said was no matter what, if something happens, either you or me will have to be there. So I called down on Jerry's, in consultation with Jerry.

Q. **So you took Jerry's input.**

A. **Yes.**

Q. And --

A. **We hired accordingly.**

(Tr. 103:15-104:9) (emphasis added).

The Regional Director's reliance on Aardvark Post, 331 NLRB 320 (2000), for the proposition that "[t]he assessment of an applicant's technical skill is not an effective recommendation to hire that individual" is grossly misplaced. (DD&E 13). The undisputed testimony confirms that Mr. Carrasco provided a recommendation regarding the applicant pool that was considered when the Hotel filled the opening created by his promotion. This recommendation – based on the needs of the Hotel and the skills and abilities of the entire Engineering Department – is distinctly different from the rejected supervisor in Aardvark who merely administered writing tests to applicants before the actual supervisor conducted first round interviews. In fact, the Regional Director ignored that Ayala's candidacy was premised upon Mr. Carrasco's suggestion that a *less* technical applicant should fill the open slot. Consequently, it is axiomatic that Ayala's interview with Mr. Carrasco regarded the breadth of his work

experience and background – not solely his technical aptitude as the Regional Director mistakenly suggests. See Jake Schlagel, Jr., d/b/a Aurora and East Denver Trash Disposal, 218 NLRB 1, 4 (1975) (finding the solicitation of a foreman’s opinion regarding hiring decisions evidence of his supervisory status); In re Palagonia Bakery Co., Inc., 339 NLRB 515, 534 (2003) (acting upon a manager’s recommendation is evidence of supervisory status).

Ultimately, based in large part on Mr. Carrasco’s input and recommendations, the Hotel hired Ayala and Banzuelo—two of the five employees presently in the Hotel’s Engineering Department. (Tr. 40:7-41:8, 73:2-3, 104:6-19, 150:19-151:2). The current makeup of the Engineering Department irrefutably establishes the deference and high regard the Hotel gives Mr. Carrasco’s opinions during the hiring process. Accordingly, the Regional Director’s finding that the record is unclear regarding Mr. Carrasco’s role in hiring is inconsistent with the clear and irrefutable facts in the record, and must be reviewed and reversed.⁸

C. *Mr. Carrasco Effectively Assigns Work*

The Regional Director also committed clear legal and factual error in finding insufficient evidence to conclude that Mr. Carrasco assigns work within the meaning of the Act. In Oakwood, the Board stated that a supervisor assigns work when directing the place, time, and overall duties of employees. 348 NLRB at 689. The assignment of an employee to a certain shift or significant overall task qualifies as “assign” within the Board’s construction. Id. The Board further explained that if a putative supervisor “weighs the individualized condition and

⁸ The record is replete with evidence of Mr. Carrasco’s role in training the engineers, which is the province of a statutory supervisor. O.Z. Hall Motors, Inc., 94 NLRB 1180, 1184 (1951) (finding assistant manager, who trained mechanics, gave them technical advice, and had authority to order mechanics to perform work in manner determined by him, a supervisor). Mr. Carrasco immediately mentored Ayala upon his hire. (Tr. 113:19-24). Mr. Seneviratne testified that Mr. Carrasco is expected to train and teach those maintenance engineers who want to complete more technical work assignments. (Tr. 113:19-114:9, 203:12-17).

needs of a patient against the skills or special training of available nursing personnel, the nurse's assessment involves the exercise of independent judgment." Id.

The same analysis must apply here. As the record establishes, Mr. Carrasco is involved in virtually every decision in the Engineering Department, whether technical or administrative. (Tr. 88:18-21: Mr. Seneviratne testified, "I get his feedback almost every time."). For example, Mr. Carrasco weighed the nature of the cable-running project performed during weekend shifts against the abilities of Mejia and Ayala—who had both previously assisted Mr. Carrasco with technical assignments—and chose Ayala for the assignment.⁹ (Tr. 77:19-23, 100:14-22). Mr. Seneviratne testified:

Q. Why does Jerry say to you I want Edgar to work on this project?

A. Because **Jerry feels that he is the best man, the most - - capable man to do that job.**

Q. And why does he think that Edgar is the best man?

A. Because he has worked with him before. **He sees Edgar's output and aptitude.**

(Tr. 175:2-9) (emphasis added). Further, all of the employees but Mejia are scheduled for 40 hours per week; the weekend shift assignments to complete the cable-running task were not to equalize Ayala's hours, but to reward him with overtime work. (Tr. 175:1:11); (Er. Exs. 13, 14).

Mr. Carrasco's selection of Ayala for the cable running project and coinciding reward of overtime is evidence of his supervisory status. Massachusetts Coastal Seafoods, 293 NLRB 496, 506 (1989) (finding foremen statutory supervisors because "they could and did assign additional people to jobs such as racking, which called for increased pay, when they determined it was necessary"); Georgetown Development and Management Corp., 227 NLRB 381 (1976)

⁹ Failing to assess Mr. Carrasco's assignment of the weekend shift and cable-running task to Ayala under the "assign" function, and instead considering the incident only under the responsibly direct function, was clear error. Nonetheless, the Regional Director was wrong about the latter, as well. See infra.

(employee's ability to independently authorize overtime was key indicator of his supervisory status).

Mr. Carrasco's authority to effectuate work assignments also resulted in Hourn being deemed a poor fit for working Saturday shifts. (Tr. 102:9-103:13). The Regional Director rejected the Hourn incident because "it appears Carrasco was merely expressing his opinion on the quality of another engineer's work." (DD&E 13). Again, the Regional Director conveniently turned a blind eye to the testimony. The record clearly shows that Mr. Carrasco's recommendation to Mr. Seneviratne dictated Mr. Hourn's work assignment: "Mr. Hourn was scheduled for the weekend and Jerry came and told me do not put him on the weekend." (Tr. 164:3-11). See NLRB v. Quinnipiac College, 256 F.3d 68, 76 (2d Cir. 2001) (shift supervisors classified as "supervisors" where they had authority to reassign or redeploy employees, taking into consideration the employees' experience and capability to respond to a particular incident); In re Palagonia Bakery Co., Inc., 339 NLRB 515, 534 (2003) (the authority to effectuate assignments based on differences of ability amongst employees sufficiently establishes supervisory status).

Finally, the Regional Director provided no explanation for rejecting Painter Terrazas' testimony "that when he runs out of work he will often seek more work from Carrasco." (DD&E 14). See Juniper Industries Inc., 311 NLRB 109, 110 (1993) (supervisory status based in large part on foreman's authority to assign work).

The record evidence is clear. Mr. Carrasco assigned Ayala the special cable project and authorized overtime for the project's completion, dictated Hourn's work assignment, and on weekends delegates work to Terrazas. In assigning such work assignments, Mr. Carrasco exercises independent judgment to determine the maintenance and technical needs of the Hotel

against the skills of the Engineering Department's Personnel Oakwood, 348 NLRB at 689. The Regional Director's refusal to find otherwise is incompatible with the teachings of Oakwood. As such, the conclusion of insufficient evidence on this supervisory function cannot be supported in fact or law and must be reversed.

D. *Mr. Carrasco Has the Authority to Effectively Recommend Discipline*

The Regional Director's description of Mr. Carrasco's role in the Hotel's discipline process as vague is at odds with plain and undisputed testimony to the contrary. (DD&E 8). As a supervisor Mr. Carrasco has the authority to complete coaching and counseling forms, which is the sole mechanism to initiate the Hotel's progressive discipline procedure.¹⁰ (Tr. 220:25-223:22). Mr. Carrasco's ability to do so is evidence of his supervisory status. See Sheraton Universal Hotel, 350 NLRB 1114 (2007) (upholding supervisory status based on one's ability to complete coach and counseling sessions, which were a prerequisite to discipline). That Mr. Carrasco has not yet completed a coaching and counseling form is irrelevant to the analysis at hand.

The pertinent facts are that he has the authority, and in Mr. Seneviratne's absence, Mr. Carrasco's recommendation to Human Resources to impose discipline on personnel matters, would be equally powerful to Mr. Seneviratne's. (Tr. 224-225:1). See, e.g., NLRB v. Harmon Industries, Inc., 565 F.2d 1047, 1049 (8th Cir. 1977) ("Section 2(11) does not require the *exercise* of supervisory power. It is the *existence* of the power which determines the classification.").

¹⁰ Ms. Weis testified that Mr. Carrasco – like all Pyramid employees – does not have the final authority to hire, fire, or terminate an engineer. This does not diminish the independent judgment he possesses in overseeing the day-to-day operations of the Engineering Department. Gerbes Supermarket, Inc., 213 NLRB 803, 806 (1974) (recognizing that the basic policies were determined in the central office, and that the manager was not completely autonomous, but that these facts did not alter the manager's exercise of the power to direct the operation of the store).

Further, since Mr. Carrasco's promotion, only one engineer has received discipline at the Hotel. (Tr. 223:24-224:1). Mr. Carrasco counseled this employee about keeping his job, not about "the quality of the engineer's work" (DD&E 14), as the Regional Director concluded. (Tr. 104:10-106:20).

The Regional Director's rejection of Mr. Carrasco's authority to discipline employees is yet another example of his failure to properly assess the record evidence.

E. *Mr. Carrasco Responsibly Directs Engineering Employees*

The Regional Director's simplistic approach to reviewing the record is most evident in the analysis of whether Mr. Carrasco responsibly directs the engineers. For directing to be "responsible," the person in charge must be accountable for the performance of the task of another. Oakwood, 348 NLRB at 692. The Board in Oakwood explained that the term "responsibly to direct" was added to Section 2(11) because Senator Flanders was concerned that the exemption would exclude "individuals who exercise basic supervision but lack the authority or opportunity to carry out any of the other statutory supervisory functions (e.g., where promotional, disciplinary and similar functions are handled by a centralized human resources department)." Id. at 690. Thus, where there is a putative supervisor between a conceded supervisor and the rank-and-file employees, and the putative supervisor decides "what job shall be undertaken next or who shall do it," that person is a supervisor provided that the direction is both 'responsible' . . . and carried out with independent judgment." Id. at 691.

1. *Mr. Carrasco is held accountable for the performance of the engineers.*

As the Engineering Supervisor, Mr. Carrasco is accountable for the failings of others. Mr. Seneviratne testified that upon his promotion to Supervising Engineer, "I expected him to be the person in between me and the rest of the department personnel-wise, and take some of the

weight off me on the technical issues and the personnel issues.” (Tr. 91:6-11).

Ms. Weis testified that Mr. Carrasco would be held accountable if his employees did not complete the Survey. (Tr. 55:4-22). Mr. Seneviratne also testified that Mr. Carrasco would be held accountable if Ayala failed to properly work on the condenser, and he would not hold any other employee responsible for the acts of another, like he does Mr. Carrasco. (Tr. 93:5-94:2). The Regional Director blatantly ignored this evidence of accountability.

2. Mr. Carrasco directs the engineers.

Terrazas stated very simply: “**Jerry or Asoka they tell me what work we need to do that day.**” (Tr. 231:19-21). These work assignments are determined according to Mr. Carrasco’s daily floor inspections and, as described above, Mr. Carrasco is held accountable for the work of others. Accordingly, as the “coordinator” between the engineering personnel and Mr. Seneviratne, Mr. Carrasco responsibly directs work. See Oakwood, 348 NLRB at 691.

Additionally, during Mr. Carrasco’s shifts, he steps into the shoes of Mr. Seneviratne, who does not work on the weekends. (Tr. 95:6-9; 107:21-24, 163:16). When Mr. Carrasco is working, he is the highest person in charge of maintenance for the entire building. (Er. Ex. 13); (Tr. 97:2-22). On Saturday evenings, in particular, Mr. Carrasco alone ensures that the Hotel runs smoothly. (Er. Ex. 13); (Tr. 97:2-22, 162:6-14, 210:13). In this capacity, he oversees all projects. (Tr. 99:12-100:15). He is the only engineer in the Department qualified to assume this level of responsibility. (Tr. 97:23-98:7). See Kentucky River Cmty. Care, Inc., 532 U.S. at 714-16 (holding that greater experience, formal training, and technical skill—in directing other employees, and generally—warrant finding supervisory status); see also Truman Schlup, Consulting Engineer, 145 NLRB 768, 770 (1963) (excluding chief of survey party, who was a licensed engineer, from appropriate bargaining unit). Such significant responsibility correlates to supervisory status under the Act.

Indeed, the importance of Mr. Carrasco being the highest authority present every weekend cannot be understated, especially in the hospitality industry, where the safety and well-being of guests is of paramount importance. As the Regional Director should have recognized in citing Bama Co., 145 NLRB 1141, 1143 (1964), “The Board has frequently held that a substitute for a superintendent while he is on vacation or away from the plant, is a supervisor within the meaning of the Act.” See also NLRB v. St. Mary’s Home, 690 F.2d 1062, 1067-68 (4th Cir. 1982) (enforcing Board’s order finding that an employee who was the highest ranking official present on two of her five working days and other employees described her as the “boss” was a statutory supervisor). The Regional Director clearly erred in concluding the contrary.

F. *The Regional Director’s Reliance on Volaire Contractors Deserves No Weight*

The Regional Director was plainly mistaken in relying on Volaire Contractors Inc., 341 NLRB 673, 674-75 (2004), to conclude that “[o]ccasional or isolated instances of actions which might otherwise by [sic] indicative of supervisory authority are generally insufficient to predicate a finding of supervisory status.” (DD&E 16). The Board in Volaire Contractors cited Greenspan, D.D.S., P.C., 318 NLRB 70, 76 (1995), for the proposition that “when an individual **has not been notified**, orally or in writing, that he is vested with a supervisory power, the frequency of exercise of the authority is relevant to a determination of whether in fact the authority has been delegated to him by management.” 341 NLRB at 675 (emphasis added). However, here the record clearly reflects that the Hotel notified Mr. Carrasco of his supervisory role on the Personnel Action Form upon his promotion, through his title of “Engineering Supervisor,” on the internal telephone directory that lists only managers, by his e-mail signature that states “Engineering Supervisor” – just to name a few of the numerous instances in the record – that he is the supervisor of the Engineering Department.

Regardless, in resting his rationale on the supposedly “sporadic” instances of when Mr. Carrasco exercised supervisory indicia, the Regional Director “erred as a matter of law in considering the test of the performance of supervisory duties to be the frequency of their exercise.” Ohio Power Co. v. NLRB, 176 F.2d 385 (6th Cir. 1949). As the Circuit made clear in Ohio Power, “Section 2(11) covers any individual ‘having authority * * * responsibly to direct * * *.’ It does not require the exercise of the power described for all or any definite part of the employee’s time. It is the existence of the power which determines the classification.” See also Archer Mills, Inc., 115 NLRB 674 (1956) (10% of time devoted to supervisory indicia is sufficient).

Because the record reflects that Mr. Carrasco possesses the authority to effectively hire, train, assign, and discipline the Engineering Department employees, the Regional Director’s reliance on Voltaire Contractors is erroneous and should be given no credence.¹¹

G. *Mr. Carrasco is Unquestionably Regarded as a Supervisor*

The above facts in the record overwhelmingly demonstrate that the Regional Director erred in finding insufficient evidence to determine that Mr. Carrasco is a statutory supervisor. Assuming *arguendo* that any doubt exists, secondary indicia of supervisory status cannot be ignored. Baby Watson Cheesecake, 320 NLRB 779, 784 (1996). In Baby Watson, employees acknowledged a certain employee as their supervisor. The employee at issue was one of only two people with keys to the locker rooms containing employee uniforms, and he earned a substantially higher pay rate than other general employees. These factors, viewed together with

¹¹ Voltaire Contractors actually supports a finding that Mr. Carrasco is a statutory supervisor because the Board found the same facts that exist here—the employer told the putative supervisor that he was a supervisor, he reported directly to the outside superintendent, he was issued a cell phone to communicate with the superintendent, and the superintendent was frequently absent from the site when worked—dispositive in finding the employee a supervisor. 341 NLRB at 673-74.

the employee's ability to direct work and recommend discipline, confirmed the employee's supervisory status. Id. at 784.

Similar, yet more substantial, secondary indicia exist in the record. Mr. Carrasco's e-mail address is linked to a Hotel BlackBerry, which he takes with him when he leaves the property. (Tr. 110:22-112:4). In contrast, the engineers use BlackBerrys to receive work assignments, but their BlackBerrys do not have e-mail capability and they must remain on property. (Tr. 111:6-112:5). Mr. Carrasco is one of only three individuals in the Hotel with access to the lock system that provides security protection to the building. (Tr. 108:13-20, 110:1-20). He and Mr. Seneviratne are the only employees with access to the Hotel's Human Resources Department. (Tr. 19:1-2, 25:17-19, 39:19-40:2, 108:4-9).

The Regional Director's assumption that the Hotel must have given Mr. Seneviratne a BlackBerry with email capability and access to all areas and access codes only because he works alone on weekends is illogical and demonstrative of the glaring factual omissions contained in the Decision. (DD&E 12). The record reflects that Mr. Carrasco has a Hotel Blackberry linked to a Hotel-provided e-mail address so that he can "take[] it with him" when he leaves the Hotel, in order to receive e-mails from Mr. Seneviratne at night. (Tr. 110:22-112:4). Mr. Seneviratne explained:

Q. And if you need to email Jerry at 11:00 at night --

A. Yes.

Q. -- you can email him.

A. Yes. And he responds back to me.

Q. Right.

A. Many times he responds back.

Q. And that's Pyramid, Pyramid pays for that.

A. Yes.

(Tr. 112:6-13).

The Regional Director also disregarded the many ways that the Hotel recognizes Mr. Carrasco as a supervisor and cited a clearly distinguishable case in doing so.¹² Carrasco's title is "Engineering Supervisor." (Er. Exs. 5, 12); (Tr. 92:3-4). His wage rate is significantly higher than all other engineering personnel. (Compare Er. Exs. 3 and 4); (Tr. 12:24-13:2, 14:19-24, 36:6-9). He is also the only engineer to have his own office. (Tr. 18:23-25, 19:1-2, 108:4-9).

Finally, the employees revere Mr. Carrasco as their supervisor. Mr. Carrasco was introduced to Ayala and Banzuelo as their supervisor when they interviewed for their positions (Tr. 155:12-14), and Terrazas' testimony confirmed that he and his colleagues all view Mr. Carrasco as their supervisor:

Q. When you were hired, what was your classification?

A. Painter.

Q. And who is your supervisor?

A. Jerry Carrasco and Asoka.

(Tr. 230:25-231:4).

* * *

Q. And have you ever seen engineering co-workers ask Jerry to leave work?

A. Of course, yes.

(Tr. 247:18-20).

Contrary to the Regional Director's conclusion that the record was insufficient, the secondary indicia of supervisory status confirm Mr. Carrasco's supervisory status under the Act.

¹² See Ken-Crest Srvs., 335 NLRB 777 (2001), where certain resident advisors earned more money than the putative supervisor program managers, and certain advisors testified that they did *not* view the managers as supervisors. (DD&E 13).

See DST Industries, 310 NLRB 957 (1993) (higher pay and other special privileges and benefits reserved for its supervisors exhibited indicia of supervisory authority); see also Lone Star School Book Depository, 158 NLRB 72 (1966) (the employer's entrustment of a key to an order-puller was a crucial factor in finding he was a supervisor).

IV. CONCLUSION

Based on the foregoing, Fairfax at Embassy Row respectfully requests that the National Labor Relations Board grant review of the Regional Director's Decision, and conclude that the Engineering Supervisor is a statutory supervisor under the Act.

Respectfully submitted,

By: /s/ Paul Rosenberg

Paul Rosenberg
Jacqlyn Rovine
BakerHostetler
45 Rockefeller Plaza
New York, NY 10111-0100
(212) 589-4299

*Attorneys for the Employer
Fairfax at Embassy Row*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of February, 2013, I caused a true and correct copy of the foregoing Employer's Request for Review of the Decision of the Regional Director to be served electronically and electronic mail, upon the following:

Wayne Gold
Regional Director
National Labor Relations Board
Region 5
100 South Charles Street – Suite 600
Baltimore, Maryland 21201-4061

Eamon Clifford
International Union of Operating Engineers, Local 99
2461 Wisconsin Ave., NW
Washington DC 20007-1862

Dated: February 6, 2013

/s/ Paul Rosenberg
Paul Rosenberg

EXHIBIT A

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

PYRAMID ACQUISITION II
MANAGEMENT, LLC,
d/b/a THE FAIRFAX AT EMBASSY ROW¹
Employer

and

Case 05-RC-095207

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 99²
Petitioner

DECISION AND DIRECTION OF ELECTION

Pyramid Acquisition II Management, d/b/a The Fairfax Embassy Row, a Massachusetts L.L.C., hereafter referred to as the Employer, specializes in hospitality hotels and resorts. On December 19, 2012, the International Union of Operating Engineers, Local 99, hereafter referred to as the Petitioner, filed a petition in the above-captioned case pursuant to Section 9(c) of the National Labor Relations Act, seeking an election to represent all full-time and regular part-time employees employed by the Employer at The Fairfax at Embassy Row engaged in engineering and maintenance, including engineers and painters, excluding all clerical employees, all managerial employees, all guards, and all supervisors as defined by the Act. On January 4, 2013, a hearing on the petition was held before a hearing officer of the National Labor Relations Board. The Employer and Petitioner appeared at the hearing.

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

Three witnesses testified at the hearing: Jan Weis, Regional Director of Human Resources; Asoka Seneviratne, Director of Facilities; and Felix Terrazas, Painter. The Petitioner stated at the hearing that it is prepared to proceed to an election in any unit found appropriate by the Regional Director. The Employer and Petitioner filed post-hearing briefs which I have fully considered.

I. ISSUES

The issues in this proceeding are:

1. Whether Riery Carrasco³ is a supervisor according to Section 2(11) of the Act.
2. Whether the petitioned-for unit is an appropriate unit.

The Employer's position is that Carrasco is a supervisor within the meaning of the Act, and that the painter does not share a sufficient community of interest with the petitioned-for unit. The Petitioner contends that Carrasco is not a supervisor and that the petitioned-for unit, including the painter, is an appropriate unit. I have carefully considered the evidence and arguments made by the parties at the hearing and in their post-hearing briefs. For the reasons set forth below, I find that the record is insufficient to allow me to determine Carrasco's supervisory status, and therefore I shall direct that he vote under challenge. I further find that the petitioned-for unit is an appropriate unit, and that the painter may properly be included in the unit.

II. FACTS

A. ORGANIZATIONAL FACTS

³ Carrasco did not testify at the hearing.

In 2006, the Employer became the contracted operator of The Fairfax on Embassy Row hotel in Washington, D.C., hereafter referred to as the Hotel. The Hotel is a two building complex with approximately 259 hotel rooms.

A Managing Director is at the head of the Hotel's supervisory structure. The Hotel's human resources are managed by both a Regional Director of Human Resources and a local Director of Human Resources. At the hearing, the Employer provided an internal contact list for each department's managers and supervisors, including the Engineering Department.⁴ Under the heading of Engineering, the list identifies Asoka Seneviratne as the Director of Facilities, and Riery Carrasco as the Engineering Supervisor.

B. ENGINEERS

Seneviratne testified that he is the head of the Engineering Department.⁵ His responsibility is to maintain the Hotel's building, property, and machinery. Seneviratne has been employed as the Director of Facilities since December 2010. He possesses a bachelor's degree in mechanical engineering and has a master's license in HVAC. Seneviratne supervises five engineers and one painter.⁶ Seneviratne testified that he spends approximately 60% of his time performing administrative tasks, and 40% performing manual and technical tasks. He described his typical day arriving to work at approximately 7:00 a.m. First, he checks his computer to monitor the HVAC systems to ensure operation. Then, he will check temperatures throughout the building. Around, 8:00 a.m. he tries to conduct meetings with the engineers and painter. At the meetings the engineers and painter

⁴ Despite the Employer's contention that the painter Felix Terrazas works in the Painting Department, there is no Painting Department on the contact list.

⁵ The parties stipulated that Asoka Seneviratne is a supervisor according to Section 2(11) of the Act.

⁶ Riery Carrasco, whose supervisory status is at issue, is counted in the five engineers.

will review the night manger's report which reflects issues that the Engineering Department must repair. Along with the night manager's report they will review a logbook to see what the engineers from the nightshift performed, and if there are instructions for task to be completed. The Engineering Department maintains a project binder where engineers and the painter record completed tasks such a battery replacement and caulking. Seneviratne testified that throughout the day many issues and tasks arise that require communication and coordination between the supervisors and engineers.

Engineers are separated into two groups: maintenance employees and technical employees. A maintenance employee is mainly responsible for cosmetic upkeep such as maintaining carpet, wallpaper, painting, and bathroom fixtures. Seneviratne testified that engineers will occasionally perform painting touch-ups. Maintenance employees respond to guests' complaints or issues. A guest will contact the telephone operator about an issue concerning his/her hotel room, and then the operator will contact the maintenance engineer to perform repairs. The repairs needed may be a stopped toilet, or a non-working television, or a flood in the room, etc. Typically, the maintenance employees do not possess advanced technical training, HVAC licenses, or CFC (chlorofluorocarbons) certifications. Technical employees have more formal education and training in particular machinery. Examples of this education are HVAC training and CFC (chlorofluorocarbons) certifications. Technical tasks include replacing a thermostat in a room, running copper pipeline or PVC pipeline, and troubleshooting control problems in the machinery.

