

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

GUIDE DOGS FOR THE BLIND, INC.

Employer

and

Case 20-RC-18286

OFFICE AND PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, LOCAL 29

Petitioner

DECISION AND DIRECTION OF ELECTION

Guide Dogs for the Blind, Inc. (the Employer) is a California nonprofit corporation that provides guide-dogs and training in their use free-of-charge to blind and visually impaired persons throughout the United States and Canada. By its amended petition, Office and Professional Employees International Union, Local 29 (the Petitioner), seeks to represent a unit consisting of about 45 employees who work in the training department at the Employer's San Rafael, California, facility.¹ The Employer contends that the petitioned-for unit is not an appropriate unit, and that the appropriate unit must include employees in certain other "dog-handling" classifications who work in the training department and the veterinary, admissions/alumni/graduate services/outreach (AAGSO), breeding, kennel and puppy-raising departments. The unit urged by the Employer consists of about 112 employees.²

The Petitioner contends that the canine welfare program manager, apprentice program manager, training/class supervisor, and class/training manager are statutory supervisors and

¹ The petitioned-for unit, as amended, includes: All full-time and regular part-time instructors, including apprentice instructors, apprentice program instructors, canine welfare technicians, resident attendants/ and training specialists employed by the Employer in the training department at its San Rafael, California, facility; and excluding all office and clerical employees, all other employees, guards and supervisors as defined by the Act.

² The Employer employs a total of about 187 individuals at its San Rafael facility.

should be excluded from the unit.³ The Petitioner also contends that that the training department's administrative assistant and administrative coordinator are office clerical employees and should be excluded from the unit. The Employer takes the contrary view and asserts that these individuals must be included in the unit.

The Employer also contends that the apprentice program orientation & mobility instructor (APO&M Instructor) is a professional employee and should be excluded from the unit. The Petitioner asserts that this individual is not a professional employee and should be included in the unit. In the alternative, Petitioner argues that if the APO&M Instructor is found to be a professional employee, she should be allowed to vote in a *Sonotone*⁴ election, together with those instructors who have similar job prerequisites and duties and who were stipulated to be included in the unit.

Upon careful review of the record and for the reasons discussed below, I find that the employees in the petitioned-for unit share a substantial community of interest and that the petitioned-for unit, as amended by the parties' stipulations, is an appropriate unit for collective-bargaining purposes. I also find that the APO&M Instructor and the instructors who are required to possess the same educational degree and perform similar job functions as the APO&M Instructor are not professional employees, and thus are not required to vote in a *Sonotone* election. Further, I find that the administrative assistant and administrative coordinator are office clericals and should be excluded from the unit. Finally, I find that the canine welfare program manager, apprentice program manager, training/class supervisors, and the class/training manager are statutory supervisors and should be excluded from the unit.

STIPULATIONS

The parties stipulated, and I find, that training department employees in the following classifications should be included in any unit found appropriate:

³ The Petitioner also contends that following classifications in other departments are supervisory: from the veterinary department, supervising veterinary technician; from the Admissions/Alumni/Graduate Services/Outreach (AAGSO) department, senior field manager and senior graduate support specialist; from the breeding department, breeding colony supervisor; for the kennel department, assistant kennel managers, kennel supervisors and kennel training supervisors. However, as discussed below, I find it unnecessary to reach such issues given my finding that a unit limited to employees within the training department is an appropriate unit for collective-bargaining purposes.

⁴ *Sonotone Corp.*, 90 NLRB 1236, 1241-42 (1950).

All full-time and regular part-time apprentice instructors I, II, and III, licensed instructors, qualified instructors, master instructors, master licensed instructors, senior instructors, senior licensed instructors, senior qualified instructors, canine welfare technicians I, II and III, senior canine welfare specialist⁵, resident advisor/canine welfare technician modified (RA/CWT Modified), canine welfare specialists, and training/class specialists. The parties also stipulated, and I find, that students enrolled in San Francisco State University Masters Program, who receive instruction at the Employer's San Rafael facility, are not employees within the meaning of the Act and should be excluded from the unit. The parties further stipulated, and I find, that the individuals in the following classifications are statutory supervisors and should be excluded from the unit: President/CEO, Chief Financial Officer (CFO), director of human resources, director of training, director of development, director of community operations, and director of marketing and communications.

