GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of:	
Local 22, International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, Petitioner,	PERB Case No. 84-R-05 Opinion No. 96
and	
The Washington Convention Center, Employer.	

DECISION AND ORDER

On April 16, 1984, Local 22 of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada (Petitioner) filed a Recognition Petition with the District of Columbia Public Employee Relations Board (Board) seeking the creation of and the exclusive right to represent a unit of spotlight operators at the Washington Convention Center (Employer). The proposed unit consists of five (5) employees.

Although Employer is an independent, quasi-public agency, its employees are subject to the Board's jurisdiction for the limited purpose of supervision of its labor management relations as authorized by the Washington Convention Center Amendment Act of 1983.

On May 10, 1984, Employer filed its opposition to the Petition contending that the spotlight operators are casual employees who do not constitute an appropriate unit for collective bargaining. Employer requested the Board to dismiss the Petition.

On June 18, 1984, in response to Employer's opposition, Petitioner filed a memorandum in support of its Petition contending, essentially, that a well-established line of National Labor Relations Board (NLRB) cases relating to collective bargaining unit creation in the entertainment industry establish a clear precedent for a unit of spotlight operators. On June 26, 1984, Employer filed a reply to Petitioner's memorandum contending that the cases cited by Petitioner are distinguishable from the present situation because they involve different types of employers and different bargaining units of employees.

The issue before the Board is whether or not a unit of spotlight operators at the Washington Convention Center is an appropriate unit for collective bargaining.

On July 11, 1984, the Board ordered a hearing before the Board's designated Hearing Examiner to resolve the factual and legal issues in dispute. On August 10, 1984, a hearing was conducted affording both parties full opportunity to present testimony and documentary evidence. Post-Hearing briefs were filed by both parties by September 17, 1984. The Hearing Examiner's Report and Recommendations were filed with the Board on October 3, 1984. Both parties were afforded the opportunity to file exceptions to the Hearing Examiner's Report and Recommendations, but neither party did so.

In summary, the Hearing Examiner framed the issue as being whether or not the spotlight operators are full-time employees of the Washington Convention Center thereby entitling them to collective bargaining representation. After considering the entire record, the Hearing Examiner concluded that the spotlight operators are not "employees" for the purpose of collective bargaining representation. The Washington Convention Center has utilized spotlight operators on just seven (7) occasions since it began operations in January 1983. The Hearing Examiner found that the relationship between the spotlight operators and the Washington Convention Center most closely approximates that of independent contractors rather than employees because on the seven (7) occasions when the Washington Convention Center utilized their services, it did so without the expectation of continued reemployment of them. Because they did not have a reasonable expectation of reemployment, they cannot be considered employees for the purpose of representation by a collective bargaining agreement.

Based upon its review of the entire record, the Board finds the Hearing Examiner's analysis, reasoning and conclusions to be thorough, rational and persuasive. Accordingly, the Hearing Examiner's recommendations are adopted by the Board.

O R D E R

IT IS ORDERED:

The Recognition Petition of International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada, is dismissed.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
January 8, 1985