The average engineer's hourly wage rate is \$18.12 per hour with the highest engineer's wage rate being \$20.00 per hour and the lowest being \$17.00 per hour.⁷ The engineers work 40 hours per week - Monday through Friday. The engineers use common workspaces. "The shop" is where engineers do hands-on work such as drilling, cutting, and grinding. There, the engineers have lockers to store personal belongings and storage cabinets to store power tools. The other common workspace is where parts such as locks, electronics, and maintenance supplies are kept. Engineers always carry tools such as wrenches, screwdrivers, and hammers to complete their work. They wear navy blue pants and white shirts with charcoal stripes as their uniforms.

1. Riery Carrasco

Carrasco was employed as an engineer at the Hotel prior to the Employer's management contract. He was retained by the Employer as an engineer. Both Jan Weis,⁸ Regional Director of Human Resources, and Seneviratne testified that in January 2011 Carrasco was promoted to Engineering Supervisor. In support of this contention, the Employer provided Personnel Action Forms that demonstrate that Carrasco received a promotion. In January 2011 he received a \$2.00 per hour raise. Again, in June 2012, the Employer changed Carrasco's hourly wage rate from \$28.13 per hour to \$28.83 per hour. The Personnel Action Form states that the raise was to be applied retroactively to January 15, 2012. Seneviratne testified that Carrasco filled the position after the prior supervisor left the Hotel. He stated that Carrasco was chosen because of his strong technical skill (HVAC licenses), prior experience as a chief engineer at a different hotel, and his familiarity and experience at the Hotel. Carrasco's salary prior to his promotion was \$26.13 per

⁷ These figures do not include Riery Carrasco's wage rate.

⁸ At hearing the parties stipulated that Jan Weis is a supervisor according to Section 2(11) of the Act.

hour. Prior to his promotion to Engineering Supervisor, Carrasco's responsibilities were maintaining and repairing machinery related to heating, ventilation, air conditioning, and refrigeration. After his promotion, Carrasco's job responsibilities included administrative and personnel work. Both Weis and Seneviratne testified that there is no written job description for Engineering Supervisor. Weis did not meet with Carrasco to discuss the position, and Seneviratne testified that he met with Carrasco prior to Carrasco assuming the position of Engineering Supervisor, but could not recall what they discussed. Carrasco works 40 hours per week from Friday through Monday. According to the schedules provided at hearing, Carrasco is rarely scheduled to work while another engineer is working. Seneviratne testified that Carrasco serves as the person between him and the rest of the personnel, and that Carrasco as the Engineering Supervisor takes some of the weight off him on both technical issues and personnel issues. Seneviratne testified that every Friday the two meet to discuss what occurred during the last week and the needs of the department. Seneviratne estimates that Carrasco performs 60% technical work and 40% administrative work. The record is unclear regarding what administrative work Carrasco performs.

As Engineering Supervisor, Carrasco has his own office where he stores his tools and personal belongings. He has a company-issued Blackberry with email capability. Other engineers have Blackberrys, but their Blackberrys do not have email capability. Seneviratne and Carrasco are the only engineers who have separate offices. At the hearing the Employer provided emails that demonstrate that Carrasco has a company issued email address. In the Engineering Department only Seneviratne and Carrasco have a company email address. Employer Exhibit 6 is an email in which Weis contacted several department

managers and supervisors, including Carrasco, in order to notify them that several employees within their respective departments had not completed their employee satisfaction surveys. Weis included the names of both engineers and the painter under the heading of "Engineering". Carrasco's emails include a signature line with the title of Engineering Supervisor. Carrasco is one of three employees who have access to all restricted areas and access codes. The other two are Seneviratne and the Rooms Director.

Because the Engineering Department has a small and relatively stable work force there are limited examples of hired, suspended, fired, or transferred employees within the department. The Employer did provide several examples where it believes Carrasco acted independently by recommending certain actions.

Seneviratne testified that three engineers have been hired within the past two years. Initially, applicants are interviewed by a supervisor within the Engineering Department. Then, the Engineering Department makes a recommendation to the Human Resources Department. Typically, the General Manager will interview all potential employees before hiring an individual. Seneviratne stated that Carrasco interviewed two of the three applicants who were hired as engineers.⁹ The interviews were described as formal interviews in which Carrasco questioned applicants regarding their technical skills, experience, and resume. There is no record testimony that Seneviratne interviews applicants after Carrasco. After the interview, Seneviratne and Carrasco will meet to discuss the applicants and decide whom to recommend to Human Resources and the General Manager. The record is unclear regarding the form of recommendation offered, or

⁹ Seneviratne testified that Carrasco did not interview the other applicant because a decision to hire that individual had already been made.

specific detail about Seneviratne and Carrasco's collaborative decision making process concerning whom to recommend. Seneviratne provided an example where Carrasco interviewed applicants and then suggested that the Employer hire a less experienced, less costly technician, rather than the more experienced technician seeking a higher wage. Ultimately the less experienced technician was hired. The record does not, however, contain any specific detail about the reasons for that engineer's hiring, or detail about the interviews conducted after Carrasco's interview. Nor was a written recommendation presented at hearing.

Since Carrasco's promotion to Engineering Supervisor, one engineer has received discipline. The written discipline was prepared and signed by Seneviratne. Prior to the discipline being issued, Seneviratne testified that he spoke with Carrasco. The testimony about what Carrasco told Seneviratne is vague. Carrasco told Seneviratne that an engineer either has to have the hands for the work or the intelligence. How Carrasco's input factored into the engineer's discipline is unclear.

Engineers receive annual evaluations. The evaluations are used to counsel employees on areas of improvement and to commend employees for proficiency and excellence. The evaluations are drafted and signed by Seneviratne, and then he meets with the specific employee to discuss his or her evaluation. Prior to drafting the evaluation, Seneviratne speaks with Carrasco regarding each engineer's performance. For instance, Seneviratne testified that Carrasco has informed Seneviratne that an employee did not fix a vacuum cleaner and that it had been sitting in the shop awaiting repair. Such negative feedback could be included in employees' evaluations. However, the record contains no specifics about an employee's evaluation reflecting negative feedback offered by Carrasco.

Nor does the record contain testimony whether Seneviratne performs his own investigation after receiving Carrasco's input. Seneviratne testified that employees can and occasionally do receive pay raises in excess of the regular annual raise. Carrasco in the past has recommended employees for raises in excess of the Employer's annual raise. The Employer provided no examples of employees receiving pay raises due to Carrasco's recommendation.

Engineers work fairly regular shifts. Seneviratne stated that he consults with Carrasco when completing the schedule. Seneviratne testified that on one occasion he was going to schedule an engineer to work the weekend shift, which requires more skill and efficiency because the weekend engineer works alone. Carrasco recommended that Seneviratne not schedule that engineer due to the engineer's inability to work alone. The engineer was not scheduled to work weekends.

Carrasco, having higher technical skills, is often responsible for larger projects. Recently, Carrasco was responsible for running cables throughout the Hotel. In order to complete the job Carrasco called in an engineer to help. Because the engineer had worked 40 hours already, the engineer received overtime pay. Sometime after requesting the engineer to help on the project, Carrasco called Seneviratne to inform him. There is little evidence as to why Carrasco chose the engineer that he did. Seneviratne testified that Carrasco has the authority to decide which engineers are needed to complete projects or tasks, and to assign overtime pay so long as it does not exceed the department's budget. In this case, Seneviratne testified that the engineer received somewhere between two and eight hours of overtime. This was the only example provided where Carrasco assigned overtime to an engineer.

C. PAINTER

1. Felix Terrazas

Felix Terrazas has been employed as a painter for approximately three years. He is the Hotel's only painter. He is paid \$18.00 per hour. At the hearing the Employer provided a Maintenance Department work schedule. The Maintenance Department schedule lists only the engineers' and painter's schedules. He works from 7:00 a.m. to 3:30 p.m., Monday through Friday. During those same hours, two engineers are scheduled to work. Terrazas testified that he performs painting task approximately 70% of his work time. There is a separate workspace where Terrazas keeps his painting materials. Terrazas testified that he carries many of the same tools as the engineers. Terrazas wears white pants with a white shirt as his uniform.

Terrazas is supervised by Seneviratne¹⁰ and Carrasco. Seneviratne completes Terrazas' evaluation and meets with him to discuss the evaluation. Terrazas receives work assignments either by phone or in person while in the Engineering office. He attends the Monday meetings with the engineers. He testified that he sometimes receives his work instructions at the same time as the engineers. When asked what department he is in, he replied the Engineering Department. Terrazas picks up his pay check from Seneviratne's office. Several of Terrazas's work assignments are listed and recorded in the same work binder as the engineers' assignments. Terrazas testified that along with painting assignments, he will often complete minor repairs throughout the Hotel and hotel rooms. For example, Terrazas will often tighten screws when he notices that they require tightening.

¹⁰ Seneviratne admitted that he supervises Felix Terrazas.

Terrazas stated that his typical day starts by sweeping the streets, blowing leaves, shoveling snow, or watering plants. He completes these assignments with the engineers' help, all using the same tools. Terrazas testified that after completing these initial tasks he will receive a list from the front desk identifying issues that need repair or painting in the hotel rooms. He stated that it is not uncommon to work in these rooms at the same time as an engineer. Recently, Terrazas completed a painting assignment in a room while an engineer worked on a television. Then, he helped the engineer by holding his ladder steady while the engineer completed his task. Sometimes Terrazas will be assigned to check a light bulb, which is the engineers' responsibility.

III. ANALYSIS

A. The Supervisory Status of Riery Carrasco

Supervisors are defined in Section 2(11) of the Act as:

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

To meet the definition of a supervisor, an individual need only have one of the 12 criteria listed above, or the authority to effectively recommend such action. *Ohio Power Co, v. NLRB*, 176 F.2d 385 (6th Cir. 1949), cert. denied, 338 U.S. 899 (1949). The exercise of that authority, however, must involve independent judgment. *Harborside Healthcare, Inc.*, 330 NLRB 1334 (2000). Thus, the exercise of "supervisory authority" in merely routine, clerical, perfunctory or

sporadic manner does not confer supervisory status. *Chrome Deposit Corp.*, 323 NLRB 961, 963 (1997). The burden of establishing supervisory status rests on the party asserting that status. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 711 (2001). Conclusory evidence, “without specific explanation that the [disputed person or classification] in fact exercised independent judgment,” does not establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). Similarly, it is an individual’s duties and responsibilities that determine his or her status as a supervisor under the Act, not his or her job title. *New Fern Restorium Co.*, 175 NLRB 871 (1969). Nonstatutory indicia can be used as background evidence on the question of supervisory status but are not themselves dispositive of the issue in the absence of evidence indicating the existence of one of the primary or statutory indications of supervisory status. See *Training School of Vineland*, 332 NLRB 1412 (2000).

The Employer asserts that Riery Carrasco is a supervisor within Section 2(11) of the Act. Therefore, it has the burden to establish Carrasco’s supervisory status. At first glance there appears to be many examples of secondary indicia that Carrasco is a supervisor. However, when examined closely, the evidence is less obvious. Carrasco receives approximately \$9.00 more per hour than the other engineers. Personnel Action Forms show that he received a promotion in January 2011. However, at the time of his promotion he already earned approximately \$6.00 more than any other engineer. He has his own office where he performs administrative work and keeps his tools and personal belongings. But the record is unclear as to how he spends the approximately 40% of his work time performing administrative work. He has an Employer-issued BlackBerry with email capability. But he works alone on the weekend, and may need that extra function. Carrasco is one of three employees in the Hotel with access to all areas and access codes. But an engineer that works alone on the weekend would need access to all areas.

Finally, if Carrasco was determined to be a supervisor, the ratio of supervisors to nonsupervisors would be one supervisor for every two engineers. The ratio of supervisors to rank-and-file employees is a background factor which may enter into Board consideration when resolving a supervisory issue, but it is not itself statutory indicia. *Ken-Crest Services*, 335 NLRB 777 (2001). The schedules provided at hearing show that Carrasco almost never works at the same time as any other engineer. The strongest secondary indicia is that Carrasco is widely referred to as the Engineering Supervisor. All three witnesses referred to Carrasco as a supervisor—those witnesses span from upper management to a member of the maintenance department. Carrasco’s emails include a signature that refers to himself as the Engineering Supervisor. Where the employees looked on the individual in question as a supervisor and “there is a valid basis for such judgment on their part,” this was given some weight in the resolution of the supervisory question. *Bama Co*, 145 NLRB 1141 (1964).

The Employer presented several examples in which it believes Carrasco independently acted with authority on behalf of the Employer, which satisfied one or many of the 2(11) indicia. I will deal with those examples here. First, the Employer presented witnesses to testify regarding Carrasco’s participation in hiring engineers. There is evidence that Carrasco has served as the initial interviewer of several applicants. After the interviews, Carrasco met with Seneviratne to discuss the applicants. Then, either Human Resources or the General Manager interviewed the applicant. The record is unclear regarding exactly what role Carrasco has in hiring, and what role the Engineering Department’s collaborative recommendation plays in the ultimate hiring decision. The record suggests that Carrasco is an initial interviewer to determine technical skill, but his role is only one phase in a several step hiring process. The assessment of an applicant’s technical skill is not an effective recommendation to hire that individual. *Aardvark Post*, 331

NLRB 320 (2000). Nor does the record demonstrate to what degree Carrasco's recommendation is free from the control or superseding of Seneviratne. See *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006). The evidence is insufficient to demonstrate that Carrasco effectively recommended applicants for hire.

As to assignment of work, the testimony is that Seneviratne consults with Carrasco regarding scheduling of employees. The only example provided as to Carrasco's involvement with the scheduling of employees is that Carrasco told Seneviratne that one engineer was incapable of working the weekend shift, and that engineer was not thereafter scheduled for weekend work. Without more detail, it appears Carrasco was merely expressing his opinion on the quality of another engineer's work. Whether Seneviratne had to follow Carrasco's input, or investigate Carrasco's input on his own, is unknown. This example is not sufficient evidence that Carrasco assigns work. Felix Terrazas testified that when he runs out of work he will often seek more work from Carrasco. How often this occurs is unknown, considering that Terrazas and Carrasco's work schedule only overlaps one hour per week. There is little testimony regarding the nature of the assignments, so there is no way of knowing if the assignments are routine in nature.

As to discipline, the record evidence is insufficient to demonstrate that Carrasco effectively recommended an engineer for discipline. The testimony reveals that at some point prior to issuing the discipline, Seneviratne spoke with Carrasco about the engineer. Both the reasons for the discipline and the degree to which Seneviratne sought Carrasco's input are vague. The record is unclear if Carrasco was aware that he was being consulted with the possibility that the engineer would receive discipline. Based on the evidence in the record, at most, Carrasco gave Seneviratne his opinion about the quality of the engineer's work. There is no testimony in

the record regarding if, and to what extent, Seneviratne or Human Resources conducted their own investigation into the engineer's performance before issuing the discipline. Although an individual's duties may include relaying to management complaints against other employees, or reports of inefficiency, if these are investigated independently by higher management, he is not a supervisor within the meaning of the statutory definition. *Pepsi-Cola Bottling Co.*, 154 NLRB 490, 493-494 (1965).

The authority to evaluate is insufficient alone to establish supervisory status if the evaluation does not affect employee status or tenure. *Williamette Industries*, 336 NLRB 743 (2001). Again, the record is unclear regarding the degree to which Carrasco's input affected engineers' wages, hours, or working conditions. There is testimony that Seneviratne speaks with Carrasco prior to completing employee evaluations, but the record has little detail about the nature or significance of Carrasco's input. Also, Seneviratne testified that the evaluations are used to identify areas of improvements or proficiency. There is little testimony about what effect evaluations have on engineers' wages or tenure. Seneviratne stated that Carrasco has recommended that employees receive higher pay raises, but provided no specific examples of an employee receiving a pay raise based to Carrasco's recommendation.

As to responsible direction, the record testimony is that Carrasco requested an engineer to return to work to help Carrasco complete a task. Because the engineer had already worked 40 hours, the job required overtime pay. The engineer went back to work and completed the assignment and received overtime pay. Seneviratne testified that he was not notified about the assignment until after Carrasco requested the employee to return to work. Exactly when Seneviratne was informed is not clear. Nor is it clear if Carrasco requested or required the employee back to work. Seneviratne stated that Carrasco has the authority to assign overtime

when needed, and to choose which engineer he wants to complete the assignment. However, without more detail regarding the project and why Carrasco chose the engineer that he did, the record remains unclear if Carrasco used independent judgment. The record contains testimony that the engineer called into work was a more skilled technician. If he was the only technician capable of performing the task, Carrasco may not have exercised independent judgment. The Board majority in *Oakwood* defined “independent judgment” to be “at a minimum” the authority to “act or effectively recommend action, free of the control of others” and to “form an opinion or evaluation by discerning and comparing data.” 348 NLRB at 692. The record does not make clear if Carrasco was free to decide which engineer would or could complete the project. Further, Seneviratne testified that Carrasco would not have authority to assign overtime to employees beyond a limited number of hours. This one vague and isolated example of Carrasco allegedly directing work and assigning overtime is not sufficient to establish Carrasco is a statutory supervisor. Occasional or isolated instances of actions which might otherwise be indicative of supervisory authority are generally insufficient to predicate a finding of supervisory status. *Volair Contractors, Inc.*, 341 NLRB 673 (2004). Further, Seneviratne testified that if a job was not completed or poorly completed, Carrasco would be held responsible. “For direction to be responsible, the person directing and performing the oversight of the employee must be accountable for the performance of the task by the other such that some adverse consequence may befall the one providing the oversight if the tasks are not performed properly.” *Id.* There is no evidence concerning how Carrasco would be held responsible or if in fact he has in the past been held responsible for the completion or failure to complete a project.

In light of the inconclusive record evidence regarding hiring, assigning work, disciplining, and directing work, I find that the record is unclear as to whether Carrasco is a

supervisor within the meaning of Section 2(11) of the Act. Certainly he is widely regarded as a supervisor by management and employees. His pay is significantly greater than that of other employees, and he has some involvement in supervisory or managerial tasks such as hiring, discipline, and recommending wage increases. Therefore, I direct that Carrasco be permitted to vote under challenge.

B. Appropriateness of the Petitioned-for Unit

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. See, e.g. *Overnite Transportation Co.*, 331 NLRB 662 (2000). There is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act requires only that the unit be "appropriate"; that is, appropriate to insure to employees in each case "the fullest freedom in exercising the rights guaranteed by this Act." *Bartlett Collins Co.*, 334 NLRB 484 (2001). In its analysis of the hotel/motel industry, the Board has often found a maintenance department to be an appropriate unit. See, e.g. *Omni International Hotel*, 283 NLRB 475 (1987). The Board reaffirmed that unit determinations in the hotel/motel industry are made on a case-by-case basis, utilizing the same traditional community-of-interest criteria used in other industries. *Id.*

The facts of *Omni International Hotel* are similar to those in the present case. In *Omni*, the petitioned-for unit was for an engineering department. The engineers were responsible for

the maintenance and repair of the hotel. The engineering department included five general maintenance engineers and one painter. *Id.* The engineers performed many, if not all, of the same maintenance and technical tasks as the engineers in the present case. In holding the maintenance unit an appropriate unit, the Board stated that the employees within the engineering department had common supervision, common work schedules, common wages, and common tasks and work assignments. *Id.*

In the present case, Seneviratne supervises the engineers and painter. He holds departmental meetings in which both classifications are in attendance. He assigns both classifications work assignments. Both classifications are listed on the same schedule; which is listed as the Maintenance Department schedule. The painter has a similar wage rate as the engineers. He wears and carries the same tools; and often works beside engineers and helps them complete their tasks – which are both recorded in the same binder.

Despite the Employer's claim that the engineers and painter are in separate departments, the evidence clearly supports a contrary finding. Seneviratne testified that he does not present himself as supervising two separate departments. Weis' email to Carrasco requested that employees within the Engineering Department complete a survey. Terrazas is listed within the Engineering Department. When asked what department he works in, Terrazas answered that he works in the Engineering Department. And, as stated above, the painter is included on the Engineering Department's work schedule and, at times, works with other Engineering Department employees. Accordingly, I find that the petitioned - for unit is an appropriate unit, and that Terrazas is properly included in the unit and eligible to vote in the election.

C. CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.¹¹
3. The International Union of Operating Engineers, Local 99, is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. There is no prior history of collective bargaining between the Union and the Employer at The Fairfax on Embassy Row, Washington D.C.
6. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time Engineering Department employees
employed by the Employer at The Fairfax at Embassy Row in Washington,

¹¹ The Employer, Pyramid Acquisition II Management LLC d/b/a The Fairfax at Embassy Row, a Massachusetts limited liability company, with an office and place of business in Boston, Massachusetts, and a place of business in Washington, DC, is engaged in the business of providing hotel services, including at The Fairfax at Embassy Row currently located at 2100 Massachusetts Ave NW, Washington, DC, the only location involved in these proceedings. During the past 12 months, a representative period, the Employer, in conducting its business operations described herein, derived gross revenues in excess of \$500,000.

D.C., including engineers and painters, but excluding all office clerical employees, managerial employees, guards, and supervisors as defined in the Act.

D. 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 or not they wish to be represented for purposes of collective bargaining by the International Union of Operating Engineers, Local 99. 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 strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since

the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

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 seven (7) days of the date of the issuance 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.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, Bank of America Center - Tower II, 100 South Charles Street - Suite 600, Baltimore, MD 21201, on or before **January 25, 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 mail, by electronic transmission through the Agency website, www.nlr.gov, or by facsimile transmission at (410) 962-2198. The burden of establishing the timely filing and receipt of this list will continue to be placed on the sending party.

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 a minimum of 3 working days prior to 12:01 a.m. of the day 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.

I. RIGHT TO REQUEST REVIEW

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street NW, Washington, D.C. 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, D.C., by close of business on **February 1, 2013**, unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website **is accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.¹² A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select the E-Gov tab and then click on the E-filing link on the pull down menu. Click on the "File Documents" button under the Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or

¹² A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Issued at Baltimore, Maryland this 18th day of January 2013.

(SEAL)

/s/ Wayne R. Gold

Wayne R. Gold, Regional Director
National Labor Relations Board, Region 5
Bank of America Center - Tower II
100 South Charles Street – Suite 600
Baltimore, Maryland 21201

EXHIBIT B

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

**PYRAMID ACQUISITION II
MANAGEMENT, LLC, d/b/a
THE FAIRFAX AT EMBASSY ROW,**

Employer,

and

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 99,**

Petitioner.

Case No. 05-RC-095207

The above-entitled matter came on for hearing pursuant to notice, before **JOSHUA ROSENBERG**, Hearing Officer, at the **National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20005**, on **Friday, January 4, 2013**, at **9:00 a.m.**

1 MR. ROSENBERG: Presently, it includes six employees.

2 HEARING OFFICER ROSENBERG: Okay. Are there any other
3 issues that the parties have with this petitioned-for unit?

4 MR. ROSENBERG: Not at this time.

5 **HEARING OFFICER ROSENBERG: Okay. All right, off the**
6 **record.**

7 **(Off the record from 9:59 a.m. to 10:00 a.m.)**

8 HEARING OFFICER ROSENBERG: Mr. Rosenberg, would you
9 like to present your evidence first?

10 MR. ROSENBERG: Yes. We call Jan Weis.

11 HEARING OFFICER ROSENBERG: Ms. Weis, can you please
12 come to the stand?

13 (Whereupon,

14

JAN WEIS

15 was called as a witness by and on behalf of the Employer
16 and, after having been duly sworn, was examined and
17 testified as follows:)

18 HEARING OFFICER ROSENBERG: Have a seat. Sir --

19 MR. ROSENBERG: Right, thank you.

20

DIRECT EXAMINATION

21 Q. BY MR. ROSENBERG: Good morning, Jan.

22 A. Good morning.

23 Q. What's your current title?

24 A. I'm the Regional Director of Human Resources, Mid-
25 Atlantic region.

1 Q. For whom?

2 A. Pyramid Hotel Group.

3 Q. And just for the record and for the Hearing Officer's
4 benefit, can you give us all a brief, an explanation of what
5 is Pyramid Hotel Group?

6 A. What is Pyramid Hotel Group?

7 Q. Yeah, what does Pyramid do?

8 A. Hospitality hotels and resorts. We basically manage --
9 a combination of managing resorts, as well as owner/manager.
10 We also have a renovation segment in our company that
11 actually oversees the renovations of Pyramid Hotel Group.
12 And that company handles subcontractors and that kind of
13 thing.

14 Q. When you say manages the hotel, is that a code word for
15 the Employer at the property?

16 A. It operates --

17 Q. Operates.

18 A. -- a hotel regardless of who the owner is. In some
19 cases, the owner might be us or joint ownership. But we are
20 operating the hotel on a daily a basis under a management
21 contract.