Lastly, the parties stipulated, and I find, that the Employer's executive assistant is a confidential employee and should be excluded from the unit.

⁵ The "training/class specialist," appears to be another name for the "canine welfare specialist." I utilize the latter term herein. Training Operations Division Director Terry Barrett testified that the canine welfare specialist position was vacant at the time of the hearing. However, I have included it in the unit found appropriate based on the parties' stipulation to its inclusion. In this regard, I further note that the record contains several job descriptions with job titles which differ to some extent from those used by the parties in their stipulation and in the record. The job titles in the job descriptions are: apprentice guide dog mobility instructor, guide dog mobility instructor, master guide dog mobility instructor, senior guide dog mobility instructor, canine welfare technician I, canine welfare technician I (modified), canine welfare technician II, and senior canine welfare technician, resident advisor/canine welfare technician I (modified) and canine welfare specialist. In this decision, I am generally adhering to the nomenclature used by both parties rather than by the Employer in these job descriptions.

FACTS

The Employer has facilities in San Rafael, California, and at Boring, Oregon⁶ where it breeds, raises, cares for, and trains guide-dogs, which it provides, along with guide-dog training, to blind and visually-impaired persons throughout the United States and Canada. The Employer's San Rafael facility covers 11-acres, and includes an administration building, a volunteer center, a dormitory, a training office, a maintenance department office, a large kennel complex, a veterinary clinic, a gift shop, an employee lounge, a kitchen/locker area, and parking lots used by employees, visitors and volunteers.

The Employer's Administrative Divisions. The Employer is headed by a president/CEO, and has several administrative divisions, each of which is headed by a director who the parties stipulated is a statutory supervisor. All of the petitioned-for employees fall under the training division and are in the training department. This division is headed by Director of Training Operations, Terry Barrett. The disputed employee classifications work in departments located within the training division, and in the community operations division, which is headed by Community Operations Director Brent Ruppel. Specifically, the disputed employees work within the training, veterinary or admissions/alumni/graduate services/outreach (AAGSO) departments in the training division under Barrett, and in the breeding, kennel and puppy-raising departments in the community operations division headed by Director Ruppel. Within the training division, the training department, headed by Training Department Director Charles Nathan, also includes the following sub-departments: dorm, RN and training apprentice program (TRAP). No party seeks to include the dorm or RN (Registered Nurse) staff or their respective managers, which provide care to the students in the dormitory at the Employer's facility. The TRAP program is discussed below.

The Petitioned-For Training Department Employees. The parties stipulated that except for the apprentice program orientation & mobility instructor (APO&M Instructor) whose asserted status as a professional employee is addressed separately below, all of the petitioned-for classifications of training department employees should be included in the unit. The record reflects that all of the petitioned-for employees are responsible for physically caring for the dogs

⁶ No party seeks the inclusion in the unit of employees from the Boring, Oregon facility, which is about 650 miles from the San Rafael facility. The Employer also owns a facility at Mill Valley, California, which is currently leased out and is not being used by the Employer.

in the Employer's guide-dog training program (herein called the training guide-dogs) and/or in training the training guide-dogs and blind and visually-impaired students to work with them.