22 Q. And as Regional Director of Human Resources, where are
23 your -- what's your role?

24 A. My role is that I am assigned hotels usually in a
25 geographic area. Right now, I'm on the East Coast, and I'm

1 on Cayman Islands. And I am the intermediary, so to speak,
2 between the corporate office and the employees and the
3 managers of each of those hotels. So, I am the person that
4 if there is an issue or an investigation that needs to be
5 discussed for a certain employee or any kind of legal issue,
6 then I'm the person who reviews the information and works
7 through that. If it needs to go to the corporate office,
8 then I make sure everything is appropriate and ready to go,
9 and then I send it there. But I also do audits on hotels to
10 make sure we're in compliance.

11 Q. And do you do -- I mean do you do at the property HR
12 functions?

13 A. Yes.

14 Q. Reviewing applications?

15 A. Right.

16 Q. Reviewing employee files?

17 A. I do.

18 Q. Administration of benefits?

19 A. At my hotel, at Fairfax, I am a co-manager with the
20 director of human resources at that hotel. But because I
21 travel, I'm gone a certain amount of time, but that's my
22 primary home base, if you will.

23 Q. Fairfax is your home base?

24 A. Fairfax is my home base, yeah.

25 Q. And do you recall, Jan, when Pyramid became the operator

1 at the property?

2 A. 2006. I believe it was late summer 2006.

3 Q. And when Pyramid becomes the manager/operator of a
4 hotel, is there a common on-boarding process for the
5 employees?

6 A. Yes. It is very consistent. Typically, in all cases,
7 when we become the manager of a hotel, the prior management
8 company takes with them all the employee files, the training
9 documents. Basically, they remove the human resource
10 department short of anything which was stipulated they have
11 to keep, including payroll records. So during the initial
12 few weeks, we are re-establishing that HR department, so we
13 are having employees fill out applications. We're doing
14 I-9s, doing the documentation. We're looking at their
15 resumes. Basically, we are hiring them. And in most cases
16 without -- with a few exceptions maybe, we hire all
17 employees at the time that we take over the management of
18 the hotel.

19 **(Employer's Exhibit 1 marked for identification.)**

20 Q. BY MR. ROSENBERG: Jan, I just handed you a document
21 marked Respondent 1. Do you recognize what this document
22 is?

23 A. Yes. This is our, if you will call it, a manual
24 application that we give new employees at the time when we
25 take over a management contract.

1 Q. And whose application was this?

2 A. This is Jerry Carrasco.

3 Q. And what is, well, let's see, and what position was
4 Jerry applying for or --

5 A. Engineer.

6 Q. And was he an existing employee --

7 A. Yes.

8 Q. -- when you became the operator at the hotel?

9 A. Yes. So this is an example. We also have automated HR
10 applications, but we don't go that route when we're handling
11 a management contract.

12 HEARING OFFICER ROSENBERG: Are there any objections to
13 the receipt of Exhibit Respondent R-1 or Employer 1 into the
14 record?

15 MR. CLIFFORD: None.

16 HEARING OFFICER ROSENBERG: Okay. Exhibit Employer 1 is
17 received into evidence.

18 **(Employer's Exhibit 1 received in evidence.)**

19 Q. BY MR. ROSENBERG: Jan, I've just handed you a document
20 labeled --

21 A. I actually didn't get one.

22 Q. What's that?

23 A. I didn't get one.

24 Q. Oh, I didn't give you one, sorry.

25 A. Everyone but me. Okay.

1 (Employer's Exhibit 2 marked for identification.)

2 Q. BY MR. ROSENBERG: I handed you a document entitled
3 Respondent 2. Do you recognize what that document is?

4 A. Yeah, this is a Personnel Action Form. It is kind of an
5 all-purpose form that we use when we, as you can see across
6 the top it is a new hire form to record all pertinent
7 information. It goes into the HR system.

8 Q. Right.

9 A. If the person transferred or if they change, have a
10 change for any reason, whether it is a personal address or
11 in this case it is a salary change because of a promotion.

12 Q. Okay. So let's back up. So up on top, it said there is
13 a change there. The X box is change. Who is that referring
14 to?

15 A. That's referring to Jerry Carrasco.

16 Q. Okay. And what was the change here?

17 A. He was promoted to the engineer supervisor.

18 Q. So he was promoted then from a basic engineer to an
19 engineering supervisor?

20 A. Right.

21 Q. Is that the formal change that took place?

22 A. Yes.

23 Q. And with that, did he receive a pay raise?

24 A. Yes.

25 Q. And so with, okay, and is that your signature then on

1 the bottom of the page?

2 A. Yes, it is.

3 MR. ROSENBERG: Move Respondent 2 into evidence.

4 HEARING OFFICER ROSENBERG: Are there any objections
5 with regard to receiving Exhibit Employer 2 into the record?

6 MR. CLIFFORD: There are no objections.

7 HEARING OFFICER ROSENBERG: Exhibit Employer 2 is
8 received into evidence.

9 **(Employer's Exhibit 2 received in evidence.)**

10 THE WITNESS: I didn't get one again.

11 **(Employer's Exhibit 3 marked for identification.)**

12 Q. BY MR. ROSENBERG: Jan, I just handed you another
13 document marked Respondent 3. Do you recognize what that
14 is?

15 A. Yes.

16 Q. What is it?

17 A. That's another change form on Jerry, and it is taking
18 his salary from \$28.13 to \$28.83 per hour.

19 Q. And under the -- if we look down on the page, there is a
20 reason why this took place under the comments. What was
21 that reason for?

22 A. Promotion to supervisor.

23 Q. And then with this promotion to supervisor, did he,
24 Jerry, receive an office?

25 A. Yes.

1 Q. Do other engineers in the department have an office?

2 A. No.

3 MR. ROSENBERG: Move Respondent 3 into evidence, please.

4 HEARING OFFICER ROSENBERG: Any objections to moving --

5 MR. CLIFFORD: None, none.

6 HEARING OFFICER ROSENBERG: -- Employer 3 into evidence?

7 Exhibit Employer 3 is received into evidence.

8 **(Employer's Exhibit 3 received in evidence.)**

9 HEARING OFFICER ROSENBERG: Ms. Weis, before Carrasco
10 had his own office, what was his working space?

11 THE WITNESS: He was in the engineer office.

12 HEARING OFFICER ROSENBERG: And --

13 THE WITNESS: As an engineer. The engineers share an
14 office area.

15 HEARING OFFICER ROSENBERG: So everyone who is broadly
16 called an engineer will all work --

17 THE WITNESS: Right, they have a --

18 HEARING OFFICER ROSENBERG: Where is that office?

19 THE WITNESS: It is the engineer department, if you
20 will. It is not really an office.

21 Q. BY MR. ROSENBERG: Yeah, so just to, I mean so we don't
22 get off track, the Hearing Officer just asked you what the
23 other work, the other engineers' workspace is, I think is
24 what the Hearing Officer is asking.

25 HEARING OFFICER ROSENBERG: That's correct.

1 Q. And it shows salary. Now, how often are the engineers
2 or any of your employees, how often are the engineers paid?

3 A. They are paid weekly.

4 Q. Based off of how many hours?

5 A. Forty.

6 Q. So Jerry's salary then right now that's pay period
7 \$1,153/20, that's to compute his hourly rate, we would do
8 \$1,153 divided by 40?

9 A. Right.

10 Q. And then so his rate is -- now if you take a look at
11 Exhibit 3, which I had handed to you, then matches up --
12 does it match up then to \$28.83?

13 A. Yes, it does.

14 Q. And what does the -- it says on the left-hand side
15 there, it says 6044, what does the 44 stand for?

16 A. That's the number for the engineer department.

17 Q. Okay.

18 MR. ROSENBERG: Move Exhibit 4 into evidence, please?

19 HEARING OFFICER ROSENBERG: Any objections to moving
20 Employer Exhibit 4 into evidence?

21 MR. CLIFFORD: No, none.

22 HEARING OFFICER ROSENBERG: Employer Exhibit 4 is
23 received into evidence.

24 **(Employer's Exhibit 4 received in evidence.)**

25 MR. ROSENBERG: Jan, I just handed you another document

1 title Respondent's Exhibit 5.

2 **(Employer's Exhibit 5 marked for identification.)**

3 Q. BY MR. ROSENBERG: Do you recognize what this document
4 is?

5 A. Yes.

6 Q. And can you explain to the Hearing Officer what it is?

7 A. This is the hotel's internal primary contact list of
8 managers that all of us get and all of us use on a daily
9 basis.

10 Q. And how did you receive this document?

11 A. This comes out of the executive office.

12 Q. Okay.

13 A. Mainly because the executive office oversees the
14 assignment of telephone extension and they track this.

15 Q. What do you mean by the executive office?

16 A. Our general manager and his executive assistant produced
17 this.

18 Q. So everybody -- is everyone on this list where there is
19 a name attached to someone considered a manager?

20 A. Yes.

21 Q. And is this posted around -- is this public knowledge
22 around the hotel?

23 A. Yes.

24 MR. ROSENBERG: Move Exhibit 5 into evidence, please.

25 HEARING OFFICER ROSENBERG: Any objections to --

1 MR. CLIFFORD: No objections to Exhibit 5.

2 HEARING OFFICER ROSENBERG: Employer Exhibit 5 is
3 received into evidence.

4 **(Employer's Exhibit 5 received in evidence.)**

5 MR. ROSENBERG: Okay. Jan, I just handed you another
6 document entitled Respondent's Exhibit 6.

7 **(Employer's Exhibit 6 marked for identification.)**

8 Q. BY MR. ROSENBERG: Do you recognize this document?

9 A. I do.

10 Q. What is it?

11 A. This is an email from me concerning the employee opinion
12 survey that we conduct every six months. We ask that all
13 employees come to a specified room. And it is one online.
14 We ask that they all come in. They sign and we track that
15 they have done the survey. It is all very confidential.
16 This is my email to the management team of individuals who
17 have employees who had not come to that.

18 On this very last group, you'll see engineering. And we
19 had three engineers who had not yet taken the survey. And
20 we wanted them to please come up and do that.

21 Q. So moving, just so we understand who some of the people
22 on this email distribution list is, who is Karl, and if I
23 mispronounce anyone's name just let me know, Karl Radergard?

24 A. He is the sous chef.

25 Q. He is the sous chef. And what about Verena Koelbl?

- 1 A. At that time, she was the front office manager.
- 2 Q. And what about George Fassiadis?
- 3 A. Chef.
- 4 Q. Gerard or G. Folly?
- 5 A. Gerard is our director of rooms.
- 6 Q. Okay. So everyone on this list, this distribution list,
7 is considered a manager?
- 8 A. Yes.
- 9 Q. And moving one, two, three, four lines down on the
10 distribution list, it says rcarrasco@pyramidhotelgroup.com.
11 Who is that?
- 12 A. That's Jerry.
- 13 Q. And by --
- 14 A. Our supervisors.
- 15 Q. Jerry, the same individual we've been talking about?
- 16 A. Right, yes, exactly.
- 17 Q. Okay. Do other engineers have an email? This says
18 rcarrasco@pyramidhotelgroup.com. When you hire engineers
19 into the department, do they get an email address assigned
20 to them?
- 21 A. No.
- 22 MR. ROSENBERG: Move Exhibit 6 into evidence, please?
- 23 HEARING OFFICER ROSENBERG: Any objections to --
- 24 MR. CLIFFORD: No objections to Exhibit 6.
- 25 MR. ROSENBERG: Jan, if you could just take a look back

1 at exhibit --

2 HEARING OFFICER ROSENBERG: Sorry, Employer's Exhibit 6
3 is received into evidence.

4 **(Employer's Exhibit 6 received in evidence.)**

5 Q. BY MR. ROSENBERG: If you can just take a look back at
6 Exhibit 5, at Respondent's 5?

7 A. Okay.

8 Q. And if you can look down, if you can look down about
9 halfway through the page underneath where it says
10 engineering, who are the two individuals under engineering?

11 A. The two point people would be the Director of
12 Facilities.

13 Q. And who is that?

14 A. Asoka.

15 Q. Okay.

16 A. And Jerry, who is the engineering supervisor.

17 Q. Okay. And any other individuals from the engineering
18 department on this list?

19 A. No.

20 Q. No, okay.

21 MR. ROSENBERG: Can we just go off the record for one
22 second?

23 **(Off the record from 10:18 a.m. to 10:18 a.m.)**

24 MR. ROSENBERG: Jan, I just handed you a document titled
25 Respondent 7.

1 is \$20 per hour.

2 A. Yes.

3 Q. Does that sound about right, Jan?

4 A. Yes.

5 Q. So he's at \$20 per hour. And Jerry's pay rate was
6 \$28.83. Why does Jerry have such a higher pay rate than the
7 other individuals?

8 A. Because he has more responsibility and he has more
9 authority.

10 Q. Okay. And then I'm going to hand you another document
11 here.

12 **(Employer's Exhibit 9 marked for identification.)**

13 Q. BY MR. ROSENBERG: I just handed you another document
14 titled Respondent 9. Do you recognize this document?

15 A. Yes. This is a report that comes out of our payroll
16 system that we can produce for an individual or for a group
17 of people.

18 Q. And who does this report correspond to?

19 A. Jerry Carrasco.

20 Q. And so does this -- what does this report tell us about
21 Jerry?

22 A. This comes out of the database's history file, so all
23 history is say within the system so that we can go back and
24 take a look at the progression of salary. And in this case,
25 it shows what he was hired at.

- 1 Q. Okay. So if we look down here, it says on 9/11/2006,
2 new hire. His rate was \$23.
- 3 A. Yes, it was.
- 4 Q. Is that correct?
- 5 A. Yes.
- 6 Q. Does this reflect what his rate was at the property
7 prior to 2006?
- 8 A. Right. This reflects what the prior management company
9 was paying him, so yes.
- 10 Q. So this reflects, this reflects his rate when Pyramid
11 became the manager --
- 12 A. Right.
- 13 Q. -- at the property?
- 14 A. Right.
- 15 Q. Does it reflect his rate upon hire at the hotel?
- 16 A. No, but I would not know what that is.
- 17 Q. Right, right. Okay.
- 18 MR. ROSENBERG: Move Exhibit 9 into evidence, please.
- 19 HEARING OFFICER ROSENBERG: Are there any objections to
20 movement of Exhibit 9 --
- 21 MR. CLIFFORD: There are none.
- 22 HEARING OFFICER ROSENBERG: -- into evidence? All
23 right, Employer Exhibit 9 is received into evidence.
- 24 **(Employer's Exhibit 9 received in evidence.)**
- 25 Q. BY MR. ROSENBERG: And then if we can go back, please,

1 A. Yes.

2 Q. We've already talked about him. He's the painter?

3 A. Yes.

4 Q. And if you look at Exhibit 8, Edgardo Ayala and
5 Edwin Banzuelo do not appear on the painter department
6 sheet.

7 A. Right.

8 Q. Thank you.

9 A. Correct.

10 Q. Thanks, Jan.

11 MR. ROSENBERG: Nothing further.

12 HEARING OFFICER ROSENBERG: Ms. Weis, if I could direct
13 you to Exhibit 5, Employer Exhibit 5.

14 THE WITNESS: Yes.

15 HEARING OFFICER ROSENBERG: You suggested that this is a
16 sheet that you might use to contact various individuals
17 including Mr. Carrasco, right?

18 THE WITNESS: Yes.

19 HEARING OFFICER ROSENBERG: What in the recent past have
20 you contacted Mr. Carrasco for? Has there been -- give us
21 an example of what you might contact him for?

22 THE WITNESS: Quite often we might call/contact Jerry
23 for access to our HR department. We have a lot of
24 confidential records so very few people have access to that
25 department. And if I can't -- if I lose my key, he or Asoka

1 are the only two people that could get me into that
2 department. No one else can do that.

3 HEARING OFFICER ROSENBERG: In your role as an HR
4 director, is there anything that you work together with
5 Carrasco on with regard to personnel issues?

6 THE WITNESS: Not really.

7 HEARING OFFICER ROSENBERG: Anything in regard to hiring
8 perhaps or discipline?

9 THE WITNESS: Input.

10 HEARING OFFICER ROSENBERG: Input. Can you describe
11 what you mean, like state an example?

12 THE WITNESS: If we -- we've done so little hiring, but
13 if we were interviewing a new engineer, for instance, or
14 asking for, for instance, we want to network and get
15 applications for an engineer, Jerry is one of those people
16 that would say this is a really good person, you might want
17 to look at that individual, the same as Asoka would.

18 HEARING OFFICER ROSENBERG: When was the last time that
19 Mr. Carrasco gave you such a recommendation or input as you
20 put it?

21 THE WITNESS: Probably would have been --

22 MR. ROSENBERG: If I can interject here for a second?

23 HEARING OFFICER ROSENBERG: Let her answer it first.

24 MR. ROSENBERG: Well, but you're not, there is -- okay,
25 go ahead.

1 THE WITNESS: I would say possibly Felix.

2 HEARING OFFICER ROSENBERG: Okay. Felix Terrazas?

3 THE WITNESS: Yes.

4 HEARING OFFICER ROSENBERG: And when was this?

5 THE WITNESS: I couldn't tell you.

6 HEARING OFFICER ROSENBERG: What was Carrasco's role in
7 giving input? Did you seek his input? Did he contact you?

8 THE WITNESS: I believe he contacted us, saying this is
9 a very good person; you need to look at them.

10 HEARING OFFICER ROSENBERG: Would you call that a
11 standard means by which one gets hired into this department
12 that Carrasco would contact you and recommend an individual?

13 THE WITNESS: I mean if that's standard. It probably
14 happened once or twice.

15 MR. ROSENBERG: Let me ask a couple of questions --

16 HEARING OFFICER ROSENBERG: Go ahead.

17 MR. ROSENBERG: -- on that.

18 Q. BY MR. ROSENBERG: Jan, the Hearing Officer is asking
19 you some questions about the hiring process.

20 A. Right.

21 Q. Would it be in your experience as director of human
22 resources throughout the hotel, would it be standard for if
23 there is -- are there certain departments which have more
24 than one supervisor?

25 A. Yes.

1 Q. Would you ask Edwin, hey, I think we need more people;
2 which would you recommend? Would you ask him that?

3 A. No.

4 Q. The next person on there is Milton, and I'm sorry, I
5 don't know --

6 A. Mejia.

7 Q. Right. Would you ask Milton, hey, Milton, how is James
8 doing today? What kind of work is he doing? Would you ask
9 Milton, Milton, I think we need to hire someone else, the
10 department is running a little slow, what do you think?

11 A. No.

12 Q. So you wouldn't go to Milton with that. You would go to
13 Jerry with all those types of questions?

14 A. Yes.

15 Q. Thanks.

16 HEARING OFFICER ROSENBERG: In spite of what
17 Mr. Rosenberg said, would you --

18 MR. ROSENBERG: Well, it is not in spite of. It is on
19 the record.

20 HEARING OFFICER ROSENBERG: Sure. So in the context of
21 what Mr. Rosenberg said, would you say that you regard
22 Asoka's input higher than Carrasco's? Or would you say that
23 they're equal, or is it some other sort of way that you
24 entertain it?

25 THE WITNESS: I'm looking at Asoka as the chief engineer

1 and director of the department. I'm looking at those two
2 individuals as collaborating on running the department. I
3 can't, I can't answer that question. I mean it is --

4 HEARING OFFICER ROSENBERG: Have you ever had a
5 situation where the two were consulted over a personnel
6 decision and they disagreed?

7 THE WITNESS: No.

8 HEARING OFFICER ROSENBERG: Have you ever had a
9 situation in which the two were consulted and they agreed?

10 THE WITNESS: Yes.

11 HEARING OFFICER ROSENBERG: Okay. And they were both
12 consulted individually, separately?

13 THE WITNESS: I don't really remember. I believe they
14 were.

15 Q. BY MR. ROSENBERG: Jan, Asoka is the director of the
16 facility. Is his -- does he look over both the painting
17 department and the engineering department?

18 A. Yes.

19 Q. Jerry, would he look over the painting department?

20 A. I think Jerry's primary focus is engineering.

21 HEARING OFFICER ROSENBERG: Would you say there is a
22 painting department? There is one painter, correct?

23 THE WITNESS: Yes.

24 HEARING OFFICER ROSENBERG: Okay. Would you regard it
25 as a separate department?

1 A. As opposed to everyone?

2 Q. Yeah, as opposed to everyone.

3 A. We have no need. I mean you've got an email address to
4 contact people for important reasons and for vendors to
5 contact them.

6 HEARING OFFICER ROSENBERG: Can you describe what those
7 important reasons might be?

8 THE WITNESS: Well, just like my email that I sent out
9 saying I need to get a hold of people to do the survey.

10 Q. BY MR. ROSENBERG: So you give them email addresses
11 because they're held accountable?

12 A. Yeah, they're held accountable. They need to be
13 contacted. They have a role that necessitates them, for
14 instance, in engineering I know that vendor contact is
15 important.

16 Q. So let's take a look at Respondent's 6, right, your
17 email about --

18 A. Right.

19 Q. -- the employee opinion survey.

20 A. Exactly, that's a perfect example.

21 HEARING OFFICER ROSENBERG: If I may speak --

22 MR. ROSENBERG: No, no, let me finish, please.

23 HEARING OFFICER ROSENBERG: Hold on. It is on that
24 matter.

25 MR. ROSENBERG: But might I finish, please? Thank you.

1 HEARING OFFICER ROSENBERG: So --

2 MR. ROSENBERG: Let me finish, please. I'm in the
3 middle of a thought. Let me finish.

4 Q. BY MR. ROSENBERG: If you take a look at Respondent 6,
5 you send an email out that Asoka and Jerry were on, that you
6 wanted Edgardo, Edwin, and Felix to fill out the employee
7 opinion survey. If Edgardo, Edwin, and Felix don't fill out
8 the employee opinion survey, would you hold Jerry
9 accountable for their failure to come complete the survey?

10 HEARING OFFICER ROSENBERG: What does it mean to hold
11 them accountable?

12 MR. ROSENBERG: Let her answer the question.

13 HEARING OFFICER ROSENBERG: Oh, sorry. You have to say
14 something. You can't nod.

15 Q. BY MR. ROSENBERG: Yeah, answer the question yes or no.

16 A. Yes.

17 Q. Yes, so you would hold him accountable. For the record,
18 what does that mean holding him accountable?

19 A. I would have expected that he and Asoka would get a hold
20 of these individuals and tell them how important it was to
21 do the survey. And I would follow up with them if they had
22 gotten a hold of them.

23 HEARING OFFICER ROSENBERG: Other than emails like
24 pertaining to employee surveys, what other types of emails
25 might you send to Carrasco or Asoka dealing with personnel

1 call in from those two individuals.

2 In some cases, they already have an individual that they
3 together know would be a good candidate. They ask them to
4 apply.

5 HEARING OFFICER ROSENBERG: Who is they?

6 THE WITNESS: Jerry and Asoka.

7 HEARING OFFICER ROSENBERG: Okay.

8 THE WITNESS: That individual applies and they will tell
9 us. We'll look to see if this individual applied. We want
10 to see the résumé, we'll bring that up. They do the
11 interviews. At that point, they make a determination
12 collaboratively and probably with Stephen Johnston because
13 Stephen is our GM and he wants to see any employee that we
14 hire, that this is the individual we would like to hire. He
15 actually -- Stephen actually does an interview with the
16 individual as well.

17 We then go to the process of doing a background check, a
18 predictive index on the individual. We check references,
19 meaning we, meaning HR, the HRD does. If all of that
20 clears, then we let people know -- we do a drug test as
21 well. Once all of that documentation clears, then the job
22 offer is made.

23 HEARING OFFICER ROSENBERG: Is there anything that --

24 MR. ROSENBERG: You do that -- I'm sorry.

25 HEARING OFFICER ROSENBERG: Sorry.

1 stages, suppose Carrasco were to change his mind to deviate
2 from the recommendation that he and Asoka collaboratively
3 came to and if Carrasco were just to contact you independent
4 of Asoka, first of all, has that ever happened?

5 THE WITNESS: No.

6 HEARING OFFICER ROSENBERG: If it were to happen, how
7 would you treat Carrasco's input?

8 THE WITNESS: I would take it seriously. I would go to
9 Asoka. I would say, all right, we need to talk about this,
10 maybe even talk to Stephen about it.

11 HEARING OFFICER ROSENBERG: Would you --

12 THE WITNESS: It could be it could alter the decision.

13 HEARING OFFICER ROSENBERG: Would you ever not go to
14 Asoka in that situation?

15 THE WITNESS: No.

16 HEARING OFFICER ROSENBERG: So any time Carrasco's
17 input -- any time Carrasco would give input in the hiring
18 process, you would always follow up with Asoka to get
19 Asoka's opinion, as well?

20 THE WITNESS: I'm not going to independently act, even
21 if Asoka came to me or any other director came to me and
22 said I have serious concern. I'm not taking anyone's word.

23 HEARING OFFICER ROSENBERG: But what if Asoka just came
24 to you individually and it just so happened that Carrasco
25 didn't collaborate with him for whatever reason.

1 (Whereupon,

2

ASOKA SENEVIRATNE

3 was called as a witness by and on behalf of the Employer
4 and, after having been duly sworn, was examined and
5 testified as follows:)

6 HEARING OFFICER ROSENBERG: Be seated. Can you state
7 your name for the record, sir?

8 MR. ROSENBERG: By the way, can we go off the record?

9 HEARING OFFICER ROSENBERG: Off the record.

10 (Off the record from 12:23 p.m. to 12:23 p.m.)

11 HEARING OFFICER ROSENBERG: Okay, sir, can you state
12 your name for the record?

13 THE WITNESS: Yes.

14 HEARING OFFICER ROSENBERG: And spell it out?

15 THE WITNESS: Sure. My first name is Asoka, A-s-o-k-a.
16 My last name goes like Seneviratne, S-e-n-e-v-i-r-a-t-n-e.

17 HEARING OFFICER ROSENBERG: Okay.

18

DIRECT EXAMINATION

19 Q. BY MR. ROSENBERG: Good afternoon, Asoka.

20 A. Good afternoon, sir.

21 Q. Asoka, where do you presently work?

22 A. At The Fairfax at Embassy Row.

23 Q. And what is your position there?

24 A. The Director of Facilities.

25 Q. And what is your -- what do you do as Director of

1 Facilities?

2 A. I basically oversee the engineering department with the
3 responsibility of maintaining and upkeeping the hotel
4 building, the property, and the machinery within.

5 Q. And what's your background in terms of the engineering
6 field?

7 A. Well, qualifications-wise, I have academic
8 qualification. I have a bachelor's degree in mechanical
9 engineering going back to about 25 years ago. And I do have
10 a master's license in HVAC.

11 Q. And what does that mean?

12 A. That's a tradesman's qualifications to certify that I
13 have reached a certain level of competence on heating,
14 ventilation, and air conditioning, and refrigeration
15 machinery. And I do have over 25 years of experience, most
16 of which is hands-on. I have a background as, first as a
17 marine engineer on ships, and then as a refrigeration/air
18 conditioning, and then later as a building engineer.

19 Q. How long have you been at The Fairfax?

20 A. I joined The Fairfax on the 6th of December 2010.

21 Q. Where were you before that?

22 A. I was at the Kimpton Hotels for five years in
23 Washington, D.C.

24 MR. CLIFFORD: Kimpton?

25 THE WITNESS: Kimpton, yes.

1 Q. BY MR. ROSENBERG: And can you describe to the Hearing
2 Officer the different types of, the different types of
3 employees that you supervise?

4 A. Would you repeat that question, sir?

5 Q. How is your department structured?

6 A. Well, you basically, you could say that the department
7 has the head, obviously is me, and then two groups of
8 employees in the department. One can be categorized as
9 maintenance employees, which involves like handyman quality,
10 handyman --

11 Q. So you know what, if you could, well, sorry to
12 interrupt. If you can just put in front of you --

13 HEARING OFFICER ROSENBERG: Can you let the witness
14 answer that question?

15 MR. ROSENBERG: I'm going to make it a little easier for
16 him.

17 HEARING OFFICER ROSENBERG: Okay, sure.

18 Q. BY MR. ROSENBERG: Can you put in front of you the
19 payroll report, please? Take and put in front of you
20 Respondent's Exhibit 4.

21 A. Number 4?

22 Q. Yeah. All right, so now let's go back a little bit.
23 What types of employees, how is your department organized?

24 A. There is one group who is just maintenance work. And
25 the other group, they will do more technically arranged

1 MR. ROSENBERG: Okay. Sure. Well, what do the -- well,
2 why don't we do it this way, let's take the --

3 HEARING OFFICER ROSENBERG: Well, no, let --

4 MR. ROSENBERG: Sir, I'm asking the questions and then
5 you can interrupt.

6 HEARING OFFICER ROSENBERG: Well, I am the Hearing
7 Officer. And I'm really just having him answer one of your
8 questions.

9 MR. ROSENBERG: Okay. Let me, let me conduct the direct
10 examination and then you may ask your questions, okay?

11 Q. BY MR. ROSENBERG: What would James, James Bell, where
12 would he fall in?

13 A. Definitely in the maintenance category.

14 Q. As a maintenance employee, what does he do?

15 A. He's expected to do room calls from the guests. When a
16 guest has issue in the room, the guest would call the
17 telephone operator and the telephone operator will call the
18 engineer on duty, on the radio. And it could be anything
19 arranging from a stopped toilet, to a non-working TV, or to
20 a flood in the room.

21 Q. And then what about Edgardo Ayala?

22 A. Edgardo is in the same category. However, he is not in
23 the maintenance category. I take it back. He is in the
24 more -- I would say Edgardo is a mixture of maintenance and
25 technical.

1 Q. Okay. And when you say technical, what do you mean by
2 that?

3 A. For example, Edgardo can be, can do work in mechanical
4 HVAC machinery up to a point without supervision.

5 Q. Okay. Can you give some examples of what you mean by
6 mechanical?

7 A. For example, Edgardo can replace a thermostat in a room
8 or in a back of the house area. He can run a pipeline,
9 probably copper pipeline or PVC pipeline. And then he can
10 with an electric meter troubleshoot control problems in the
11 machinery.

12 Q. And near the top, at the beginning, you said you had an
13 HVAC license.

14 A. Yes, I do.

15 Q. Does Edgardo have an HVAC license?

16 A. Edgardo has a certain level of HVAC license. He does
17 have what we call a CFC Type 1 and Type 2 license.

18 Q. And what does CFC stand for?

19 A. I think it is, it is a CFC, it is a mandatory
20 qualification required by the EPA. Without the CFC license,
21 you are not legally authorized to handle refrigerants.

22 Q. I see.

23 MR. CLIFFORD: Fluorocarbons.

24 HEARING OFFICER ROSENBERG: Is that chlorofluorocarbons?

25 MR. CLIFFORD: Yeah.

- 1 HEARING OFFICER ROSENBERG: Okay.
- 2 MR. ROSENBERG: Thank you.
- 3 Q. BY MR. ROSENBERG: And do you have a CFC license?
- 4 A. I do have a universal CFC license obtained in 1990 --
- 5 mid '90s, yeah.
- 6 Q. All right.
- 7 A. Mid '90s.
- 8 Q. Edwin Banzuelo.
- 9 A. Yes.
- 10 Q. How would -- where would he fall in this structure?
- 11 A. He would be in the maintenance category, yes.
- 12 Q. So do Edwin and James each fall in the maintenance
- 13 category?
- 14 A. In the same category, yes.
- 15 Q. Do they have the HVAC licenses?
- 16 A. They do not.
- 17 Q. Do they have the CFC licenses?
- 18 A. They do not.
- 19 Q. And then what about Milton?
- 20 A. Milton is in the same category. However, I would give
- 21 him a little bit more inclination towards technical.
- 22 Q. A little bit more.
- 23 A. Yes.
- 24 Q. Okay. And then what about Felix?
- 25 A. Felix is in neither of those categories. He is in a

- 1 A. If ever, he will just do minor touch-ups when Felix is
2 on vacation.
- 3 Q. So what's the difference between a touch-up and
4 painting, of painting work?
- 5 A. A touch-up is that you walk into a room, you see a minor
6 scuff mark on the paint work.
- 7 Q. Right.
- 8 A. And that's not acceptable for a new incoming guest, so
9 we try to keep up on top of them.
- 10 Q. Okay.
- 11 A. So when they go to do room PM, if they see a touch-up,
12 they call. If they see something more than a touch-up, they
13 usually call Felix. They are calling Felix.
- 14 Q. All right, okay, great. Now, I want to talk a little
15 bit about Jerry.
- 16 A. Yes.
- 17 Q. What role does Jerry have in the department?
- 18 A. Jerry is my right-hand man, to put it shortly. And
19 every decision I get in the department, technically or
20 administratively, I talk to Jerry. I get his feedback
21 almost every time.
- 22 Q. Okay. Do you -- let's go back a little bit. Ms. Weis
23 testified earlier that January 2011, he -- Jerry was
24 promoted to a supervisory position.
- 25 A. Yes, he was.

1 Q. Do you recall when that -- do you recall him being
2 promoted?

3 A. Absolutely, yes.

4 Q. Can you talk a little bit about the reasons why he was
5 promoted?

6 A. Right. This happened approximately a month or two
7 months from the time I joined the company. We had a
8 supervisor at the time who left our employment and then a
9 vacancy arose to fill that position. And given Jerry's
10 background, given Jerry's experience in the hotel, the
11 number of years, Jerry was the best choice to be considered
12 for that position.

13 Q. You said his background. What type of background?

14 A. He did have a strong technical background in HVAC and
15 refrigeration, and a mechanical background. And he was also
16 a chief engineer for another hotel.

17 Q. So if you can pull up Respondent 1 for a moment, please.

18 A. Yes.

19 Q. It says previous employment, the page -- second page
20 says previous employment history.

21 A. Right.

22 Q. You said he was chief engineer. Where is he chief
23 engineer at?

24 A. I believe he's a chief engineer at -- I'm trying to
25 remember the name.

1 Q. Is it either the Days Inn?

2 A. It is in Washington, D.C. It is -- I'm so sorry. It
3 doesn't come --

4 Q. That's okay, no problem. Do you think it may be the
5 Days Inn?

6 A. It is not the Days Inn.

7 Q. Okay. All right, but he was chief engineer somewhere
8 else?

9 A. Yes. I'm just trying to remember the name of the hotel.

10 Q. Is it the Georgetown Inn?

11 A. It is Georgetown Inn, yes.

12 Q. Okay. And what about his certifications and technical
13 background?

14 A. You know when I joined the hotel, I talked with Jerry
15 quite often, when Jerry was already corporate engineer. And
16 Jerry told me that he just have a CFC license. I believe he
17 told me he has universal. And he does say he has attended
18 various HVAC courses.

19 Q. Okay.

20 A. Now, he was the man who was handling all HVAC-related
21 matters in the hotel.

22 Q. What about working on the boiler, did he work on the
23 boiler?

24 A. He can do up to a point. He can troubleshoot basic
25 issues.

1 Q. Can he do more on the boiler than others in the
2 department?

3 A. Absolutely.

4 Q. So when he was promoted to supervisor --

5 A. Yes.

6 Q. What sort of expectations did you have for him in that
7 role?

8 A. Well, I expected him to be the person in between me and
9 the rest of the department personnel-wise, and take some of
10 the weight off me on the technical issues and the personnel
11 issues.

12 **(Employer's Exhibit 12 marked for identification.)**

13 Q. BY MR. ROSENBERG: Asoka, do you -- I just handed you a
14 document labeled Employer 12. Do you recognize that
15 document?

16 A. Yes, I do.

17 Q. And if you can tell us what is that?

18 A. This is the annual employee evaluation done by the
19 department head on Jerry last year.

20 Q. Okay. And in terms of the last page, it says signature
21 of reviewer, who is that? Whose signature is that, do you
22 know?

23 A. That's me.

24 Q. That's your signature?

25 A. Yes.

- 1 Q. Okay. And the title engineering supervisor facility,
2 that's your -- that's you signing that?
- 3 A. Yes. Jerry has signed as engineering supervisor, and I
4 have signed as Director of Facilities.
- 5 Q. Right, okay. Now, if you turn to the second to the last
6 page.
- 7 A. Yes.
- 8 Q. Where it says set goals for improvement needed?
- 9 A. Yes.
- 10 Q. The very first sentence there says as the engineering
11 department supervisor, I would like to see Jerry take more
12 ownership, solving technical problems to a conclusion.
- 13 A. Yes.
- 14 Q. Can you tell us what do you mean by that when you're
15 saying something you want him to improve upon as the
16 supervisor?
- 17 A. Right. So we come across a problem with let's say a
18 refrigeration everything, a walk-in cooler. And it will not
19 maintain the temperature. And Jerry will come and tell me,
20 Asoka, the compressor is going off on high head pressure.
21 Then I will say, okay, maybe the condenser is clogged or
22 maybe temperature of the condenser water is too high. And
23 Jerry will come back and say the water is fine, temperature
24 is good, it is about 75, and the head pressure is nearly 300
25 psi. And I will say, well, Jerry, can you find out why it

1 is, why it is doing that, because a multiple of reasons why
2 it is doing that, to eliminate the easy ones first. But
3 sometimes I witness with Jerry that he would not go to the
4 next level to conclude that problem to completion.

5 Q. So does Edgar work on the condenser?

6 A. He does to a much lesser degree.

7 Q. Right, but he does work --

8 A. He does.

9 Q. He does work on the condenser. So you expect Jerry, if
10 Edgar doesn't do something right on the condenser and Jerry
11 sees that, to come to you and tell you about it?

12 A. Absolutely.

13 Q. And if Jerry doesn't take -- you expect Jerry to take
14 responsibility.

15 A. Absolutely.

16 Q. So you would hold Jerry accountable --

17 A. Yes, I would.

18 Q. -- if Edgar doesn't fully --

19 A. Yes.

20 Q. -- do what you expect on the condenser.

21 A. The accountability I hold with Jerry for that job would
22 be on a higher level.

23 Q. Right.

24 A. Than to Edgar.

25 Q. Do you hold him -- now, would you hold James to that

1 same standard?

2 A. I would not.

3 Q. Okay. All right, so then scrolling down there it says
4 under your summary comments, since Jerry is a supervisor --

5 A. Right.

6 Q. -- his responsibilities are higher than a shift
7 engineer.

8 A. Sure.

9 Q. Again, what do you mean by that when you say
10 responsibilities?

11 A. When it comes to a technical issue like a boiler
12 stopped, or a chiller stopped, or a toilet is not running,
13 Jerry is the first responder.

14 Q. Okay. All right.

15 MR. ROSENBERG: I'd like to move Exhibit 12 into
16 evidence, please.

17 HEARING OFFICER ROSENBERG: Are there any objections to
18 the receipt --

19 MR. CLIFFORD: No.

20 HEARING OFFICER ROSENBERG: -- of Employer's Exhibit 12
21 into evidence?

22 MR. CLIFFORD: No.

23 HEARING OFFICER ROSENBERG: All right, Employer
24 Exhibit 12 is received into evidence.

25 **(Employer's Exhibit 12 received in evidence.)**

1 Q. BY MR. ROSENBERG: Asoka, do you meet -- do you and
2 Jerry have weekly meetings to talk about the department?

3 A. Yes, we do.

4 Q. Tell us a little bit about how those meetings come
5 about.

6 A. Jerry's shift runs from Friday afternoon over to the
7 weekend, onto Monday afternoon. The reason we do that that
8 way is I work Monday through Friday, and the expectation is
9 Jerry will hold the fort, so to speak, during the weekend.

10 Q. Right.

11 A. The reason why he does that is he has the capacity to do
12 that. And so on Friday evening when he comes 3:00, if I'm
13 in the office, Jerry say, hi, Asoka. Then I say, Jerry,
14 okay, let's have a chat, check a few things. Or if I'm busy
15 on the corridor or up on the roof somewhere, I call Jerry
16 and say, Jerry, I'll catch with you later. But 99 percent
17 of the time, I make sure I meet Jerry, he is sitting in
18 front of me. I walk through the issues that happen during
19 the week, who is in the hotel, what happened, so forth, and
20 then what we have -- what I have for him for the weekend and
21 any other projects that he need to do and who he needs for
22 those projects.

23 Q. Okay. So okay, great. So during these meetings, do you
24 ever talk about scheduling issues?

25 A. Yes, I do.

1 MR. ROSENBERG: Off the record one moment, please?

2 **HEARING OFFICER ROSENBERG: Off the record.**

3 **(Off the record from 12:55 p.m. to 12:55 p.m.)**

4 Q. BY MR. ROSENBERG: Okay. Jerry, I want to talk -- I
5 mean Asoka, I want to talk to you a little bit about
6 scheduling, okay?

7 A. Yes.

8 Q. You talked a little bit about -- I just handed you two
9 documents. Let's take a look at the first one marked
10 Respondent's exhibit -- Employer Exhibit 13.

11 **(Employer's Exhibit 13 marked for identification.)**

12 Q. BY MR. ROSENBERG: Do you recognize what that document
13 is?

14 A. Yes.

15 Q. And explain to us what it is.

16 A. This is the weekly schedule I do for the department.

17 Q. Okay.

18 A. With most times Jerry's input.

19 Q. Okay.

20 A. Based on the workload in the department.

21 Q. And is this schedule fairly -- the hours on this
22 schedule, is it fairly typical of what it has been over the
23 past year?

24 A. It is very typical pretty much from about the beginning
25 of last year. And if anything it was slightly changed

- 1 during the holiday period to accommodate various needs.
- 2 Q. Okay. So let's look at Saturday. Let's take a look at
- 3 a Saturday night.
- 4 A. Right.
- 5 Q. Where or just ease of reference where it says 12/1.
- 6 A. Right.
- 7 Q. You are not working on that day.
- 8 A. I did not, no.
- 9 Q. But Jerry, Jerry is working on that day.
- 10 A. Yes, he did.
- 11 Q. And Jerry is the only engineer working that, that day.
- 12 A. Yes.
- 13 Q. That evening.
- 14 A. Yes.
- 15 Q. Well, that full day.
- 16 A. Right.
- 17 Q. Why is that? Why is Jerry the only one working on a
- 18 Saturday night?
- 19 A. Because Jerry does have the capacity to run the hotel on
- 20 his own. There are no special projects usually happening on
- 21 the weekends, so Jerry is usually the duty engineer and the
- 22 man in charge of the hotel.
- 23 Q. So would you ever have James Bell being the man in
- 24 charge on a Saturday evening?
- 25 A. No. I will not do that.

1 Q. Would you ever have Milton being the man in charge on a
2 Saturday evening?

3 A. I will not do that.

4 Q. Okay. Would you ever have Edgar being the man in charge
5 on a Saturday evening?

6 A. Only if Jerry is not available, but with exception. And
7 I make sure I am on call.

8 Q. Okay. Now, I notice here, okay, now if you can just
9 pull up and put next to you Exhibit 14, please, okay? I'm
10 looking on the two, well, first of all, let's take a look at
11 Respondent's 13 first.

12 A. Okay.

13 Q. I see all over this exhibit it says O-C.

14 A. Yes.

15 Q. What does O-C mean?

16 A. Jerry is on call.

17 Q. And is everyone in the department on call pretty much
18 all the time?

19 A. Yes.

20 Q. I mean is that standard-place in engineering?

21 A. The standard, it is standard.

22 Q. You know the facility is shut down, there is a --

23 A. Yeah.

24 Q. -- air conditioning breaks, boiler shuts down, there is
25 a flood.

1 A. Right.

2 Q. Is everyone expected to be on call?

3 A. On call, yes. It is not a mandatory, but is expected.

4 Q. Okay. Thank you. So let's take a look at, looking at
5 13, taking a look at 13 and it says that, I'm looking up on
6 top, under 12/2, and it says that Edgar was O-C on that day.

7 A. Right.

8 Q. Okay. And I also see that on that same day Milton was
9 O-C.

10 A. Yes.

11 Q. So they were both on-call?

12 A. Yes.

13 **(Employer's Exhibit 14 marked for identification.)**

14 Q. BY MR. ROSENBERG: All right. Now, if you will, please,
15 will you take a look at Exhibit 14?

16 A. Okay.

17 Q. Do you recognize what this is?

18 A. Yes.

19 Q. And what is it?

20 A. This is Edgar's drop in and out from our timesaver (ph.)
21 from the period December 1 to 7th.

22 Q. Right. So let's take a look now at December 2nd.

23 A. Right.

24 Q. It says that he clocked in at 0600.

25 A. Right.

- 1 Q. That's 6:00 a.m.?
- 2 A. Yes.
- 3 Q. And clocked out at 1100.
- 4 A. Right.
- 5 Q. Is that 11:00?
- 6 A. Yes, in the morning.
- 7 Q. And I assume it is -- it says under "reg," 5 hours, so I
- 8 mean clock out 11:00 a.m.
- 9 A. Yes, sir.
- 10 Q. On the schedule, though, he was off. He was O-C.
- 11 A. Right.
- 12 Q. So can you explain how it came about that he ended up,
- 13 would end up working on the 2nd?
- 14 A. Right. I had to do a project to run Category 5, Cat 5
- 15 cables in the hotel for cameras. And on Friday I asked
- 16 Jerry, Jerry, this is our project. Jerry is pretty good at
- 17 it. He knows the building very well. And who do you need
- 18 to help, because it is a two-man job. And Jerry said, as
- 19 typical of him, allow Edgar.
- 20 Q. Right. He could have chosen other people, if he wanted
- 21 to?
- 22 A. He could have.
- 23 Q. Okay. And now if you turn to the, turn to the next page
- 24 on Exhibit 14.
- 25 A. Right.

1 MR. ROSENBERG: I'd like to move Exhibits 13 and 14 into
2 evidence, please.

3 HEARING OFFICER ROSENBERG: Any objection to receipt of
4 Employer Exhibits 13 and 14 into evidence?

5 MR. CLIFFORD: No objection.

6 HEARING OFFICER ROSENBERG: All right, both Employer
7 Exhibits 13 and 14 are received into evidence.

8 **(Employer's Exhibits 13 and 14 received in evidence.)**

9 Q. BY MR. ROSENBERG: All right, so we talked -- before you
10 went into this scheduling issue, we talked about the fact
11 that you have weekly meetings with, you said you meet weekly
12 with Jerry.

13 A. Yes.

14 Q. Are there other instances, other than what we just
15 talked about with Edgar, where he has recommended someone
16 should, you know, where he has said to you, hey, Asoka, this
17 guy doesn't work out very well on the weekends.

18 A. Absolutely.

19 Q. I don't want him here.

20 A. Absolutely.

21 Q. Can you tell us about one of those instances?

22 A. Yes. We had a former employee who left us last year,
23 Mr. Hourn. He was a long-running employee.

24 Q. Can you spell his name?

25 A. I'm so sorry. His name is Mr. Hourn, H-o-u-r-n. He's

1 been in the hotel I believe over 10 years.

2 HEARING OFFICER ROSENBERG: Do you know his first name?

3 THE WITNESS: I think his first name is Youth,
4 Y-o-u-t-h.

5 HEARING OFFICER ROSENBERG: Y-o-u-t-h.

6 THE WITNESS: Yes. And at one point, this was going
7 back to probably several months, I said -- I had wanted to
8 put Mr. Hourn on a shift on the weekend and Jerry told me,
9 Asoka, don't do that, Mr. Hourn is not capable of handling
10 the hotel shift on his own. And this is typical of a
11 conversation we would have with Jerry in terms of talking and
12 scheduling. On another occasion, it is a different issue,
13 but I can tell you.

14 Q. BY MR. ROSENBERG: Yes, please do.

15 A. Yeah, when Jerry got promoted, we had the position of
16 that Jerry was holding before vacant.

17 Q. Okay.

18 A. Which was engineer, but he was the refrigeration/air
19 conditioning technician. So me and Jerry were talking about
20 which route we should take. We can take a well-experienced
21 guy perhaps like Jerry and pay the same level of money, or
22 we can take a lesser person with a good solid background and
23 some qualifications and groom him to take that job. And
24 then so we had two people that we were thinking about. And
25 I said, Jerry, what do you think? And the very word Jerry

1 said was, Asoka, we'll go for the second option. We take a
2 guy who has been to college, who has done some work, we
3 train him. And very word he said was no matter what, if
4 something happens, either you or me will have to be there.
5 So I called down on Jerry's, in consultation with Jerry.

6 Q. So you took Jerry's input.

7 A. Yes.

8 Q. And --

9 A. We hired accordingly.

10 Q. You hired someone less technical?

11 A. Yes.

12 Q. Do you remember who you hired?

13 A. Edgardo.

14 Q. You hired Edgardo.

15 A. Yes.

16 Q. So you hired Edgardo based on --

17 A. Absolutely.

18 Q. Based on Jerry's recommendation.

19 A. Yes, sir.

20 Q. Now, during these meetings, do you ever talk about
21 individuals' performance --

22 A. Oh, yes.

23 Q. -- in the department?

24 A. Yes.

25 Q. So tell us how that comes about.

1 A. Well, as typical of many departments, we also have very
2 strong employees, not so strong employees, so that becomes a
3 subject.

4 Q. Okay.

5 A. And can I refer to another employee?

6 Q. What's that?

7 A. Can I refer to another employee, a conversation we had
8 between me and Jerry?

9 Q. Yes.

10 A. Jerry was referring to another employee in my department
11 and told me, Asoka, if you want to be successful in this
12 business, I told him, which happened to be James Bell, that
13 either he should have this or you should be able to work.
14 If you're not working physically, if you don't have the
15 capacity, then you are a weak link. So this is a typical
16 conversation.

17 Q. So Jerry told James Bell that?

18 A. Yes.

19 Q. Either you have to have this, meaning your head.

20 A. Yes.

21 Q. Or you've got to have this --

22 A. Yes.

23 Q. -- meaning your hands --

24 A. Yes.

25 Q. -- to do a good job?

1 A. To keep your job, basically.

2 Q. Right. And he reported this -- and then he reported
3 this to you?

4 A. This is what he told me. Jerry and me have a very, if
5 not informal, easygoing relationship you know.

6 MR. CLIFFORD: Can I clarify? I'm confused about what
7 his answer was.

8 MR. ROSENBERG: Okay.

9 MR. CLIFFORD: Your answer was that -- I just want to
10 make sure I understood you that Jerry told James Bell that
11 you either had to be intelligent or a hard worker in order
12 to get ahead.