Specifically, the approximately 12 CWTs⁷, whose inclusion in the unit has been stipulated to by the parties, all report directly to Canine Welfare Program Manager Marny Knowles, whose supervisory status is discussed separately below. CWTs report directly to the kennel welfare program manager, who, in turn, reports directly to Training Department Director Charles Nathan. CWTs use the training department office, which is located across the street from the kennel complex. They may also use computers located within the training guide-dog area of the kennel complex and in an office above the veterinary clinic. CWTs clean the kennels of the training guide-dogs, and exercise, feed, bathe, and administer medications to them. The training guide-dogs are generally separated from other dogs in the Employer's kennel complex, and generally are cared for only by CWTs.⁸ CWTs are assigned to care for specific training guide-dogs that are assigned to particular instructors, which are housed together in the same kennel. CWTs communicate with these instructors on a daily basis about matters involving the health and behavior of the training guide-dogs. CWTs may also assist the instructors in implementing behavior modification techniques when a training guide-dog exhibits a problem behavior, such as aggressiveness or fear of walking on an unfamiliar surface. Occasionally, CWTs will join instructors in dog-training conducted outside the Employer's facility. CWTs also assist students in the program by picking them up from the airport and helping to orient them in the dormitory. The resident advisor/CWT I (modified), performs the same job duties as the other CWTs, and also orients, assists and mentors the students, and conducts evening workshops and classes for them in the dormitory. The resident advisor/CWT I (modified) also stays overnight in the dormitory to handle any emergencies that may arise involving the students.

⁷ CWTs progress through several different CWT levels, including CWT I, CWT I (Modified); CWT II, Senior CWT, Canine Welfare Specialist and Resident Advisor/CWT I (Modified). References to "CWTs" herein refer to employees in all of these CWT classifications unless otherwise indicated.

⁸ At the time of the hearing, there were a total of about 275 dogs at the Employer's facility. Training guide-dogs are usually kept in kennels 1, 2 and 3, and at times in the boarding kennels, while the dogs in the Employer's breeding program (breeding dogs) are kept in a separate breeding kennel; puppies are kept in the puppy kennel; and other dogs may be held in the receiving or boarding kennel, depending on the reason that they are at the Employer's facility. The dogs in the breeding, puppy and receiving kennels are cared for by the kennel technicians, who do not take care of the training guide-dogs, except overnight between the hours of 11 p.m. and 7 a.m., when a single kennel technician is the only person in charge of all the dogs in the Employer's kennel complex.

The Employer hires most apprentice instructors from the ranks of its CWTs. The record reflects that two CWTs transferred to the kennel department and currently work as kennel technicians, which is one of the disputed classifications. All of the CWTs are non-exempt, hourly paid employees, Grades 5 through 8.⁹ Their work shifts are staggered and generally cover the hours between 7 a.m. and 9 p.m. except for the resident advisor/CWT I (modified) who stays overnight in the dormitory.

There are approximately 30 *instructors*, including apprentice, qualified, senior and master instructors, whose inclusion in the unit has been stipulated to by the parties.¹⁰ The job of all the instructors is to train the training guide-dogs and students. The senior and master instructors also serve as mentors to the apprentice instructors. The instructors share cubicles in the training office, which is located across the street from the kennel complex. They are also able to use computer terminals in an office within the kennel complex located above the veterinary office. The instructors work together on teams (“strings”) of four or five instructors, with each instructor assigned to about four guide-dogs. During the first two months of a training cycle, the instructors train only the training guide-dogs, mostly away from the Employer’s facility in the surrounding community. After that period, the instructors spend the next three weeks working with the students and training guide-dogs together in classrooms located in the dormitory at the Employer’s facility. After a training cycle is completed, some of the instructors may also perform routine or as needed follow-up visits to the homes of students who have graduated from the program. Generally, there is a three-week break between training cycles.

⁹ The record does not contain a listing of wage rates for each of the pay grades used by the Employer. However, it shows that the entry level for Grade 5 starts at \$14 an hour and for Grade 8 starts at \$17 an hour; and the highest pay in Grade 11 is about 15% less than the highest pay in Grade 12.

¹⁰ Qualified instructors are qualified to train dogs and students independently and do follow-up training with students in their homes. Senior instructors perform the same tasks as qualified instructors but also carry out mentoring responsibilities with apprentice instructors. Master instructors perform the same duties as senior instructors but also perform some of the tasks typically performed by training/class supervisors, such as treadmill training and supervising escalator training. The facts and analysis regarding the orientation & mobility instructor (APO&M Instructor), whom Petitioner seeks to include, and the Employer seeks to exclude as a professional employee, are set forth separately below.