13 THE WITNESS: Not in the --

14 MR. CLIFFORD: And then Jerry told you that he said
15 that?

16 THE WITNESS: Yes.

17 MR. CLIFFORD: Okay. I wanted to make sure. I wasn't
18 sure.

19 THE WITNESS: What he meant by this was not intelligent,
20 but knowledge.

21 MR. CLIFFORD: I wasn't sure who the party that was
22 telling you that, that's all. Excuse me.

23 Q. BY MR. ROSENBERG: Yeah. And these are typical of the
24 conversations --

25 A. Yes.

1 Q. -- you have with Jerry on a weekly, weekly basis.

2 A. Yes.

3 Q. Hey, how's the department going, what do we need.

4 A. Yes.

5 Q. Who should work here.

6 A. Yeah. There are many instances like that that I can
7 think about you know?

8 Q. Okay.

9 A. We exchange ideas. And, obviously, eventually I, I make
10 the decision.

11 Q. Do you have meetings like this with any of -- with
12 James Bell?

13 A. I do have usually a Monday morning lineup. That's the
14 day we all -- except Jerry, who comes late there. But I do
15 have meetings on average about two or three times a week,
16 but I do make sure I do have the Monday morning lineup. But
17 I do not have that sort of conversation with anybody except
18 Jerry.

19 Q. And why does Jerry come late to your Monday morning
20 lineups?

21 A. Because Jerry just finished the weekend. And he comes
22 on the -- and he kind of tells me what happened, what he
23 did, what was the problems, what we can do for the week. It
24 is a very useful conversation, yes.

25 Q. Okay. So you have a different sort of relationship --

1 A. Absolutely.

2 Q. -- with Jerry than with the other --

3 A. Absolutely, yes.

4 Q. Now, Ms. Weis testified earlier about this, but does
5 Jerry have his own office?

6 A. He does.

7 Q. He does. And does anyone else in your department have
8 an office?

9 A. No.

10 MR. ROSENBERG: This is 15 -- is it 15, I think? Yeah,
11 15.

12 **(Employer's Exhibit 15 marked for identification.)**

13 Q. BY MR. ROSENBERG: So, Asoka, I've just handed you a
14 document, what we're going to call Employer 15.

15 A. Yes.

16 Q. Can you tell me what this is?

17 A. This involves the hotel's electronic lock system. We
18 manipulate our lock system or program our lock system. Only
19 a selected few people have access to it. That's me, Jerry,
20 and our director of rooms, Gerard.

21 Q. Okay. So let's start at the, let's start at the -- this
22 is, it looks like it is an email chain, right?

23 A. It is, yes.

24 Q. Okay. So let's start at the bottom of the chain.

25 A. Right.

1 A. Yes.

2 Q. Why is it important that Jerry have, quote/unquote, good
3 access?

4 A. The access Jerry and I have give us the capability to
5 change the lock system the way we want it.

6 Q. Okay.

7 A. That access also entails some risks we take because you
8 can change settings and jeopardize the lock system. So
9 every now and then I change the passwords for us just as a
10 security measure. So in this time I change the password and
11 ID for Jerry just from the same basis.

12 HEARING OFFICER ROSENBERG: So the lock system, it
13 protects the whole building.

14 THE WITNESS: It does, yes.

15 Q. BY MR. ROSENBERG: And Jerry is one of three people in
16 the whole hotel who has access?

17 A. Yes. For example, restricted area in the hotel, it has
18 a restricted lock. You can program the address of that lock
19 and make a key that will not otherwise access that door. So
20 that entails huge responsibility for liability.

21 Q. All right. Now, does Jerry have anything else -- strike
22 that. Do you have a BlackBerry?

23 A. Yes, I do.

24 Q. Is it a Pyramid Hotel Group gives you a BlackBerry?

25 A. I have the option of taking that or using my own. I use

1 my own, but Pyramid pays for it.

2 Q. Pyramid pays for it.

3 A. Yes.

4 Q. What about Jerry?

5 A. Jerry has a company-owned BlackBerry, yes.

6 Q. Does anyone else in the department, in your department
7 have a company paid for BlackBerry?

8 A. Yes and no, because Jerry is the only one who takes it
9 with him, has the privilege of taking it with him.

10 Q. Right.

11 A. The others use it at work and leave it. And only Felix
12 has a company, given one just for internal use.

13 Q. So the others, they have a reporting device that they
14 use on property?

15 A. Exactly.

16 Q. So just so we're clear, Room 731, the toilet is
17 overflowing.

18 A. Right.

19 Q. You plug in a message, and Jim Bell will get it on
20 property?

21 HEARING OFFICER ROSENBERG: But that is with the
22 BlackBerry still?

23 THE WITNESS: With the BlackBerry. Now, the other
24 difference between Jerry's and the rest of us, us except me,
25 is that Jerry has email capability.

- 1 Q. BY MR. ROSENBERG: Right. So, Jerry, at the end of the
2 day, James Bell doesn't take that home with him.
- 3 A. No. He doesn't take home, not unless he get an email.
- 4 Q. Right. Jerry takes it home with him.
- 5 A. Yes.
- 6 Q. And if you need to email Jerry at 11:00 at night --
- 7 A. Yes.
- 8 Q. -- you can email him.
- 9 A. Yes. And he responds back to me.
- 10 Q. Right.
- 11 A. Many times he responds back.
- 12 Q. And that's Pyramid, Pyramid pays for that.
- 13 A. Yes.
- 14 Q. Let's take a typical day in the engineering department.
- 15 A. Yes.
- 16 Q. Jerry comes in, clocks in, where does he go?
- 17 A. Typically, Jerry clocks in, he goes to his office,
18 really, because that's where his stuff is, you know.
- 19 Q. Right. Edgardo, Melvin, James clock in, where do they
20 go?
- 21 A. They come to the common area, either the shop or the
22 back shop.
- 23 Q. And explain what the back shop is.
- 24 A. The back shop is where they keep their carts and the
25 tools. And everybody has their own cart, carrying tools,

1 and parts, and stuff. And they also have their lockers in
2 there, in the back shop, in a separate area. And Jerry does
3 not have a locker in that area.

4 Q. Jerry does not have a locker in there.

5 A. Yes. His office is his locker.

6 Q. Does Felix have a locker in that area?

7 A. Felix has his locker in the paint room.

8 Q. So Felix's locker is then separate from --

9 A. Yes.

10 Q. -- the engineering's locker.

11 A. Absolutely.

12 Q. What about training, does Jerry have a role?

13 A. Yes.

14 Q. You mentioned before that Jerry recommended to you --

15 A. Yes.

16 Q. -- to bring on Edgardo.

17 A. Yes.

18 Q. Did then Jerry take over all the training with Edgardo?

19 A. Yes. Well, on the first job, Edgardo, after he finished
20 the human resources formalities, he came back and then I
21 virtually handed him over to Jerry to walk through the
22 property. And then Jerry did. He spent the next few hours
23 going up and down with him, and together they came back to
24 the office. And, yeah.

25 Q. Now, you said that Milton, James, they don't have the

- 1 same level of technical expertise, right, that Jerry has or
2 even Edgardo.
- 3 A. Right.
- 4 Q. If they want to take that initiative to pull cables --
- 5 A. Right.
- 6 Q. -- to do some of the more technical work --
- 7 A. Right.
- 8 Q. -- would Jerry be responsible for training them?
- 9 A. Yes, yes.
- 10 Q. Would anyone else other than yourself be responsible for
11 training them?
- 12 A. No.
- 13 MR. CLIFFORD: Are you okay with us taking five?
- 14 MR. ROSENBERG: What's that?
- 15 MR. CLIFFORD: Are you okay with us taking five?
- 16 MR. ROSENBERG: I just have one more exhibit.
- 17 **(Employer's Exhibit 16 marked for identification.)**
- 18 Q. BY MR. ROSENBERG: Asoka, I just handed you a piece of
19 paper marked Employer 16.
- 20 A. Yes.
- 21 Q. Do you recognize what this is?
- 22 A. Yes, I do.
- 23 Q. Can you tell us all a little bit about it?
- 24 A. This is a copy of a business card of a potential
25 employee that Jerry brought to me for a potential new hire.

1 know what would happen in that scenario. Would Felix be
2 able to do any of the engineering things that he can
3 actually do or would you just --

4 THE WITNESS: For example, I mean on hypothetical basis,
5 if you have a burst pipe and there is nobody around, if I
6 have to ball a pipe with a piece of rag just to minimize the
7 leak, you know, hypothetically I might tell Felix, hey, hold
8 that for me until I get something, get a stopper or tools
9 and stuff like that. But when it comes to PM work or
10 anything that need to be done properly, I will leave it to
11 Milton or a room PM engineer.

12 HEARING OFFICER ROSENBERG: Okay.

13 THE WITNESS: Yes. I am not saying he is incapable, but
14 that's not the practice.

15 HEARING OFFICER ROSENBERG: I understand. Earlier, you
16 made a distinction, just to be clear for the record, between
17 technical and maintenance. Can you elaborate on that
18 distinction?

19 THE WITNESS: Yes, sir. The maintenance is basically
20 entails more cosmetic stuff, carpets, wallpaper, painting,
21 bathroom fixtures. Those are like maintenance items. For
22 example, if a toilet paper holder is loose that requires
23 either changing the screw or changing the anchor on the
24 wall, that I consider as a maintenance.

25 HEARING OFFICER ROSENBERG: Okay.

1 THE WITNESS: A technical item is something that you
2 need to have some sort of a formal education, technical
3 education, and training.

4 HEARING OFFICER ROSENBERG: Okay.

5 THE WITNESS: That's the difference.

6 HEARING OFFICER ROSENBERG: Okay. And this just
7 pertains to duties that people in your department might
8 have.

9 THE WITNESS: Yes.

10 HEARING OFFICER ROSENBERG: Now, would you say that
11 Felix has any technical?

12 THE WITNESS: I wouldn't be aware it, no, sir, no.

13 HEARING OFFICER ROSENBERG: No, okay?

14 THE WITNESS: Not that I'm aware of.

15 HEARING OFFICER ROSENBERG: But the engineers equally
16 do?

17 THE WITNESS: The ones that I referred to as technical
18 engineers, myself, Jerry, and --

19 MR. ROSENBERG: We went through, we already asked all
20 that.

21 HEARING OFFICER ROSENBERG: Yeah, but I'm making a
22 distinction with the painter.

23 MR. ROSENBERG: Right, okay.

24 HEARING OFFICER ROSENBERG: Okay, so are there any
25 projects that are almost completely collaborative; in other

1 was going to be promoted.

2 THE WITNESS: Yes, on my recommendation as well.

3 HEARING OFFICER ROSENBERG: Sorry?

4 THE WITNESS: On my recommendation as well.

5 HEARING OFFICER ROSENBERG: On your --

6 MR. ROSENBERG: Again, I appreciate you're allowed to
7 ask questions.

8 HEARING OFFICER ROSENBERG: Sure.

9 MR. ROSENBERG: But you aren't permitted to
10 mischaracterize things. No one here said it was an all of a
11 sudden decision to promote somebody.

12 HEARING OFFICER ROSENBERG: Okay.

13 MR. ROSENBERG: Okay?

14 HEARING OFFICER ROSENBERG: Okay, sure. I appreciate --

15 MR. ROSENBERG: The decision was made to promote and it
16 wasn't just an out of thin air to promote somebody.

17 HEARING OFFICER ROSENBERG: I appreciate the legal
18 distinction. Okay. So a decision was made to promote
19 Mr. Carrasco and you were involved in that decision. And
20 you recommended that it happen.

21 THE WITNESS: Yes.

22 HEARING OFFICER ROSENBERG: Can you elaborate further on
23 what your role was in that decision?

24 THE WITNESS: When the then supervisor left, that
25 vacancy was there and we had to fill that vacancy. It is an

1 important position in the department. He is the main
2 coordinator and he is the number one man for the department
3 head. So I had to fill that. And I immediately looked at
4 Jerry for two reasons. Jerry appeared at the time to be
5 qualified and capable.

6 HEARING OFFICER ROSENBERG: Right, so --

7 THE WITNESS: Plus, he has the like seniority he has
8 earned that consideration.

9 HEARING OFFICER ROSENBERG: Right. And earlier you
10 mentioned certain technical qualifications that he had.

11 THE WITNESS: Yes.

12 HEARING OFFICER ROSENBERG: Was there anything more
13 personnel related that you were looking for in terms of the
14 way he would handle personnel?

15 THE WITNESS: Jerry knew the stuff. That was one
16 consideration.

17 HEARING OFFICER ROSENBERG: Sorry?

18 THE WITNESS: Jerry knew the existing stuff. He knew
19 the building very well. He had been there for many years.
20 And he had the technical qualifications and the background.
21 So Jerry seemed to be a good fit to be considered.

22 HEARING OFFICER ROSENBERG: Okay. And as you understand
23 it, what new role did he handle; in other words, what new
24 duties, what new responsibilities was he given that he did
25 not have before?

1 Jerry knows the stuff, and Jerry, so now taking some of the
2 weight off me on some areas. And that was definitely one
3 area.

4 HEARING OFFICER ROSENBERG: And he does not need to
5 consult with you before doing that?

6 THE WITNESS: Well, eventually, when the report is done,
7 when he goes, he gets it, I always make it a point that I
8 physically look at the report to make sure that the PPM of
9 water, the open cycles, and the closed circuits, everything
10 is within limits. But Jerry is the one who physically will
11 go to the field with the person, take the -- outside and
12 then go from place to place. So Jerry take a serious amount
13 of ownership of that, that little task.

14 HEARING OFFICER ROSENBERG: Okay. Is Jerry involved in
15 hiring?

16 THE WITNESS: I always talk to Jerry on hiring, and I
17 think we referred to one exhibit already.

18 HEARING OFFICER ROSENBERG: Correct. Okay. So what
19 would you describe to be his overall role in that process?

20 THE WITNESS: I always welcome his input. I would let
21 him talk to them. For example, when I hired Edgar, I had
22 Jerry talk to him and tell me what he thinks. When I
23 hired --

24 HEARING OFFICER ROSENBERG: By talk, do you mean
25 interview?

1 THE WITNESS: Yes. Yes.

2 HEARING OFFICER ROSENBERG: Is it a formal interview?

3 THE WITNESS: Yes.

4 HEARING OFFICER ROSENBERG: Can you describe what that
5 means?

6 THE WITNESS: When Edgar was hired to fill Jerry's
7 former position, and like I said we had the option of
8 getting for a full-blown technician versus someone lesser
9 person and training, we opted for Edgar. And Jerry
10 interviewed Edgar.

11 HEARING OFFICER ROSENBERG: Alone or was another
12 supervisor present?

13 THE WITNESS: No alone, by himself, yes.

14 HEARING OFFICER ROSENBERG: Okay. And was there a
15 write-up of that interview?

16 THE WITNESS: It is been over a year. I have to look it
17 up. I'm not sure about that, yes.

18 HEARING OFFICER ROSENBERG: Okay.

19 THE WITNESS: But I do remember after getting -- I
20 talked to him and I said, Jerry, what do you think.

21 HEARING OFFICER ROSENBERG: Okay. And does he have the
22 authority to make a final decision regarding hiring?

23 THE WITNESS: Well, as the department head, the final
24 decision rests on me. But his recommendation and opinion
25 his highly respected.

1 HEARING OFFICER ROSENBERG: Do you ever disagree with
2 him?

3 THE WITNESS: Yes, I do.

4 HEARING OFFICER ROSENBERG: And what happens in that
5 disagreement? How would you carry the weight of his
6 disagreeing opinion?

7 THE WITNESS: The disagreement will be mostly based on
8 technical stuff, not on personnel issues like --

9 HEARING OFFICER ROSENBERG: Well, no, we're talking
10 about hiring.

11 THE WITNESS: Okay. Okay. Well, we haven't done as
12 many hirings as, you know, during my time, two years, we
13 have hired Edgar, Edwin, and Milton, three people. So
14 that's a span of two years.

15 MR. ROSENBERG: If I may? Thanks.

16 Q. BY MR. ROSENBERG: So you just, I think you meant in two
17 years, you've hired Edgar, Edwin, and Milton.

18 A. And Milton, yes.

19 Q. So that is three guys, correct. Of those, and Jerry --
20 did Jerry interview Edgar?

21 A. Yes, he did.

22 Q. He did interview him?

23 A. Yes.

24 Q. Did he interview Edwin?

25 A. Yes, he did.

1 Q. He did interview Edwin?

2 A. He did.

3 Q. Did he interview Milton?

4 A. I don't believe so.

5 Q. So of the three, he interviewed 67 percent of them.

6 A. Yes.

7 Q. Does -- the Hearing Officer asked you questions about
8 hiring. Does anyone, anyone who is interviewed, does it
9 eventually pass through either human resources or the
10 executive office of the hotel?

11 A. Yes.

12 Q. So the final, is the final hiring decision made by the
13 general manager?

14 A. It is a collective decision.

15 Q. Right.

16 A. Like Jan mentioned. It is a collective decision.

17 HEARING OFFICER ROSENBERG: Does Jerry sit in?

18 THE WITNESS: He doesn't formally sit in. He makes his
19 input to me. And then the potential employee will be seen
20 by the general manager, interviewed by the general manager,
21 interviewed by the HR director, and then we share our ideas.
22 Asoka, you think you need this? I think I like the guy.
23 And -- for example might say, well, you know what, so and
24 so, and we make collective decision.

25 HEARING OFFICER ROSENBERG: Okay. But do you ever

1 present to the director of HR or to the general manager a
2 recommendation that is different from Carrasco's -- let me
3 rephrase that. Do you ever tell the general manager and the
4 director of HR I want to hire him, for example, but Carrasco
5 does not?

6 THE WITNESS: That question never arose, to be honest
7 with you.

8 HEARING OFFICER ROSENBERG: Okay. But suppose it did.
9 Would you present a single departmental recommendation?

10 THE WITNESS: Yes.

11 HEARING OFFICER ROSENBERG: Or would you -- so you would
12 try to reach consensus --

13 THE WITNESS: Yes.

14 HEARING OFFICER ROSENBERG: -- with Carrasco before --

15 THE WITNESS: Yes.

16 HEARING OFFICER ROSENBERG: Okay. So Carrasco does not
17 individually influence that collective discussion at the
18 end?

19 THE WITNESS: We have a chat about the person in
20 question. And Jerry will say, Asoka, it is a good choice; I
21 think he is going to do a good job. At that point, I take
22 over. At that point, I follow up with human resources and
23 the general manager.

24 Q. BY MR. ROSENBERG: Well, whose decision -- we talked
25 before about, remember we went through the explanation about

1 on certain Sundays or Saturdays, Edgar would come into work.
2 Whose decision was it that Edgar come and work on those
3 projects?

4 A. It was Jerry's, yes.

5 Q. And does Jerry make that --

6 A. I always ask him --

7 Q. Does Jerry make -- if Jerry says, hey, I want James to
8 come in and do it, would you say fine?

9 A. Yes.

10 HEARING OFFICER ROSENBERG: Okay. Let's stay with
11 hiring for now.

12 MR. ROSENBERG: Well, I'm, but I'm on -- I'm sorry.

13 HEARING OFFICER ROSENBERG: Sure.

14 MR. ROSENBERG: It is all the same, right? I mean --

15 HEARING OFFICER ROSENBERG: It is not.

16 MR. ROSENBERG: It is, though.

17 HEARING OFFICER ROSENBERG: Because for clarity of the
18 record, the indicia go in a certain order.

19 MR. ROSENBERG: There are a number of indicia, you know,
20 responsibly direct and hiring, you know. In many facets,
21 responsibly direct is many times weighted heavily, more
22 heavily than the hiring.

23 HEARING OFFICER ROSENBERG: Perhaps, but, Mr. Rosenberg,
24 we --

25 MR. ROSENBERG: Right, so --

1 HEARING OFFICER ROSENBERG: -- agreed to take turns and
2 that's why I didn't ask my questions earlier. And now I'm
3 asking. And I'm going to go in the prescribed fashion. And
4 we're on hiring right now. We'll get to the responsibly
5 direct. It is coming up.

6 MR. ROSENBERG: Well, we've gotten to it already.

7 MR. CLIFFORD: Can I get a clarification on something?

8 HEARING OFFICER ROSENBERG: Sure.

9 THE WITNESS: Yes, sir.

10 **RECROSS-EXAMINATION**

11 Q. BY MR. CLIFFORD: Previously, when we were talking about
12 the 67 percent of people that you interviewed, I think it
13 was Edwin and?

14 A. It was Edwin. It was Milton. And it was Edgar before
15 that.

16 Q. But you said that Jerry took part in two of those
17 interviews?

18 A. Yes, sir.

19 Q. Okay. Did he interview them, himself, or did interview
20 them with you there?

21 A. On what occasions?

22 Q. That was what I wasn't clear about..

23 A. I call Jerry and say, Jerry, talk to them.

24 Q. He talked with them.

25 A. That, Jerry, talk to them and tell me what you think.

1 Q. He talked with them or he had a formal interview? I'm
2 sorry, that's the part I'm not clear about.

3 A. Oh, I see. When you say a formal interview?

4 Q. That they understood that they were being interviewed by
5 a supervisor for a job at a place.

6 A. Yes, sir. Yes, sir.

7 Q. That's how you understood --

8 MR. ROSENBERG: He answered the question. He answered
9 the question.

10 THE WITNESS: When Jerry talked to --

11 MR. ROSENBERG: He answered the question yes.

12 THE WITNESS: Yes. When Jerry comes to my office and a
13 potential candidate sitting in my office, I say that's our
14 supervisor.

15 HEARING OFFICER ROSENBERG: Perhaps to clarify, how long
16 might these talks between Jerry and the prospective
17 applicant be?

18 THE WITNESS: Fifteen minutes, twenty minutes.

19 HEARING OFFICER ROSENBERG: And this is before any
20 hiring decision has been made.

21 THE WITNESS: Yes, sir.

22 HEARING OFFICER ROSENBERG: And it is --

23 THE WITNESS: Yes, sir.

24 HEARING OFFICER ROSENBERG: And he's asking technical
25 questions?

1 THE WITNESS: Yes.

2 HEARING OFFICER ROSENBERG: And he's asking background
3 questions.

4 THE WITNESS: Yes, yes.

5 HEARING OFFICER ROSENBERG: And résumé?

6 THE WITNESS: Yes.

7 HEARING OFFICER ROSENBERG: Things like that, okay.

8 THE WITNESS: Yes.

9 HEARING OFFICER ROSENBERG: All right.

10 THE WITNESS: I would argue that the first person, the
11 only person I didn't talk to with Jerry's opinion because I
12 was extremely sure about this employee.

13 HEARING OFFICER ROSENBERG: Okay. All right, let's move
14 onto is Jerry involved in transfers?

15 THE WITNESS: From department to department?

16 HEARING OFFICER ROSENBERG: Right. Or maybe even to
17 hotel to hotel, assuming --

18 MR. ROSENBERG: That's, again, it is completely
19 irrelevant. This is a small engineering department. He
20 would not make any decisions.

21 HEARING OFFICER ROSENBERG: I understand that we can
22 assume, but we really can't assume anything --

23 MR. ROSENBERG: No, no, but --

24 HEARING OFFICER ROSENBERG: -- on the record. We need
25 the record established.

1 THE WITNESS: Suspension and discipline? He would give
2 his opinion or recommendation to me, and I would go to human
3 resources and pass it on to human resources. And like I
4 said before, it is a collective decision. It is three or
5 four people have to be on board in the decision.

6 HEARING OFFICER ROSENBERG: Okay. In Employer's
7 Exhibit 13, there is a schedule, and in some instances you
8 are not there, correct?

9 THE WITNESS: Yes.

10 HEARING OFFICER ROSENBERG: And Jerry would be the
11 highest --

12 THE WITNESS: Yes, sir.

13 HEARING OFFICER ROSENBERG: -- ranking supervisor there.

14 THE WITNESS: Yes, sir.

15 HEARING OFFICER ROSENBERG: In that circumstance, does
16 he need clearance from you? Because you just stated you
17 would take a recommendation. But if he's the highest
18 supervisor, does he have authority in that scenario?

19 THE WITNESS: To?

20 HEARING OFFICER ROSENBERG: Suspend or discipline.

21 THE WITNESS: It is a hypothetical question.

22 HEARING OFFICER ROSENBERG: Okay. So has he then?

23 THE WITNESS: It has never happened.

24 HEARING OFFICER ROSENBERG: It is never happened.

25 THE WITNESS: Yes.

1 HEARING OFFICER ROSENBERG: So there has never been a
2 time when Jerry Carrasco has disciplined or suspended
3 somebody?

4 THE WITNESS: No.

5 HEARING OFFICER ROSENBERG: Okay. Has there been a time
6 when he's recommended discipline or a suspension to you?

7 MR. ROSENBERG: You've asked that now four times. We've
8 gone through the Hourn situation.

9 HEARING OFFICER ROSENBERG: Right. But sometimes in
10 context of preceding questions, it is clear for the record.
11 I mean we're taking turns, right? I mean, well, you're
12 interjecting a lot, but we agreed to take turns earlier and
13 now I'm doing it in context.

14 THE WITNESS: No, sir. See, no. I mean I'm always
15 there. I live like 30 minutes away from the hotel, 45
16 minutes, and I'm pretty much gone for the weekend. So that
17 situation did not arise. And Jerry might suggest to me,
18 hey, Mr. Asoka, don't give that man that job. And he might
19 express his opinion in that way, like butting in, you know?

20 HEARING OFFICER ROSENBERG: Right.

21 THE WITNESS: And I take it as a good indication that we
22 don't give him that job.

23 HEARING OFFICER ROSENBERG: Okay. Right. Well, we're
24 talking about suspension and discipline, not hiring. But
25 Mr. Rosenberg just noted that there is this individual

1 Youth Hourn, right?

2 THE WITNESS: Yes, sir.

3 HEARING OFFICER ROSENBERG: And you said that -- can you
4 clarify exactly was that recommending, well, just retell
5 what Jerry's relationship was toward the personnel action
6 that was taken.

7 THE WITNESS: For Mr. Hourn?

8 HEARING OFFICER ROSENBERG: Yeah.

9 THE WITNESS: There were two things that we referred to.
10 One was that Mr. Hourn was scheduled for the weekend and
11 Jerry came and told me do not put him on the weekend.

12 HEARING OFFICER ROSENBERG: Right.

13 THE WITNESS: Is that what you are referring to?

14 HEARING OFFICER ROSENBERG: Yeah. Was there any
15 discipline or --

16 THE WITNESS: No. I mean we were just discussing the
17 schedules.

18 HEARING OFFICER ROSENBERG: It was just schedules.

19 THE WITNESS: Yes.

20 HEARING OFFICER ROSENBERG: Okay.

21 THE WITNESS: And then for one reason or another, I put
22 Mr. Hourn on the Saturday or Sunday. And then I was -- in
23 fact, Jerry, said Asoka, don't put Mr. Hourn, he is not a
24 good fit in our problems.

25 HEARING OFFICER ROSENBERG: Okay. Has anyone been

1 A. Would you mind repeating that again?

2 Q. Why does Jerry say to you I want Edgar to work on this
3 project?

4 A. Because Jerry feels that he is the best man, the most --

5 Q. Right.

6 A. -- capable man to do that job.

7 Q. And why does he think that Edgar is the best man?

8 A. Because he has worked with him before. He sees Edgar's
9 output and aptitude.

10 Q. Right. So is he rewarding Edgar --

11 A. Yes.

12 Q. -- for his work previously.

13 HEARING OFFICER ROSENBERG: Let's not get too carried
14 away on the legal definitions of the word work.

15 MR. ROSENBERG: No, I'm not.

16 HEARING OFFICER ROSENBERG: I mean it is --

17 MR. ROSENBERG: No, no, no, no. I'm not getting carried
18 away. You're asking does he reward. I'm asking questions.

19 HEARING OFFICER ROSENBERG: Which the Board has its own
20 definitions of. And let's not get creative on the different
21 ways we might interpret it.

22 MR. ROSENBERG: I'm not. I don't think that's creative.

23 HEARING OFFICER ROSENBERG: I think it is very creative
24 to say that assign more hours is rewarding, because the
25 person still has to work for those hours. And so it is not,

1 I mean the gift card was on track. Anything more like gift
2 cards or, or one-time bonuses, or free time, things like
3 that.

4 THE WITNESS: Now, sir, if I may, when you work over 40
5 hours, like Edgar has done on sometimes on the weekends,
6 that's overtime, time and a half, from an employee's
7 perspective is very -- think that's a reward.

8 HEARING OFFICER ROSENBERG: Okay. But can he assign
9 overtime without your permission?

10 THE WITNESS: He can.

11 HEARING OFFICER ROSENBERG: So when is the last time --

12 THE WITNESS: And Jerry has done something --

13 HEARING OFFICER ROSENBERG: When was the last time he
14 has done that?

15 THE WITNESS: In fact, we were running the cables
16 recently.

17 HEARING OFFICER ROSENBERG: How recently?

18 THE WITNESS: I'm sorry

19 HEARING OFFICER ROSENBERG: When?

20 THE WITNESS: This will be in the last two months.

21 HEARING OFFICER ROSENBERG: Okay.

22 THE WITNESS: If Jerry call me and say that I told
23 Edgar, I told Edgar to work extra two hours, I have no
24 problem with it, because I do have good, very external
25 feelings for the type of work -- Edgar does.

1 HEARING OFFICER ROSENBERG: Okay. So Edgar worked two
2 hours of overtime, you're saying?

3 THE WITNESS: If Edgar -- I'm trying to get into this to
4 do very accurately.

5 HEARING OFFICER ROSENBERG: Sure, sure, yes, please do.

6 THE WITNESS: The best of my memory, I believe that
7 occasions in the recent past that Jerry has told Edgar to
8 work few hours, which on overtime basis to finish the
9 project.

10 HEARING OFFICER ROSENBERG: And did Jerry have to call
11 you first or anything like that?

12 THE WITNESS: No. Jerry would tell me later. Jerry
13 does not have to get formal okay from me. Jerry knows, has
14 worked with me.

15 HEARING OFFICER ROSENBERG: Okay. And you say you can't
16 remember exactly, but it was about two hours?

17 THE WITNESS: Yeah, maybe in the ballpark of maybe two
18 hours, four hours. We did a major project running cables in
19 the building. And I had Edgar do this process.

20 HEARING OFFICER ROSENBERG: Let's say it was 20 hours.
21 At that point, would you require him to call you or would he
22 be required to call someone else, for that matter?

23 THE WITNESS: If it is a project involving overtime on a
24 large scale, I expect Jerry to call me. I have not told
25 him, personally, but Jerry is supervisor. He take

1 THE WITNESS: 60 in the office, 40 in the hands-on.

2 HEARING OFFICER ROSENBERG: Okay.

3 THE WITNESS: In that ballpark.

4 HEARING OFFICER ROSENBERG: So Jerry oversees certain
5 projects --

6 THE WITNESS: Yes.

7 HEARING OFFICER ROSENBERG: -- that the employees work
8 on, right?

9 THE WITNESS: Yes, sir.

10 HEARING OFFICER ROSENBERG: Is he there watching them as
11 they are doing it?

12 THE WITNESS: He guide them. He watch them. I can
13 clearly say about the cable project. Jerry would be down
14 and Edgar would be up on the ceiling, you know.

15 HEARING OFFICER ROSENBERG: And if one of them doesn't
16 know how to do it, he might help them?

17 THE WITNESS: Oh, yeah.

18 HEARING OFFICER ROSENBERG: Okay. This is for the
19 engineers, right?

20 THE WITNESS: Yes.

21 HEARING OFFICER ROSENBERG: What about for the painter?

22 THE WITNESS: I have never ever seen Jerry getting
23 involved with painting. And I cannot tell Jerry to do any
24 painting, himself. However, I have routed to Felix through
25 Jerry.

1 And then Jerry is in charge after that till about 11:00 at
2 night.

3 HEARING OFFICER ROSENBERG: What do you mean by that?

4 THE WITNESS: Jerry take the room calls and then handle
5 the projects. And like PM work on the HVAC equipment,
6 filter changes. We maintain the 259 rooms HVAC electrical.
7 We maintain about 50 HVAC units throughout the building.
8 Some are 30, 40 years old. And so all that work PM is done
9 in-house, maintenance and repairs. So if he sees something
10 leaking, it might to Jerry's list over the weekend. And
11 sometimes Jerry says, Asoka, can I have Edgar, you know, we
12 do it. That's typical of what it is.

13 On the weekends, Jerry is on his own. If he comes to a
14 situation where he needs a reinforcement for his thoughts,
15 he will call me. And, for example, if an elevator goes
16 down, he will call me and say, Asoka, I'm going to call
17 Connie. He does that so that I'm kept informed that when an
18 elevator is down. We have six elevators in the building.
19 So, yeah, that's --

20 HEARING OFFICER ROSENBERG: So it sounds like 60 percent
21 of the time you might be in the office, but Jerry might be
22 with the other guys around the building. And Jerry might
23 call you.

24 THE WITNESS: Yes.

25 HEARING OFFICER ROSENBERG: So is it fair to say that it

1 requires Jerry to call you, for you to go out into the
2 maintenance job --

3 THE WITNESS: Anytime Jerry finds something that is a
4 little bit beyond him or that thinks is more serious, he
5 say, Asoka, can you come to the rooftop or something, you
6 know.

7 HEARING OFFICER ROSENBERG: But do you do your own
8 monitoring or is it pretty much contingent on Jerry?

9 THE WITNESS: I do mine. I walk the building at least
10 once a day on the plant areas mostly. It is somewhat of an
11 older building, so we do have challenges. So we do, I do
12 walk at least a day. And Jerry does the same thing, to be
13 honest with you.

14 HEARING OFFICER ROSENBERG: Well, it sounds like he's
15 doing more than once a day.

16 THE WITNESS: Well, Jerry is more of a hands-on guy than
17 me, compared to me. He probably spend a little bit more
18 time on passing through equipment, because we have equipment
19 in two locations in the building, many equipment. It is two
20 buildings combined together, so each building has his own
21 mechanical space. One is on the rooftop. The other is on
22 the basement. And in between, you have all the different
23 equipment.

24 HEARING OFFICER ROSENBERG: Let's say there is a
25 challenging project on a given day and it requires all of

1 the people under your supervision to be there. Can Jerry,
2 by himself, without talking to you --

3 THE WITNESS: Right.

4 HEARING OFFICER ROSENBERG: -- say you do X, you do Y --

5 THE WITNESS: Right.

6 HEARING OFFICER ROSENBERG: -- and you do Z, for
7 example?

8 THE WITNESS: He can. But as a general practice, he
9 always calls me and tells me where it is a problem that I
10 need to be aware of, because I guess it is my personal work
11 culture, you know, I need to be aware of something other
12 than ordinary. It is being conscientious.

13 HEARING OFFICER ROSENBERG: Yeah. But can he, if he
14 wanted to, can he do that type of assignment without talking
15 to you?

16 THE WITNESS: He can. But he will always let me know.
17 It is very rarely that happen that he has to gather all the,
18 rally all the troops for emergency. That happens, for
19 example, a big emergency in the hotel will be a power
20 outage, or a section of the building losing power, or a
21 flood. And Jerry is the kind of guy who will first take
22 care of it and then call me. Not that I tell him to call
23 me, but just the culture within the department, you know.

24 HEARING OFFICER ROSENBERG: And let's say he does those
25 assignments and the project fails --

1 THE WITNESS: Yes.

2 HEARING OFFICER ROSENBERG: -- for whatever reason,
3 would Jerry be ultimately responsible for that?

4 THE WITNESS: Jerry would be responsible, but like I
5 said before we work pretty much like a team. We don't go to
6 the extent of putting black and white responsibility on the
7 people unless it is a major event, major catastrophe.

8 HEARING OFFICER ROSENBERG: Okay. Does Jerry do any
9 sort of inspection?

10 THE WITNESS: He does. He does inspect all the boilers,
11 upstairs and downstairs. Make sure all the pressures,
12 temperatures are right. Make sure there is no leaks in the
13 relief valves. Make sure there is -- the typical watch-
14 keeping, engineer's work in the mechanical space.

15 HEARING OFFICER ROSENBERG: Is that inspection
16 inspecting the machines and the material end, or is it
17 inspecting the work of --

18 THE WITNESS: It is both.

19 HEARING OFFICER ROSENBERG: It is both. So are these on
20 forms, paper?

21 THE WITNESS: Well, that's most thing like form, for
22 example, you go to engineering, there is binder. And what
23 we call the chief engineer's logbook, which is a daily
24 logbook. And the third binder that looks bigger than this
25 is room PM. And the other binder is daily television

1 MR. CLIFFORD: No, we're good.

2 HEARING OFFICER ROSENBERG: Thank you, Mr. Seneviratne.

3 THE WITNESS: Oh, thank you so much.

4 **(Witness excused.)**

5 HEARING OFFICER ROSENBERG: Would the Employer like to
6 call another witness to the stand?

7 MR. ROSENBERG: I would like to recall Ms. Weis.

8 HEARING OFFICER ROSENBERG: Okay. Ms. Weis?

9 MR. CLIFFORD: You're going to recall Ms. Weis?

10 MR. ROSENBERG: Yes.

11 MR. CLIFFORD: I'm just having trouble hearing. I'm
12 not --

13 MR. ROSENBERG: No problem, no problem.

14 (Whereupon,

15 **JAN WEIS**

16 was recalled as a witness by and on behalf of the Employer
17 and, after having been duly sworn, was examined and
18 testified as follows:)

19 **DIRECT EXAMINATION**

20 Q. BY MR. ROSENBERG: Welcome back, Jan.

21 A. Thank you.

22 Q. There has been some discussion about the discipline
23 process in the hotel. Can you explain for everyone how in
24 general the disciplinary process works at the hotel?

25 A. We have a very tight, or Pyramid when I say we, the

1 companywide has a very tight control on discipline and if
2 any terminations occur. All managers, we focus solely on
3 coaching forms. So each manager on their computer has a
4 coaching and counseling form. They know and we tell them,
5 you know, we try to make it as simple as possible, if you
6 have a performance issue, we expect you to go through the
7 progressive discipline process.

8 We tell everyone that when we hire them that that's the
9 process. We talk to managers about that. And that means
10 that if a manager has a disciplinary issue then they are to
11 take whatever steps they feel, but they need to get to HR
12 about it. They can either complete that coaching form,
13 themselves, and send it to us. They do not have the
14 authority to deliver it without us looking at it, us being
15 me or Kate Nowierski.

16 Then in some cases they just don't feel that they want
17 to write the coaching form up, they come to us, they sit
18 down, and they talk about it. We type it up. We prepare
19 it. We are happy with it. And even if they send it to us,
20 we may change it. But I'm looking at it from the long-term
21 that it is compliant with the progressive steps.

22 I also go to the file of the employee and see what else
23 is in the file so that I know whether it is a verbal
24 warning, or a written warning, or if this is a last and
25 final, so I'm going through that process. So managers know

1 to come to human resources.

2 HEARING OFFICER ROSENBERG: So a coaching form is
3 distinct from progressive discipline?

4 THE WITNESS: No. The coaching form is the form we use
5 for progressive discipline.

6 HEARING OFFICER ROSENBERG: Okay.

7 MR. ROSENBERG: Let me keep going, because I'm very
8 familiar with the form.

9 HEARING OFFICER ROSENBERG: Okay.

10 MR. ROSENBERG: I don't have it with me, but I can
11 describe it for you very well.

12 THE WITNESS: Yeah, it is --

13 Q. BY MR. ROSENBERG: On the coaching and counseling form,
14 which we don't, unfortunately we don't have, but on the top
15 of it, does it say various steps in discipline?

16 A. Right. It says -- it asks the manager or the
17 individual, whoever is completing it, is this a written -- a
18 verbal warning, a written warning, a last and final, or
19 other. And then it asks for the name of the employee, their
20 position, their department, their date of hire, the date of
21 the incident, and then it asks for you to complete and
22 explain the incident, whether it is an insubordination. It
23 also asks you to classify if it is attendance,
24 insubordination, poor work quality, there's about 10
25 different items on the document that you complete.

1 Then it asks you again to explain the event. And the
2 next paragraph says what are the expectations of the
3 employee. At the bottom, there is a form or a line I should
4 say for the employee to sign and the manager to sign it, a
5 witness to sign it, and HR to sign it. None of this can be
6 delivered without HR seeing them.

7 Q. And if you would take a look at Respondent 5, which I
8 think is in front of, one of the exhibits in front of you.

9 A. Five? There's a lot more here than when I left. Five,
10 this?

11 Q. Yeah, the directorate.

12 A. Okay.

13 Q. You've been using the term all managers.

14 A. Yes.

15 Q. Have the ability to write the coaching forms. Does
16 everyone on this form here fall into that category as a
17 manager to write out a coaching form?

18 A. Some people do not have a direct report. There are
19 managers on this form who are sales managers that actually
20 don't have a direct report.

21 Q. Can Jerry write out a coaching form?

22 A. Yes.

23 HEARING OFFICER ROSENBERG: Has he ever?

24 THE WITNESS: No. We've only had two. And as long as
25 I've been in the hotel, only two forms on, we've already

1 talked about, for James Bell.

2 HEARING OFFICER ROSENBERG: And those were written by
3 Asoka Seneviratne.

4 THE WITNESS: Right.

5 Q. BY MR. ROSENBERG: But he could?

6 A. But he could, yes.

7 Q. As any supervisor in the hotel --

8 A. Right.

9 Q. -- has that authority.

10 A. And the expectation is that supervisors, because we're
11 also concerned about not only performance but harassment,
12 all types of issues, so we're very quick to coach managers
13 to come forward and supervisors.

14 Q. If Asoka were on vacation, who in the department would
15 have the ability to write up a coaching form?

16 A. Jerry. We would, you know, we would work with him
17 through it, like we do Asoka. I think Asoka, when that
18 document came, Kate probably had that document and she
19 worked with Asoka through it. So it wouldn't have been any
20 different, if it had been Jerry. Now, I will say, too, that
21 we also make sure that we, if it is in engineering, we talk
22 to the two managers in engineering about it. If it is in
23 front office, we're going to talk to the individuals that
24 are involved in it. So we get all sides of it. We get
25 statements. We do a lot of background work before we

1 you're good, too?

2 **All right, off the record.**

3 **(Off the record from 3:38 p.m. to 3:55 p.m.)**

4 HEARING OFFICER ROSENBERG: The Region has determined
5 that because Mr. Felix Terrazas is in the room and might
6 have relevant information in this proceeding, that I will
7 call Mr. Terrazas to the stand as my own witness. So,
8 Mr. Terrazas, can you please come to stand? Can you raise
9 your right hand?

10 (Whereupon,

11

FELIX TERRAZAS

12 was called as a witness by the Hearing Officer and, after
13 having been duly sworn, was examined and testified as
14 follows:)

15

DIRECT EXAMINATION

16 Q. BY HEARING OFFICER ROSENBERG: Okay, be seated.

17 A. Thank you.

18 Q. Mr. Terrazas, can you state your name for the record?

19 A. F-e-l-i-x T-e-r-r-a-z-a-s.

20 Q. Okay. And how long have you been working for this
21 employer?

22 A. Almost three years, more going on three years.

23 Q. So about when, do you know the date?

24 A. I started October 2010.

25 Q. 2010, okay. And when you were hired, what was your

1 classification?

2 A. Painter.

3 Q. And who is your supervisor?

4 A. Jerry Carrasco and Asoka.

5 Q. Mr. Seneviratne, right. If you can speak louder? Okay.

6 Can you describe what your duties are on this job?

7 A. My duties are paint, then of course quality. When I go

8 inside of the rooms, I am checking all, all of any to do.

9 For example, core tiles, some tightening the screws,

10 something to fix.

11 Q. Okay. And who do you work with?

12 A. Jerry and Asoka.

13 Q. Do you work with anybody else?

14 A. Sometime with my co-worker and other engineers.

15 Q. Who are those co-workers?

16 A. Another engineer is Milton or Edgar now.

17 Q. Anybody else?

18 A. No.

19 Q. Okay. And when you go to work, how do you know what to

20 do that day?

21 A. Sometime my supervisor, Jerry or Asoka, they tell me

22 what work we need to do that day.

23 Q. Where does he tell you?

24 A. On the phone or in the office, engineering office.

25 Q. When it is in the engineering office, does he tell you

- 1 and the other engineers at the same time?
- 2 A. Sometimes, yes. Sometime on the phone.
- 3 Q. Okay. What do you call the department that you work in?
- 4 A. Excuse me?
- 5 Q. The department?
- 6 A. Uh-huh.
- 7 Q. Do you have a name for the department where you work?
- 8 A. Engineering department.
- 9 Q. Engineering department. Is there a separate painting
10 department?
- 11 A. I am not sure, because I, I work with them, with the
12 engineering.
- 13 Q. Okay. And so when you -- what you're saying is that
14 when you work with these other engineers, you consider it
15 one department?
- 16 A. One department in total, always all together we have one
17 thing, right.
- 18 Q. Okay. And the other engineers, who do they report to?
- 19 A. Excuse me?
- 20 Q. Who is the supervisor of the engineers?
- 21 A. Asoka and Jerry.
- 22 Q. Okay. Can you describe to me a typical day?
- 23 A. For my job?
- 24 Q. Yes.
- 25 A. When I start to work every day, I sweep on the street, a

1 Jerry's office to find more work? Or is there a break room?

2 What do you do when you finish your job and don't have
3 additional work?

4 A. Automatically I checking something to do inside of the
5 rooms or ask to Jerry now what do I need to do.

6 Q. Do you ever ask to Asoka?

7 A. Sometimes, yes, especially to Jerry.

8 Q. And when you say especially to Jerry, how often is it
9 Jerry?

10 A. Once a week, because for now he is working Monday to
11 Friday. He is one hour. I start to work at 7:00, 7:00 a.m.
12 I finish, he tells me. Jerry come 8:00 p.m. We don't have
13 enough time for now. Before when Jerry was working there,
14 or if we work at, we had break.

15 Q. Have you ever received overtime?

16 A. Yes, sometime.

17 Q. Who gave it to you?

18 A. Mr. Asoka.

19 Q. Have you ever received overtime from Jerry?

20 A. No.

21 Q. Have you ever asked for time off?

22 A. No.

23 Q. For a holiday perhaps or for a doctor's appointment?

24 A. Oh, to Jerry, yes.

25 Q. To Jerry. How did you do that?

1 A. He says one, two days holiday, we are going to not work.

2 Q. Have you ever taken time off for yourself, just your
3 choice?

4 A. No. Asoka says that tomorrow we don't work because it
5 is a holiday. Asoka call me, told me.

6 Q. Okay. But if you want a specific day that you do not
7 want to work because you have a doctor's appointment perhaps
8 or some other thing that you need to do, have you ever done
9 that? Have you ever asked for a day off?

10 A. No, because I, all the time I work. If I need a couple
11 hours, for example, a time when I want to go doctor, I go
12 after 2:00, 3:00 p.m. I work until noon. Then I told to
13 Asoka I need to go to the doctor.

14 Q. So you talk to Asoka if you need to go off, if you need
15 to get off early to go to the doctor. Have you ever talked
16 to Jerry to do that?

17 A. No, because Asoka -- because Jerry is not there
18 sometime. Before, it was -- when he was working in the
19 morning.

20 **HEARING OFFICER ROSENBERG: Off the record.**

21 **(Off the record from 4:18 p.m. to 4:27 p.m.)**

22 Q. BY HEARING OFFICER ROSENBERG: Okay. If you go to work
23 one day and you think you're going to work the whole day but
24 you have to work early, I'm sorry, you have to leave early,
25 who do you speak to?

- 1 in this case to Asoka or Jerry.
- 2 Q. So you do tell Jerry sometimes?
- 3 A. Yes.
- 4 Q. That you have to leave early?
- 5 A. Early, yes. Never I leave early afternoon, after 2:00,
- 6 yes.
- 7 Q. When is your normal end time in the schedule?
- 8 A. 3:13.
- 9 Q. 3:13. So sometimes you leave at around 2:00 because you
- 10 have to go do something, right?
- 11 A. Yes.
- 12 Q. And you ask permission from either Asoka or Jerry?
- 13 A. Especially Asoka.
- 14 Q. Especially Asoka. But when Asoka is not there?
- 15 A. To Jerry.
- 16 Q. To Jerry. Okay.
- 17 A. Yes.
- 18 Q. And have you ever seen engineering co-workers ask Jerry
- 19 to leave work?
- 20 A. Of course, yes.
- 21 Q. Do you remember who?
- 22 A. Edgar.
- 23 Q. Edgar. Was this recently?
- 24 A. Recently?
- 25 Q. Yes.

1 A. For this couple of weeks, no, for not long, maybe three
2 months.

3 Q. So three months ago, you saw Edgar go to Jerry?

4 A. Yes.

5 Q. And ask to be able to leave early?

6 A. Um-hum.

7 Q. Okay. And did Jerry give him permission?

8 A. Yes.

9 Q. Did Edgar have to then go to Asoka?

10 MR. ROSENBERG: He can't -- he doesn't know what Edgar
11 had to do.

12 HEARING OFFICER ROSENBERG: You're right.

13 MR. ROSENBERG: It is not fair. That's not a fair
14 question.

15 Q. BY HEARING OFFICER ROSENBERG: Sure, sure. Okay, where
16 do you get your paycheck?

17 A. In Asoka's office, in engineering office.

18 Q. You go there and you pick it up?

19 A. Yes.

20 Q. You pick it up, yourself?

21 A. Myself, yes. When I go inside, Asoka, I'd like to pick
22 up my check. If he is not there, I pick up, myself, because
23 it is behind the desk, under the desk.

24 Q. So Asoka has the paychecks.

25 A. Uh-huh.

1 HEARING OFFICER ROSENBERG: Would the Employer like to
2 cross-examine the witness?

3 MR. ROSENBERG: We have just a couple of questions.

4 **CROSS-EXAMINATION**

5 Q. BY MR. ROSENBERG: Good afternoon, Felix.

6 A. Good afternoon, sir.

7 Q. Thank you for your time today and for bearing with us
8 throughout this process. If you may -- if I may just put
9 what we've labeled Employer 13 in front of you. Do you
10 recognize that document?