The instructors work five days a week from about 7 a.m. to about 6 p.m. Their work is overseen on a daily basis by six *training/class supervisors*, whose work is, in turn, is overseen by a *class/training manager*.¹¹

The instructors include approximately seven *apprentice instructors*, who are in the Employer's Training Apprentice Program (TRAP), a three-year apprenticeship program during which they are mentored on-the-job by other instructors in how to train the training guide-dogs and students. While the job description of the instructors reflects that they report directly to the *apprentice program manager*,¹² as well as to Training Department Director Nathan, Training Division Director Terry Barrett testified that the instructors report directly to Nathan. Within about six months of successfully completing their apprenticeship program, most apprentice instructors obtain their State licenses and most are hired by the Employer as qualified instructors. Ninety-five percent of the Employer's qualified instructors are hired from the ranks of its apprentice instructors. With the exception of the APO&M Instructor, all instructors in the petitioned-for unit are hourly paid at Grades 7 through 11. The facts and analysis regarding the APO&M Instructor are separately addressed below.

An *administrative assistant* and *administrative coordinator* also work in the training department. The Petitioner seeks to exclude these employees from the unit as office clericals while the Employer would include them in the unit. The facts and analysis regarding these positions are separately addressed below.

All of the employees who are stipulated to be included in the unit, as well as all of the disputed employees, are subject to the same Employer personnel policies, employee handbook and appraisal system. As indicated above, the instructors work closely with the CWTs assigned to the training guide-dogs that they are assigned to train. CWTs and instructors communicate and/or work together on a daily basis to address matters involving the health and behavior of these dogs. Occasionally, CWTs are invited by instructors to attend training sessions. With the exception of the APO&M Instructor, all of the employees in the petitioned-for unit have the

¹¹ Petitioner contends that the training/class supervisors and class/training manager must be excluded from the unit as statutory supervisors and the Employer takes the opposite view. The facts and analysis regarding these positions are set forth separately below.

¹² Petitioner contends that the apprentice program manager must be excluded from the unit as statutory supervisor and the Employer takes the opposite view. The facts and analysis regarding this position are set forth separately below

same educational requirement, which is a high school diploma or its equivalent. All receive the same benefits, including health, dental and retirement benefits, and employees in certain job classifications, including those in the petitioned-for unit, also receive special allowances for shoes and rainwear. Unlike employees in the veterinary department, employees in the petitioned-for unit are not required to wear scrubs and are not given the allowance for scrubs received by both veterinary and kennel department employees. All employees who work at the San Rafael facility share the same breakroom and lounge area and park in the same parking lots.

The Disputed Employees in Other Departments. The Employer contends that in addition to the stipulated unit employees, individuals in classifications within several other departments (veterinary, AAGSO, breeding, kennel and puppy-raising) who handle dogs, must also be included in the unit in order for it to be appropriate. Petitioner takes a contrary position.

Veterinary Department Employees. The Employer contends that five *veterinary technicians*, including one *supervising veterinary technician*, must be included in the unit in order for it to be an appropriate unit. The Petitioner takes the opposite view.

The Employer's veterinary clinic is located within the kennel complex area. The clinic is headed by a veterinary medical director and has three veterinarians, five veterinary technicians and registered veterinary technicians, two veterinary receptionists, one data entry clerk, and two veterinary financial program assistance employees.¹³ The clinic provides medical care to all of the dogs at the Employer's facility, as well as to dogs owned by the Employer that are being cared for in the homes of volunteer-custodians or that have graduated from the Employer's training program and are in the homes of visually impaired or blind individuals. In providing veterinary medical care to the dogs at the facility, the veterinary clinic works closely with employees in all departments that handle dogs.