11 A. It is, yes, my schedule.

12 Q. Right.

13 A. Our schedule, right.

14 Q. That's your schedule. So your schedule is Monday
15 through Friday, from 7:00 a.m. to 3:30 p.m.

16 A. That's correct.

17 Q. Okay. Do you ever work on the weekends?

18 A. Sometimes.

19 Q. Sometimes, you do.

20 A. Um-hum.

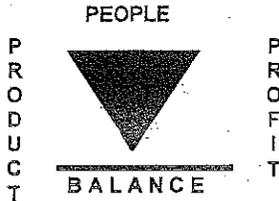
21 Q. And when you work on the weekends, who is your
22 supervisor?

23 A. Jerry.

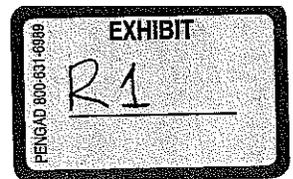
24 Q. When you, you said before that when you are in the room,
25 you clean -- you swipe the lamps, you clean the lamps

EXHIBIT C

EXHIBIT 1



PYRAMID HOTEL GROUP
APPLICATION FOR EMPLOYMENT



91.50

DATE: 6-8-06

Last Name	First	MI	SS#
CARRASCO	RIERY		
Street Address		Apt. #	
4910 Terrell-st.			
City	State	Zip Code	Home: (703) 582-3554 Alternate: ()
Annan Dale	VA	22003	
Referral Source (How did you hear about us?) Washington Post			

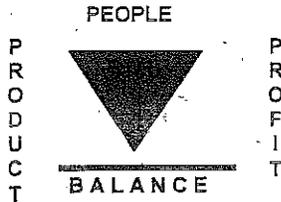
If you are under 18 and it is required, can you furnish a work permit? Yes No
 Have you ever been employed with Pyramid Hotel Group before? Yes No
 If yes, give dates and positions:

Are you authorized to work in this country? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Date available for work? Open
Position for which you applying? Engineering	<input checked="" type="checkbox"/> Full Time <input type="checkbox"/> Part Time <input type="checkbox"/> Temporary <input type="checkbox"/> On Call <input type="checkbox"/> Seasonal
Have you ever been convicted of a felony? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, please provide dates and reason:
Have you ever served in the Armed Forces? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	What Branch? _____ Dates of Services: From: _____ To: _____
Special Training related to your Field?	Hours Available? <input checked="" type="checkbox"/> AM <input checked="" type="checkbox"/> PM <input type="checkbox"/> No restrictions
What is your desired salary range? Open	List the names of any relatives employed with Pyramid Hotel Group.

PREVIOUS EMPLOYMENT HISTORY

Starting with your most recent employer, please provide the following information:

Employer: Georgetown Visitation (302) 337-0305	Phone Number:	Dates: From: 1994 To: present
Street Address: 1500 35 st. NW. Washington DC	Starting Rate of Pay: \$ _____ per <input type="checkbox"/> Hourly <input checked="" type="checkbox"/> Salaried	
Starting Position/Final Position: Engineer	Final Rate of Pay: \$ _____ per <input type="checkbox"/> Hourly <input checked="" type="checkbox"/> Salaried	
Immediate Supervisor's Name and Title: Mary Siguel Business Manager	May we contact for references? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Duties/Responsibilities: electricity, plumbing, heating/cooling	Why did you leave? Building under Renovation	



PYRAMID HOTEL GROUP
APPLICATION FOR EMPLOYMENT

DATE: 6-8-06

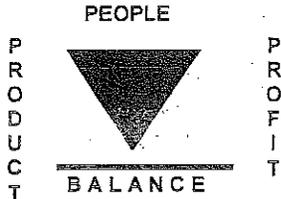
PREVIOUS EMPLOYMENT HISTORY (CONT'D)

Starting with your most recent employer, please provide the following information:

Employer: <u>Days Inn</u>	Phone Number:	Dates: From: <u>2004</u> To: <u>To 2005</u>
Street Address: <u>4400 Connecticut Av. Washington</u>		Starting Rate of Pay: \$ <u>18.00</u> per <input checked="" type="checkbox"/> Hourly <input type="checkbox"/> Salaried
Starting Position/Final Position: <u>Engineer</u>		Final Rate of Pay: \$ <u>19.00</u> per <input checked="" type="checkbox"/> Hourly <input type="checkbox"/> Salaried
Immediate Supervisor's Name and Title: <u>Corrie Spivack ASSISTANCE G.M.</u>		May we contact for references? <input type="checkbox"/> Yes <input type="checkbox"/> No
Duties/Responsibilities: <u>Electricity Plumbing HVAC units</u>		Why did you leave?
Employer: <u>Hilton at Springfield</u>	Phone Number:	Dates: From: <u>2003</u> To: <u>2004</u>
Street Address: <u>VA.</u>		Starting Rate of Pay: \$ <u>17.00</u> per <input type="checkbox"/> Hourly <input type="checkbox"/> Salaried
Starting Position/Final Position: <u>Engineer</u>		Final Rate of Pay: \$ <u>17.00</u> per <input type="checkbox"/> Hourly <input type="checkbox"/> Salaried
Immediate Supervisor's Name and Title: <u>Thou</u>		May we contact for references? <input type="checkbox"/> Yes <input type="checkbox"/> No
Duties/Responsibilities:		Why did you leave?
Employer:	Phone Number:	Dates: From: To:
Street Address:		Starting Rate of Pay: \$ per <input type="checkbox"/> Hourly <input type="checkbox"/> Salaried
Starting Position/Final Position:		Final Rate of Pay: \$ per <input type="checkbox"/> Hourly <input type="checkbox"/> Salaried
Immediate Supervisor's Name and Title:		May we contact for references? <input type="checkbox"/> Yes <input type="checkbox"/> No
Duties/Responsibilities:		Why did you leave?

EDUCATION

Name & Address:	From - To	Degree or Diploma	Major Studies
High School <u>Bolivar Bolivia</u>	<u>To 1988</u>	<u>Diploma</u>	
College			
Other <u>VA. N.A.P.E.</u>			
Other:			



PYRAMID HOTEL GROUP
APPLICATION FOR EMPLOYMENT

DATE: 6-8-06

REFERENCES

NAME	TITLE	RELATIONSHIP TO YOU	PHONE NUMBER	# OF YEARS KNOWN
<i>Celina Carrasco</i>		<i>Brother</i>	<i>(703) 599-6768</i>	
<i>Kathy Mareer</i>	<i>Business M.</i>		<i>(202) 337-3380</i>	<i>13 years</i>

SKILLS AND QUALIFICATIONS:

Typing: WPM	Computer Skills: Programs:	Software:
Language Skills: List the languages you can speak. <i>Spanish</i>		
Mechanical Skills: <input checked="" type="checkbox"/> Plumbing <input checked="" type="checkbox"/> Carpentry <input checked="" type="checkbox"/> Electrical <input type="checkbox"/> Masonry <input type="checkbox"/> Printing <input checked="" type="checkbox"/> Painting <input checked="" type="checkbox"/> HVAC		
Other Mechanical Skills/Certificates: <i>Local pressure Boilers - Electric motors, universal EFC license</i>		
Other Job Related Skills and/or Certificates:		

Public Law 91-508 requires that we advise you that a routine inquiry may be made during our initial or subsequent processing of your application which will provide applicable information concerning character, general reputation, personal characteristics, and mode of living. Upon written request, additional information regarding inquiry, if one is made, will be provided. I understand that this application stays current for only 30 days. At the conclusion of that time, if I have not heard from the employer and still wish to be considered for employment, it will be necessary for me to reapply and fill out a new application.

Federal law prohibits the company from hiring any person unless he/she presents documents which establishes his/her eligibility to work in the United States. Therefore, the company will require that each new hire present such documentation as a condition of employment.

Pyramid is an equal employment opportunity employer and does not discriminate in hiring or employment, in accordance with the requirements of all applicable state and federal laws on the basis of race, color, sex, national origin, age, sexual orientation, physical or mental disability, or any other protected status under applicable local, state, and federal law unrelated to job requirements.

I understand that Pyramid is in no way obligated to provide employment. I understand that my employment is terminable-at-will, that I am not being employed for any specific time, and that this application is not and in intended to be a contract for continued employment.

The use, possession, or being under the influence of illegal drugs or alcohol on the job is prohibited and will result in disciplinary action, up to and including termination of employment. I hereby agree to submit to any lawful drug testing that may be required as a condition of employment and understand that refusal to such testing during the course of my employment may result in disciplinary action, up to and including termination of employment.

I certify that any misrepresentation made in this application will be efficient cause for cancellation of this application and/or for my separation from Pyramid. I certify that if employed, I will abide by all company rules and regulations. I certify that the above statements have been read by me and that the statements I have made on this application are true and correct.

Applicant Signature: *Neil L.* Date: 6-8-06

Thomas and Thorngren, Inc
Pre-Screening Notice and Certification Request for
the Work Opportunity and Welfare-to-Work Credits

OMB No. 1545-1500

▶ See separate instructions.

Job applicant: Fill in the lines below and check any boxes that apply. Complete only this side.

Your name CARRASCO RIERY Social security number ▶

Street address where you live 4910 Terrell St.

City or town, state, and ZIP code Annandale VA. 22003

Telephone no. (703) 582-3554

If you are under age 25, enter your date of birth (month, day, year) 1 1

Work Opportunity Credit

1 Check here if you received a conditional certification from the state employment security agency (SESA) or a participating local agency for the work opportunity credit.

2 Check here if any of the following statements apply to you.

- I am a member of a family that has received assistance from Aid to Families with Dependent Children (AFDC) or its successor program, Temporary Assistance for Needy Families (TANF), for any 9 months during the last 18 months.
- I am a veteran and a member of a family that received food stamps for at least a 3-month period within the last 15 months.
- I was referred here by a rehabilitation agency approved by the state or the Department of Veterans Affairs.
- I am at least age 18 but not over age 24 and I am a member of a family that:
 - a Received food stamps for the last 6 months, OR
 - b Received food stamps for at least 3 of the last 5 months, BUT is no longer eligible to receive them.
- Within the past year, I was convicted of a felony or released from prison for a felony AND during the last 6 months I was a member of a low-income family.
- I received supplemental security income (SSI) benefits for any month ending within the last 60 days.

Welfare-to-Work Credit

3 Check here if you received a conditional certification from the SESA or a participating local agency for the welfare-to-work credit.

4 Check here if you are a member of a family that:

- Received AFDC or TANF payments for at least the last 18 months, OR
- Received AFDC or TANF payments for any 18 months beginning after August 5, 1997, OR
- Stopped being eligible for AFDC or TANF payments after August 5, 1997, because Federal or state law limited the maximum time those payments could be made.

All Applicants

Under penalties of perjury, I declare that I gave the above information to the employer on or before the day I was offered a job, and it is, to the best of my knowledge, true, correct, and complete.

Job applicant's signature ▶

Date 1 1

For Employer's Use Only

Employer's name _____ Telephone no. () - EIN ▶ _____

Street address _____

City or town, state, and ZIP code _____

Person to contact, if different from above Thomas and Thorngren, Inc. Telephone no. (615) 242 - 8246

Street address P.O. Box 280100

City or town, state, and ZIP code Nashville, TN 37228

If, based on the individual's age and home address, he or she is a member of group 4 or 6 (as described under **Members of Targeted Groups** in the separate instructions), enter that group number (4 or 6) ▶ _____

DATE APPLICANT: Gave information / / Was offered job / / Was hired / / Started job / /

Under penalties of perjury, I declare that I completed this form on or before the day a job was offered to the applicant and that the information I have furnished is, to the best of my knowledge, true, correct, and complete. Based on the information the job applicant furnished on page 1, I believe the individual is a member of a targeted group or a long-term family assistance recipient. I hereby request a certification that the individual is a member of a targeted group or a long-term family assistance recipient.

Employer's signature ▶ _____ Title _____ Date / /

Privacy Act and Paperwork Reduction Act Notice

Section references are to the Internal Revenue Code.

Section 51(d)(12) permits a prospective employer to request the applicant to complete this form and give it to the prospective employer. The information will be used by the employer to complete the employer's Federal tax return. Completion of this form is voluntary and may assist members of targeted groups and long-term family assistance recipients in securing employment. Routine uses of this form include giving it to the state employment security agency (SESA), which will contact appropriate sources to confirm that the applicant is a member of a targeted group or a long-term family

assistance recipient. This form may also be given to the Internal Revenue Service for administration of the Internal Revenue laws, to the Department of Justice for civil and criminal litigation, to the Department of Labor for oversight of the certifications performed by the SESA, and to cities, states, and the District of Columbia for use in administering their tax laws.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:
Recordkeeping 2 hr., 47 min.
Learning about the law or the form 28 min.
Preparing and sending this form to the SESA 36 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001.

DO NOT send this form to this address. Instead, see **When and Where To File** in the separate instructions.



EXHIBIT 2



Personnel Action Form

Reason New Hire Transfer Change Separation

Employee Name (L/F/M) <i>Carved, Rem</i>	
Social Security Number	Date of Request <i>01/15/11</i>
Location/Hotel Name	Department <i>Eng</i>
Current Position	Date of Hire

Personal Change

Date of Birth (MM/DD/YYYY)	Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	Effective Date (MM/DD/YYYY)
Address	Marital Status <input type="checkbox"/> Single <input type="checkbox"/> Married	
Federal Tax Exemption/Extra \$ /	Employee Payroll # /	
City/State/Zip	State Tax Exemption/Extra \$ /	Employee Badge # /
Phone 1 Home	Phone 2 Circle Cell / Pager	EEO Code <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Hispanic Check one <input type="checkbox"/> Asian <input type="checkbox"/> Native American

Job/Pay Rate Changes

Effective Date <i>01/15/11</i>	Next Review Date <i>01/15/12</i>	<input type="checkbox"/> 90 Day <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Common Date
Position (Base) <i>Eng. Supervisor</i>	Position (Base)	
(2nd/3rd)	(2nd/3rd)	
Department/Job Code	Department/Job Code	
Rate <i>28.13</i> \$ <u>Per Hour</u> Annual	Rate \$ Per Hour Annual	<input type="checkbox"/> Exempt <input checked="" type="checkbox"/> Non-Exempt
Status <input checked="" type="checkbox"/> FT <input type="checkbox"/> PT <input type="checkbox"/> OC <input type="checkbox"/> Temp	Status <input type="checkbox"/> FT <input type="checkbox"/> PT <input type="checkbox"/> OC <input type="checkbox"/> Temp	

Benefits

Dates of Absence	Return to Work Date	Benefit Used <input type="checkbox"/> Vacation <input type="checkbox"/> Sick <input type="checkbox"/> Personal Check one <input type="checkbox"/> Funeral <input type="checkbox"/> Jury <input type="checkbox"/> Other
Hours/Days Requested	Hours/Days Eligible	Hours/Days Remaining

Leaves of Absence

Type of Leave of Absence Medical - Not Eligible for FMLA*** FMLA**, ** Personal **

* Eligible for STD? Yes, attach STD Worksheet No
 ** Leave of Absence Request form must be obtained

Termination

Last Day Worked	Termination Date
Eligible for Re-Hire? <input type="checkbox"/> Yes <input type="checkbox"/> No* <input type="checkbox"/> Conditional* Appropriate Notice Given? <input type="checkbox"/> Yes <input type="checkbox"/> No*	If "No" or "Conditional", explain
Reason for Termination <input type="checkbox"/> Another Job* <input type="checkbox"/> Relocation <input type="checkbox"/> Personal <input type="checkbox"/> Transportation <input type="checkbox"/> Job Abandonment <input type="checkbox"/> Hotel Left System *Explain below <input type="checkbox"/> Staff Reduction <input type="checkbox"/> School <input type="checkbox"/> Misconduct* <input type="checkbox"/> End Temp. Empl. <input type="checkbox"/> Dissatisfaction <input type="checkbox"/> End LOA <input type="checkbox"/> Other*	

Comments

Employee/Date	Human Resources/Date	Approval/Signatures <i>[Signature]</i> <i>01/15/11</i>
Department Manager/Date <i>[Signature]</i> <i>1/19/11</i>	General Manager/Date	
Executive Committee/Date	Controller/Date	

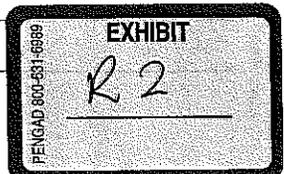
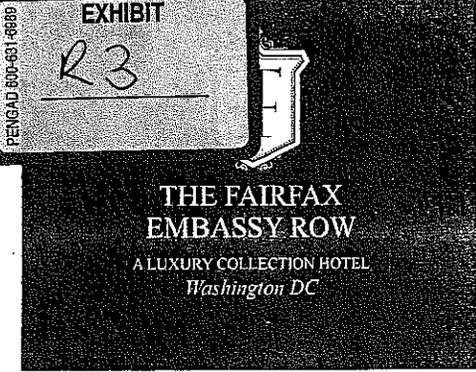


EXHIBIT 3



Personnel Action Form

Reason New Hire Transfer Change Separation

Employee Name (L/F/M) <i>Ricardo Carreras</i>	
Social Security Number	Date of Request
Location/Hotel Name	Department
Current Position <i>Asst. Ch Engineer</i>	Date of Hire <i>9/11/06</i>

Personal Change

Date of Birth (MM/DD/YYYY)	Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	Effective Date (MM/DD/YYYY)
Address	Marital Status <input type="checkbox"/> Single <input type="checkbox"/> Married	
Federal Tax Exemption/Extra \$ /	Employee Payroll # /	
City/State/Zip	State Tax Exemption/Extra \$ /	Employee Badge # /
Phone 1 Home	Phone 2 Circle Cell / Pager	EEO Code <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Asian <input type="checkbox"/> Native American

Job/Pay Rate Changes

Effective Date	Next Review Date	<input type="checkbox"/> 90 Day <input type="checkbox"/> Annual <input type="checkbox"/> Common Date
Position (Base)	Position (Base)	
(2nd/3rd)	(2nd/3rd)	
Department/Job Code	Department/Job Code	
Rate \$ <i>28.13</i> Per Hour Annual	Rate \$ <i>28.83</i> Per Hour Annual <i>(2.5)</i>	<input type="checkbox"/> Exempt <input checked="" type="checkbox"/> Non-Exempt
Status <input checked="" type="checkbox"/> FT <input type="checkbox"/> PT <input type="checkbox"/> OC <input type="checkbox"/> Temp	Status <input checked="" type="checkbox"/> FT <input type="checkbox"/> PT <input type="checkbox"/> OC <input type="checkbox"/> Temp	<i>annual = 59,966.40</i>

Benefits

Dates of Absence	Return to Work Date	Benefit Used <input type="checkbox"/> Vacation <input type="checkbox"/> Sick <input type="checkbox"/> Personal <input type="checkbox"/> Funeral <input type="checkbox"/> Jury <input type="checkbox"/> Other
Hours/Days Requested	Hours/Days Eligible	Hours/Days Remaining

Leaves of Absence

Type of Leave of Absence Medical - Not Eligible for FMLA** FMLA**,** Personal **

* Eligible for STD? Yes, attach STD Worksheet No
 ** Leave of Absence Request form must be obtained

Termination

Last Day Worked	Termination Date
Eligible for Re-Hire? <input type="checkbox"/> Yes <input type="checkbox"/> No* <input type="checkbox"/> Conditional*	If "No" or "Conditional", explain
Appropriate Notice Given? <input type="checkbox"/> Yes <input type="checkbox"/> No*	
Reason for Termination <input type="checkbox"/> Another Job* <input type="checkbox"/> Relocation <input type="checkbox"/> Personal <input type="checkbox"/> Transportation <input type="checkbox"/> Job Abandonment <input type="checkbox"/> Hotel Left System *Explain below <input type="checkbox"/> Staff Reduction <input type="checkbox"/> School <input type="checkbox"/> Misconduct* <input type="checkbox"/> End Temp. Empl. <input type="checkbox"/> Dissatisfaction <input type="checkbox"/> End LOA <input type="checkbox"/> Other*	

Comments

Retired to January 15, 2012
(Promo 1-15-2011)

Approval/Signatures

Employee/Date	Human Resources/Date
Department Manager/Date <i>[Signature]</i>	General Manager/Date <i>[Signature]</i>
Executive Committee/Date	Controller/Date <i>6/4/12</i>

EXHIBIT 4

ENG DATA

Employee Status Code (A/T/L/D/N) exactly matches A

HOME DEPT DESCRIPTION	NAME: LAST, FIRST MIDDLE	ORIGINAL HIRE DATE	ADJUSTED SENIORITY DATE	PAY PERIOD SALARY
60044 - ENGINEER	BELL JR, JAMES	04/17/2006	04/17/2006	680.00000
60044 - ENGINEER	CARRASCO, RIERY	09/11/2006	09/11/2006	1153.20000
60044 - ENGINEER	AYALA, EDGARDO ALYARENGA	03/16/2011	03/16/2011	800.00000
60044 - ENGINEER	BANZUELO, EDWIN	05/20/2011	05/20/2011	720.00000
60044 -ENGINEER	MEJIA, MILTON LEONEL	08/01/2012	08/01/2012	700.00000

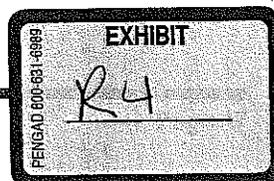


EXHIBIT 5

The Fairfax at Embassy Row
 2100 Massachusetts Ave, NW
 Washington, D.C. 20008
 202-293-2100

202-835-		202-835-	
ACCOUNTING		HUMAN RESOURCES	
Dan Berry ✓	Controller	2132	Jan Weis
Cell (910) 585-1101			Regional Director of HR
Jennifer Shipman ✓	Assistant Controller 703-307-4164	2115	Cell (727) 543-4788
Alex Mendez ✓	Accounting Manager	2194	Direct Line (202) 736-1452
Cell (574) 748-8617	202-680-3283		Kate Nowierski
Elzbieta Barreiro ✓	Payroll Manager 202-400-2541	2139	Director of HR
Kea Adams	A R Supervisor 202-550-1453	2140	HR Intern
AUDIO VISUAL			2150
SWANK		2109	KITCHEN
Linda Pickering	Director	2109	Chris Ferrer
lpickering@swankav.com			Executive Chef
(202) 907-5196			Cell (512) 629-7256
BANQUETS			George Fassiadis
George Togba	Director of Banquets ✓	2164	Sous Chef to Culinary
Cell (571) 641-7800			Banquet Sous Chef
Banquet Captain			Cell (209) 304-4224
Cell (202) 509-2922			Direct Line (202) 835-2119
Banquet Houseman			Banquet Kitchen
Cell (202) 509-3884	Cell (202) 509-3885		Hot/Cold
BELL STAND			2405/2405
Front Door		2315	PURCHASING:
CAFETERIA		2340	Lee Davis 291-0155
			Purchasing Agent
			2186
			RESERVATIONS
			Central Reservations
			1-888-627-8439
			Central Reservations
			#33
			RESTAURANTS AND LOUNGES:
			Lounge
			The Fairfax Lounge
			2391
			Restaurant
			2100 Prime
			2390
			Reinhold Schulz ✓
			Director of Food & Beverage
			2185
			(703) 969-8728
			Direct (202) 835-2185
			Elizabeth DeNola ✓
			Asst. F&B Manager
			2344
			Ishwar Rajbhandari ✓
			Asst. F&B Manager
			2344
			Room Service
			Kitchen
			2362
			REVENUE MANAGEMENT:
			Christopher Dickinson ✓
			Regional Dir. Revenue Mgmt
			2141
			Cell (202) 674-5725
			Simona Castellani-Duncan
			Reservations Coordinator
			2116
			ROOMS DIVISION
			Gerard Marcel Folly ✓
			Director of Rooms
			2178
			571-641-7801
			SALES
			Alexandra Byrne ✓
			Director of Sales & Marketing
			2134
			(202) 207-5068
			Shirley Phull ✓
			Director of Diplomatic Sales
			2149
			Cell (202) 903-8525
			Director of Group Sales
			2142
			Vonessa Davenport ✓
			Cell (202) 725-3877
			Director of Transit Business Sales
			2101
			Lilla DeMesme ✓
			Cell (202) 372-6458
			Senior Sales Manager
			2360
			Jennifer Logsdon ✓
			Direct Line (202) 835-2199
			2158
			Summer Belman ✓
			Sales Manager
			2163
			Aron Chapman
			Sales Coordinator
			SECURITY
			Lost and Found
			2411
			Cell (240) 535-3353
			GUEST SERVICES/PBX
			0
			STEWARDING
			2342
			Dish Room
			2341
			TECHNOLOGY
			Enterprise Solutions
			IT Systems Analyst
			2197
			1-866-437-7832
			Phone Room
			2197
			Email Support
			help@espc.com
			202
			FAX NUMBERS:
			Accounting
			466-9867
			Audio Visual
			530-3896
			Concierge/Guest
			293-0641
			Engineering
			835-2180
			Business Center
			736-1457
			Human Resources
			736-1434
			Purchasing
			785-3088
			Sales & Executive Office
			736-1420
			Front Office/Concierge
			293-0641
			Housekeeping Manager
			2175
			ibrahim Koroma ✓
			HSKP Ass't Manager
			2177
			TBD ✓
			HSKP Ass't Manager
			2177
			Laundry
			2300
			Cell (202) 684-1563

EXT 2279, PW 9974#
 REMOTE ACCESS: DIAL EXT, *, PW

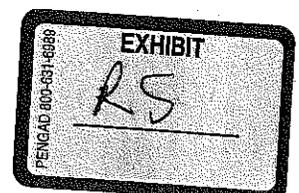


EXHIBIT 6

ASOKA SENEVIRATNE

From: Jan Weis <jweis@pyramidhotelgroup.com>
Sent: Friday, July 22, 2011 8:57 AM
To: 'Joyette Jones-Geday'; 'Karl Radergard'; 'Verena Koelbl'; tanderson@pyramidhotelgroup.com; 'Kent Langley'; 'George Fassiadis'; 'Mark Timms'; 'Andrea Pires'; 'Mehret Tesfamicheal'; gfolly@pyramidhotelgroup.com; 'Linda Brown'; 'Rhonda Keith'; 'ASOKA SENEVIRATNE'; rcarrasco@pyramidhotelgroup.com; 'Hamid Parcham'
Cc: sgjohnston@pyramidhotelgroup.com
Subject: RE: Employee Opinion Survey

Follow – up – please ask the following people (see below) to report to HR today between 10:00 and 4:00pm to complete their survey – we'll no longer be in the Hunt Room.

JAN WEIS

Regional Director of Human Resources - Mid-Atlantic

THE FAIRFAX AT EMBASSY ROW

A Starwood Luxury Collection Hotel
202 736-1452 *telephone direct*
727-543-4788 *cell*

2100 MASSACHUSETTS AVENUE
WASHINGTON, DISTRICT OF COLUMBIA, NORTHWEST, 20008

luxurycollection.com/fairfax

We are on the home stretch of the survey and we still have a few more people to stop by. Please send the following people to complete the survey. Please send them by immediately to get this completed. If they are not here today: please provide the next time they are working. Please send me the name of those working on the Overnight shift, I will send you the survey link and a random passcode, so they can take the survey. With that said, I need the PM managers to make completing the survey a priority at the start of their shifts.

Team, we need to get this done as quickly as possible and this is and must be your priority. Thank you in advance for your cooperation and assistance in this matter.

Stewarding/Cafeteria:

Edwin Vargas
Bok Yun

Front Office:

Patrick Agyei
Ahmed Mustefa
Betty Antoinette
Chafik Najdi
Rogelio Velado

Housekeeping:

Maria Moreira
Dennis Alabi-ga
Khalil Aruna



Kitchen:
Sandra Sanchez

F&B:
Hugo Angeles
Jose Henriquez
Wilma Soriano
Oscar Torrico
Guillaume Batinga
Elsy Valdez
Jose Aparicio
Sanaa Mehdli
Blanca Landaverde

Accounting:
Lee Davis

Engineering:
Edgardo Ayala
Edwin Banzuelo
Felix Terrazas

JOYETTE
JONES-GEDAY
ASSISTANT DIRECTOR OF HUMAN RESOURCES

THE FAIRFAX AT EMBASSY ROW
A Starwood Luxury Collection Hotel
202 835 2151 *telephone*
202 736 1434 *facsimile*
jjones-geday@pyramidhotelgroup.com

2100 MASSACHUSETTS AVENUE
WASHINGTON, DISTRICT OF COLUMBIA, NORTHWEST, 20008

luxurycollection.com/fairfax

For Career Opportunities, please visit: www.besthotelcareers.com

EXHIBIT 7



Pyramid Hotel Group - Job Application

Printer friendly version

Omit EEO data

Omit appl. detail

Close this window

Send this a link to this application to someone else via email:

To:

From: dlee@pyramidhotelgroup.com

Subject:

Brief message:

Send email

OPENING APPLIED FOR

Applied for: Painters

Applied at: The Fairfax Hotel at Embassy Row

NAME AND ADDRESS INFORMATION

Last name	First name	Soc. Sec. #
TERRAZAS	FELIX	
Address, cont'd.		State Zip code
8308 TOBIN RD		ANNANDALE VA 22003

(at least one phone number is required)

Home phone 703 - 992 - 7534 E-mail:

Mobile phone

Work phone 202 - 380 - 8361 Ext.

How did you hear about us? Friend/Family Other:

If under 18 years old and a work permit is required, can you provide? 18 yrs or older

Have you ever been employed at this hotel, or any Pyramid Hotel Group property, before? No

If yes, please give dates, property name, and position(s) held:

BACKGROUND AND WORK AVAILABILITY

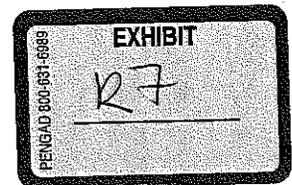
Are you authorized to work in the United States? Yes

Please indicate the type of work schedule you are interested in: Part Time

Have you ever been convicted of a felony? No

If yes, please provide date(s) and details:

Have you ever served in the U.S. Armed Forces: No



If yes, please indicate branch of service, and dates:

(not specified) From: ...to...

What special training have you received related to your field?

10 YEARS PAINTING EXPERIENCE

What hours are you available?

(any)

What is your desired compensation?

Hourly: from... 16 ...to... 18

Salary: from... ...to...

List the names of any family members or relatives employed with Pyramid Hotel Group:

NONE

VOLUNTARY EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION INFORMATION

Ethnic group with which you MOST identify: Hispanic

Gender: Male

Veteran status. Please check the following if it applies.

Do you qualify as a Veteran of the Armed Forces of the United States of America? No

PREVIOUS EMPLOYMENT REFERENCE #1

Employer: GEORGETOWN INN City: WASHINGTON State: DC Phone: 202 333 8900

Starting position: PAINTER Final position: MAINTENANCE

Immediate supervisor: JERRY CARRASCO Supervisor's title: CHIEF ENGINEERING MANAGER

Duties/Responsibilities: GENERAL MAINTENANCE OF THE HOTEL

Dates you were employed: From: 10-10-2008 To: 12-10-2009 May we contact for references? Yes

Starting rate of pay: \$ 18,00 per

Final rate of pay: \$ 18,00 per

Why did you leave? STILL WORKING

PREVIOUS EMPLOYMENT REFERENCE #2

Employer: City: State: Phone:

Starting position: Final position:

Immediate supervisor: Supervisor's title:

Duties/Responsibilities:

Dates you were employed: From: To:

May we contact for references?

Starting rate of pay: \$ per

Final rate of pay: \$ per

Why did you leave?

PREVIOUS EMPLOYMENT REFERENCE #3

Employer: City: State: Phone:

Starting position: Final position:

Immediate supervisor: Supervisor's title:

Duties/Responsibilities:

Dates you were employed: From: To:

May we contact for references?

Starting rate of pay: \$ per

Final rate of pay: \$ per

Why did you leave?

PREVIOUS EMPLOYMENT REFERENCE #4

Employer: City: State: Phone:

Starting position: Final position:

Immediate supervisor: Supervisor's title:

Duties/Responsibilities:

Dates you were employed: From: _____ To: _____ May we contact for references?

Starting rate of pay: \$ _____ per _____

Final rate of pay: \$ _____ per _____

Why did you leave? _____

EDUCATION, TRAINING AND SKILLS

High school or trade school	City and State	Attended from/to	Rec'd diploma?
HIGH SCHOOL	BOLIVIA	1.978 - 1.982	Yes
College, university or other	City and State	Attended from/to	Degree(s) attained Major studies

List the languages you speak: SPANISH AND ENGLISH

Typing: _____ words per minute

Mechanical skills: Painting

Other mechanical skills/certifications: CARPINTERY AND PLUMBING

Computer skills: _____ Software: _____

Other job-related skills, certifications: _____

PERSONAL REFERENCES

Please provide at least three personal references, including name, relationship, phone and years known.

First and last name	Relationship	Phone	Email address	Yrs known
GONZOLO VILLARROEL	COWORKER	202 6154324		10
Title: CONTRACTOR				
CELIER CARRASCO	FRIEND	703 5998768		20
Title: CONTRACTOR				
JERRY CARRASCO	FRIEND	202 3808361		20
Title: CHIEF ENGINEER				
Title:				

APPLICANT AGREEMENT (agreed to upon application submittal)

I certify that any misrepresentation made in this application will be sufficient cause for cancellation of this application and/or my separation from Pyramid Hotel Group. I certify that if employed, I will abide by all company rules and regulations. I certify that the above statements have been read by me and that the statements I have made on this application are true and correct.

I understand that this application stays current and valid for 30 days. At the conclusion of that time, if I have not heard from the employer and still wish to be considered for employment, it may be necessary for me to reapply and fill out a new application.

CONSUMER REPORT DISCLOSURE AND AUTHORIZATION

I understand that, for employment purposes as part of the pre-employment background investigation and at any time during my employment with Pyramid, Pyramid may obtain a consumer report or investigative consumer report which may include, but is not limited to, my creditworthiness or similar characteristics, employment and education verifications, social security verification, criminal and civil history, personal interviews, DMV records, any other public records and any other information bearing on my credit standing, credit capacity, character, general reputation, personal characteristics and trustworthiness. I hereby authorize and consent to Pyramid's procurement of such a report.

I understand that, pursuant to the federal Fair Credit Reporting Act (15 U.S.C. § 1681 et seq), Pyramid will provide me with a copy of any such report if the information contained in such report is, in any way, to be used in making an adverse decision regarding my fitness for employment with Pyramid. I further understand that such report will be made available to me prior to any such decision being made, along with the name and address of the reporting agency that produced the report. I understand that, if an investigative consumer report is prepared, I have the right to request in writing complete and accurate disclosure of the nature and scope of the information requested and a summary of my rights as a consumer under the Fair Credit Reporting Act.

I release Pyramid and/or its agents and any person or entity, which provides information pursuant to this authorization, from any and all liabilities, claims or law suits in regards to the information obtained from any and all of the above referenced sources used. I acknowledge that a telephonic facsimile or copy of this release shall be as valid as the original. In addition to private consumer reporting agencies, this release is valid for all federal, state, county and local agencies and authorities.

U.S. WORK ELIGIBILITY

Federal law prohibits the company from hiring any person unless he/she presents documents which establishes his/her eligibility to work in the United States. I understand that the employer will require me to present such documentation as a condition of employment.

EQUAL OPPORTUNITY EMPLOYMENT

Pyramid is an equal employment opportunity employer and does not discriminate in hiring or employment, in accordance with the requirements of all applicable state and federal laws on the basis of race, color, sex, national origin, age, sexual orientation, physical or mental disability, or any other protected status under applicable local, state, and federal law unrelated to job requirements.

NO OBLIGATION TO PROVIDE EMPLOYMENT

I understand that Pyramid is in no way obligated to provide employment. I understand that my employment is terminable-at-will, that I am not being employed for any specific time, and that this application is not intended to be a contract for continued employment.

DRUG AND ALCOHOL POLICY

I understand that the use, possession, or being under the influence of illegal drugs or alcohol on the job is prohibited and will result in disciplinary action, up to and including termination of employment. I hereby agree to submit to any lawful drug testing that may be required as a condition of employment and understand that refusal to such testing during the course of my employment may result in disciplinary action, up to and including termination of employment.

EXHIBIT 9

29

Fairfax at Embassy Row

Salary History

EMPLOYEE	EFFECTIVE DATE	REASON	SALARY	PER	ANNUAL
CARRASCO, RIERY	01/15/2012	MERIT	28.8300	H	59966.40
	01/15/2012	PERFORM	28.8300	H	59966.40
	01/15/2011	PROMO	28.1300	H	58510.40
	09/11/2010	MERIT	26.1300	H	54350.40
	09/11/2009	PERFORM	25.3700	H	52769.60
	09/11/2008	PERFORM	24.6400	H	51251.20
	09/11/2007	PERFORM	23.8100	H	49524.80
	09/11/2006	NEW HIRE	23.0000	H	47840.00

EXHIBIT 12

Increase 1.5/12

original



Pyramid Hotel Group

HOURLY

Team Member Rierry Carrasco Job Title Engineering Supervisor

Department Engineering & Maintenance Hire Date 9-11-2005

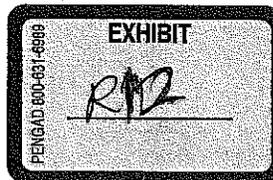
Date Appraisal Due ~~May 2011~~ September 2011 Date Appraisal Completed 5-21-2012

Jan 2012

Step 1: Describe the Process

Step 2: Rate Performance

Rating:	(5) Consistently Exceeds Standards	(2) Improvement Needed to Meet Standards
	(4) Usually Exceeds Standards	(1) Does Not Meet Standards
	(3) Successful in Meeting Standards	(0) Does Not Apply



Handwritten mark

R.E.

(5)	(4)	(3)	(2)	(1)	(0)	Comments
-----	-----	-----	-----	-----	-----	----------

APPEARANCE Clean and well groomed. Uniform pressed. Appropriate jewelry, make-up and shoes.		X				Jerry does well on this area.
ATTENDANCE Reports to work on time as scheduled. Respects and adheres to absence policy.				X		Jerry needs to try and make it on time for the late shift. However Jerry has displayed a good attitude to be available during any after hour emergencies. Thank you.
JOB KNOWLEDGE Demonstrates the skill and technical knowledge needed to perform the job.			X			Jerry has useful HVAC, Refrigeration and general maintenance skills.
QUALITY OF WORK Accurate and consistent. Follows policies and procedures. Is thorough and careful.				X		It is really important that Jerry adheres to all procedures; on time for shift, complete assigned work in a timely manner and follow up to a completion.
QUANTITY OF WORK Able to handle workload. Meets or exceeds productivity standards. Manages time well.			X			Jerry basically keeps busy during shift.. But some assigned work has been really delayed or never done unfortunately..
WORK AREA Work area maintained for maximum efficiency and cleanliness. Minimum breakage.			X			Jerry tries to be as clean and neat possible.
SAFETY Careful. Alert and corrects hazardous situations. Participates in safety programs.			X			Jerry is always careful.
INITIATIVE Accepts responsibility willingly. Assertive. Creative in solving problems.				X		As a supervisor, I would like to see Jerry takes initiative to fix problems when he sees one without being asked or reminded.
JUDGEMENT Uses sound reasoning to assess situations and make decisions. Uses common sense.			X			Jerry does well in most times.
DEPENDABILITY Completes goals. Meets deadlines. Willing to learn new tasks. Flexible. Reliable.				X		I have found that often Jerry need to be reminded. Some work can take several months or even never despite reminders. Reliability is a series issue.
TEAMWORK Cooperative. Assists willingly. Courteous to others. Supports the goals of the team, department and hotel.			X			Jerry has a very good demeanor and gets along with the team very well.
FRIENDLINESS Courteous. Pleasant. Helpful. Initiates guest contact.		X				Jerry does very well.
HOSPITALITY Treats guests with respect. Resolves guests needs. Handles complaints and problems. Follows through.				X		Jerry does very well with guests. I wish to see Jerry follow up on guest issues to a completion and more initiative even if he may not be scheduled on the next day.
SALES Makes use of suggestive selling techniques. Upsells.						NA

Step 3: Peer Review Feedback

The Team Member: Is a team player	Consolidated Peer Review Ratings				
	5	4	3	2	1

R.E. 

Helps others					
Knows how to do his/her job well					
Does his/her fair share of the work					
Cares about other team members					
Cares about customers					
Delivers good customer service					
Delivers quality in his/her job tasks					
Is responsive to guest requests					
Works safely					
Is flexible					
Is friendly					
Has fun					
Makes things better					
Treats others with respect					
Uses guest's name					
Wears uniform and name tag proudly					
Represents my department well					
Acts professionally with guests					
Has a good attitude					

Step 4: Overall Team Member Rating

- Consistently Exceeds Standards
 Usually Exceeds Standards
 Successful in Meeting Standards
 Improvement Needed to Meet Standards
 Does Not Meet Standards

Step 5: Summarize and Set Goals

Celebrate Strengths – Useful HVAC & Refrigeration Skills and general engineering knowledge. Quick grasp of problems. Knows the building well.

Set Goals for Improvement Needed:

As the Engineering Department supervisor, I would like to see Jerry take more ownership of solving technical problems to a conclusion. Rather than reporting what he suspects the problem to be, Jerry need to take the next step to fix it. I am always willing to provide technical/personal help if Jerry asks. Also I should be able to feel confident that once Jerry is assigned a task, that he will finish it in a timely manner or follow through, discuss, ask etc. For example if Jerry suspects a Freon leak in a piece of equipment, he should proceed to find the leak and fix it. If he need help, he is most welcome to ask me. He should keep at it until the issue is fully resolved.

Jerry has mentioned to me that he want to go to the next step of his HVAC /Refrigeration knowledge and I recommend he enrolls a good vocational training class and I will be happy to help to pick a good class to go to a higher skill level in terms of HVAC controls and electrical circuits.

Team Member's Summary Comments

Supervisor's Summary Comments – I am happy to have Jerry as a team member. Jerry brings in value to the department. But since Jerry is a supervisor his responsibilities are higher than a shift engineer. Jerry need to always observant to notice issues on a daily basis that need fixing and take his own initiative to address them without being prompted and constantly reminded by me.

At times Jerry has displayed a very hostile attitude. That is not acceptable behavior and will serve Jerry well maintain a civil composure at all times.

R.C.

Signature of Team Member

Job Title

Date

[Handwritten Signature]

ENG. SUPERVISOR

5-21-12

Signature of Reviewer

5/21/12

Job Title

Director

Date

[Handwritten Signature]

[Handwritten Signature]

6-1-12

Signature of General Manager/Human Resources

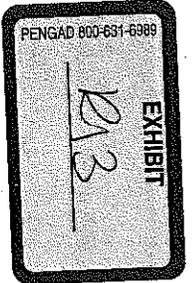
Job Title

Date

[Handwritten Signature]

EXHIBIT 13

PYR309 - FAIRFAX EMBASSY ROW
2100 MASSACHUSETTS AVENUE N.W.
WASHINGTON, District of Columbia 20008
 Schedule Printout Report for 12/01/2012 To 12/07/2012
 By Department - Position - Last Name
 95 - M3 LABORWATCH (PYR-DC)



Employee	12/01 Saturday	12/02 Sunday	12/03 Monday	12/04 Tuesday	12/05 Wednesday	12/06 Thursday	12/07 Friday	Totals
Department: 06 - MAINTENANCE								
Position: 40 - CHIEF ENGINEER								
3010414 - SENEVIRATNE, ASOKA K			800a-430p	800a-430p	800a-430p	800a-430p	800a-430p	
Employee Totals:			8.00	8.00	8.00	8.00	8.00	40.00
Position: 44 - ENGINEER								
3010424 - AYALA, EDGARDO ALYARENGA	O/C	O/C	O/C	O/C	O/C	O/C	O/C	
			600a-230p	600a-230p	600a-230p	600a-230p	600a-230p	
Employee Totals:	0.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00
3010170 - BELL JR, JAMES R	O/C	O/C	O/C	O/C	O/C	O/C	O/C	
		230p-1100p	230p-1100p	230p-1100p	230p-1100p	230p-1100p		
Employee Totals:	0.00	8.00	8.00	8.00	8.00	8.00	0.00	40.00
3010200 - CARRASCO, RIERY	630a-1100p	630a-300p	300p-1130p	O/C	O/C	O/C	300p-1130p	
	O/C	O/C	O/C	O/C	O/C	O/C	O/C	
Employee Totals:	16.00	8.00	8.00	0.00	0.00	0.00	8.00	40.00
3010474 - MEJIA, MILTON LEONEL	O/C	O/C	630a-300p	630a-300p	630a-300p	630a-300p	630a-300p	
	O/C	O/C	O/C	O/C	O/C	O/C	O/C	
Employee Totals:	0.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00
Position: 454 - PAINTER								
3010412 - TERRAZAS, FELIX	O/C	O/C	700a-330p	700a-330p	700a-330p	700a-330p	700a-330p	
	O/C	O/C	O/C	O/C	O/C	O/C	O/C	
Employee Totals:	0.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00
Site PYR309 Totals:	16.00	16.00	48.00	40.00	40.00	40.00	40.00	240.00

PYR309 - FAIRFAX EMBASSY ROW
2100 MASSACHUSETTS AVENUE N.W.
WASHINGTON, District of Columbia 20008

Schedule Printout Report for 12/08/2012 To 12/14/2012
 By Department - Position - Last Name
 95 - M3 LABORWATCH (PYR-DC)

Employee	12/08 Saturday	12/09 Sunday	12/10 Monday	12/11 Tuesday	12/12 Wednesday	12/13 Thursday	12/14 Friday	Totals
Department: 06 - MAINTENANCE								
Position: 40 - CHIEF ENGINEER								
3010414 - SENEVIRATNE, ASOKA K			800a-430p	800a-430p	800a-430p	800a-430p	800a-430p	
Employee Totals:			8.00	8.00	8.00	8.00	8.00	40.00
Position: 44 - ENGINEER								
3010424 - AYALA, EDGARDO ALYARENGA	O/C	O/C	O/C	O/C	O/C	O/C	O/C	
			600a-230p	600a-230p	600a-230p	600a-230p	600a-230p	
Employee Totals:	0.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00
3010170 - BELL JR, JAMES R	O/C	230p-1100p	O/C	230p-1100p	O/C	230p-1100p	O/C	
			O/C	O/C	O/C	O/C	O/C	
Employee Totals:	0.00	8.00	8.00	8.00	8.00	8.00	0.00	40.00
3010200 - CARRASCO, RIERRY	O/C	630a-1100p	O/C	630a-300p	O/C	630a-300p	O/C	
			300p-1130p				300p-1130p	
Employee Totals:	16.00	8.00	8.00	0.00	0.00	0.00	8.00	40.00
3010474 - MEJIA, MILTON LEONEL	O/C	O/C	O/C	O/C	O/C	O/C	O/C	
			630a-300p	630a-300p	630a-300p	630a-300p	630a-300p	
Employee Totals:	0.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00
Position: 454 - PAINTER								
3010412 - TERRAZAS, FELIX	O/C	O/C	O/C	O/C	O/C	O/C	O/C	
			700a-330p	700a-330p	700a-330p	700a-330p	700a-330p	
Employee Totals:	0.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00
Site PYR309 Totals:	16.00	16.00	48.00	40.00	40.00	40.00	40.00	240.00

EXHIBIT 14

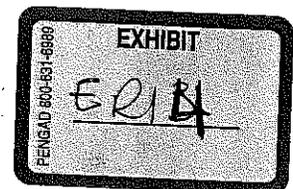
Time Card

Employee: 3010424 - AYALA, EDGARDO ALYARENGA

Period: December 01, 2012
thru December 07, 2012

Hours Paid

Day	Date	Dept - Position	In	Out	Forced	Reg	OT	DT	Total	Amount	Site
Sun	12/02/2012	06-44	0600	1100		5.00		0.00	5.00	100.0000	PYR309
Sun	12/02/2012	06-44	1130	1500		3.50		0.00	3.50	70.0000	PYR309
Mon	12/03/2012	06-44	0602	1200		6.00		0.00	6.00	120.0000	PYR309
Mon	12/03/2012	06-44	1230	2000		7.50		0.00	7.50	150.0000	PYR309
Tue	12/04/2012	06-44	0601	1251		6.75		0.00	6.75	135.0000	PYR309
Tue	12/04/2012	06-44	1309	1424		1.25		0.00	1.25	25.0000	PYR309
Wed	12/05/2012	06-44	0621	1111		5.00		0.00	5.00	100.0000	PYR309
Wed	12/05/2012	06-44	1131	1928		5.00	3.00	0.00	8.00	190.0000	PYR309
Thu	12/06/2012	06-44	0622	1121		0.00	5.00	0.00	5.00	150.0000	PYR309
Thu	12/06/2012	06-44	1147	1713		0.00	5.50	0.00	5.50	165.0000	PYR309
Fri	12/07/2012	06-44	0631	1157		0.00	5.50	0.00	5.50	165.0000	PYR309
Fri	12/07/2012	06-44	1224	1552		0.00	3.25	0.00	3.25	97.5000	PYR309
Totals:						40.00	22.25	0.00	62.25	\$1,467.50	



Time Card

Employee: 3010424 - AYALA, EDGARDO ALYARENGA

Period: December 08, 2012
thru December 14, 2012

Hours Paid

Day	Date	Dept - Position	In	Out	Forced	Reg	OT	DT	Total	Amount	Site
Sat	12/08/2012	06-44	0701	1250		5.75			5.75	115.0000	PYR309
Mon	12/10/2012	06-44	0607	1316		7.25			7.25	145.0000	PYR309
Mon	12/10/2012	06-44	1341	2059		7.25			7.25	145.0000	PYR309
Tue	12/11/2012	06-44	0606	1137		5.50			5.50	110.0000	PYR309
Tue	12/11/2012	06-44	1207	1703		5.00			5.00	100.0000	PYR309
Wed	12/12/2012	06-44	0605	1227		6.50			6.50	130.0000	PYR309
Wed	12/12/2012	06-44	1242	1602		2.75	0.50		3.25	70.0000	PYR309
Thu	12/13/2012	06-44	0605	1359		0.00	8.00		8.00	240.0000	PYR309
Thu	12/13/2012	06-44	1421	1928		0.00	5.25		5.25	157.5000	PYR309
Fri	12/14/2012	06-44	0617			0.00	0.00		0.00	0.0000	PYR309
<i>Exception: Still Clocked In</i>											
Totals:						40.00	13.75	0.00	53.75	\$1,212.50	