All of the *veterinary technicians* examine, evaluate, triage, vaccinate and de-worm dogs, as well as dispense medications. They are not required to have any education beyond high school, but are expected to have a few years experience as veterinary technicians prior to their hire. *Registered veterinary technicians* must complete two years of veterinary technology courses or have several years of experience as a veterinary technician and pass a State test. They

¹³ Neither party seeks the inclusion of the veterinarians, receptionists, data entry clerk, and veterinary financial program assistance employees in the unit.

perform certain tasks that other veterinary technicians cannot legally perform, such as inducing anesthesia and extracting certain teeth. All but one veterinary technician work ten hours a day, four days a week. The other works eight hours a day, three days a week. At least one veterinary technician works on Saturdays and Sundays, from 8 a.m. to 6 p.m. Veterinary technicians are on-call 24 hours a day, seven days a week, including holidays. They are hourly paid at Grade 9. In addition to receiving the same fringe benefits as the petitioned-for employees, they also receive a budget allowance for scrubs, which is not given to training department employees. Kennel technicians also receive an allowance for scrubs. Veterinary technicians also receive a shoe allowance, as do most of the employees in the training and kennel departments.

The *supervising veterinary technician* performs the same tasks as other veterinary technicians. She also prepares their appraisals, handles scheduling and assigns job duties to them. In addition, she performs various administrative tasks, including those involving the budget, inventory and ordering of supplies.¹⁴

There is no evidence of any temporary or permanent transfers of employees between the veterinary clinic and the training department.¹⁵ In order to avoid overcrowding, the veterinary clinic has designated separate time periods each morning for the kennel and training departments to bring in their dogs for routine visits; breeding dogs may be brought in at any time, as may any dogs requiring urgent care. The record amply supports that in providing veterinary medical care, the veterinary technicians regularly interact with training department employees, as well as with all other dog-handling employees, including kennel, breeding and puppy-raising department employees.

Admissions/Alumni/Graduate Services/Outreach Department (AAGSO) Employees.

The Employer contends that approximately 13 graduate services program employees working in three classifications (field service managers, senior field service managers and senior

¹⁴ While the parties dispute the status of the supervising veterinary technician as a statutory supervisor, as indicated above, I decline to address this issue as I have found the petitioned-for unit, which excludes veterinary department employees to be an appropriate unit.

¹⁵ The record reflects that at the time of the hearing, one kennel department employee was volunteering one day a week in the clinic and attending school to become a registered veterinary technician.

graduate support specialist, collectively herein called FSMs) within the AAGSO department, must be included in the unit.¹⁶ Petitioner takes the opposite position.

These employees report to the Director of Admissions and Graduate Services, Brian Francis, who, in turn, reports to Training Division Director Terry Barrett. All but three of the 13 FSMs work out of their homes at locations distant from the Employer's facility. They are responsible for making in-home visits to blind and/or visually impaired graduates of the Employer's training program living in their assigned geographic areas. FSMs are located in Washington, Southern California, Central California, Arizona, Tennessee, Michigan, Illinois, and Oregon. The three FSMs who work at the San Rafael facility share an office in the administrative office building. Two of them are assigned to geographic zones in the San Francisco Bay area. All FSMs are required to be licensed instructors.

The duties of the FSMs include providing telephonic and in-home support to graduates, with in-home visits conducted variously on a transitional, routine/annual or an emergency basis. In those cases where a student is unable to receive training at the Employer's facility, FSMs will fully train the student in the student's home for ten to fifteen days. FSMs spend 75 to 80% of their work-time in the field. They provide between one-half to two-thirds of the in-home training provided by the Employer. FSMs use the same training manual as the instructors but also use a separate field training manual. The FSMs' training work and techniques are similar in nature to those of the instructors, but are differently focused on the needs of individual clients and dogs in their home and local communities.

The remainder of the FSMs' work time is spent working for agencies for the blind, working on outreach programs for the Employer, and generating electronic reports of their work on the students and dogs they oversee.

The *senior graduate support specialist* is a part-time employee who works at the San Rafael campus. She also provides in-home training to students but is not assigned to a particular

¹⁶ The Employer does not contend that any other employees in its graduate services or other programs within the AAGSO department must be included in the unit. These employees include: in the graduate program, an administrative coordinator, a mental health specialist, a licensed counselor and an employee who arranges home interviews with blind and visually-impaired student applicants; from the alumni association program, a staff member and an administrative assistant; in the outreach program, one full-time and one shared administrative assistant; and, in the admissions program, one manager and three administrative coordinators.

geographic area. The record discloses that the senior graduate support specialist and the *senior field service managers* prepare annual evaluations for the FSMs assigned to them.

The record reflects that at the time of the hearing, one of the Employer's instructors had recently been promoted to an FSM position in Seattle. However, the record contains no evidence showing that any FSMs have permanently returned to positions within the petitioned-for unit. The record shows that FSMs may visit the Employer's facility a few times a year to conduct training classes or to participate in assessments with instructors about a student applicant in order to determine whether the applicant is eligible for training. In addition, instructors at times perform the same type of in-home follow-up work as the FSMs, and the FSMs will sometimes mentor apprentice instructors who are making such in-home visits. Both FSMs and the training department employees participate in events sponsored by the Employer's outreach department, including conferences and conventions. Lastly, FSMs rely on reports submitted by the training department staff to document the progress of students and guide-dogs while they were in the training program, and FSMs also communicate directly with training department employees in order to update information about dogs and former students that they are assisting in the field.

The FSM position is a salaried and exempt position paid at Grade 12. Employees in this position receive the same benefits as the petitioned-for unit employees except that because of their higher pay rate, FSMs do not receive the shoe or rainwear allowance given to the petitioned-for employees.¹⁷ FSMs are also subject to the same employee handbook as the petitioned-for and other disputed employees.

Community Operations Division. The Employer contends that individuals working in several departments in the community operations division (i.e., the breeding, kennel and puppy-raising departments) must be included in the unit. Petitioner takes the opposite view. Director Brent Ruppel heads this division. His office is located in the volunteer center at the San Rafael facility.

Breeding Department Employees. The Employer contends that the unit must include three employees in the following classifications in the breeding department: *breeding colony*

¹⁷ The shoe and rainwear benefits are only given to employees whose pay is at Grade 11 or less.

*supervisor, reproduction coordinator and breeding program coordinator.*¹⁸ All three report directly to Breeding Department Manager, Marion Phillips.

About ninety percent of the Employer's dogs come from its breeding program. The breeding department is located in the kennel complex at the San Rafael facility, and includes a laboratory, an office area and a kennel used only for dogs in the breeding program.¹⁹ Generally, breeding dogs are not mixed with other dogs and training department employees are not allowed into the breeding kennel, which is cared for by kennel technicians. Dogs in the breeding program that are not in the process of being bred or giving birth are kept in the homes of volunteer-custodians who live within a 75-mile radius of the Employer's facility.

The *breeding colony supervisor* spends about 80% of her work time screening and interviewing applicants for the Employer's volunteer-custodian program and making visits to the homes of applicants to this program and to the homes volunteer-custodians who have breeding or pregnant dogs in their homes. She also prepares quarterly reports for the colony of breeding dogs; maintains the data base for all of the Employer's dogs; and generates correspondence connected to her work.²⁰ About 20% of the breeding colony supervisor's work involves hands-on work with the breeding dogs, including assessing them for breeder status; overseeing natural breedings and artificial inseminations; and doing behavior modification work with them, often in the homes of volunteer-custodians. The job description for this position indicates that the breeding colony supervisor oversees the reproduction coordinator; conducts performance reviews; and trains and disciplines as needed. However, Breeding Manager Phillips testified that, contrary to what it is in the job description, it is Phillips and not the breeding colony

¹⁸ A breeding stock coordinator position was vacant at the time of the hearing and no party seeks its inclusion in the unit.

¹⁹ Breeding-dogs may sometimes be housed in kennels other than the breeding kennel for short periods of time (i.e., for two or three weeks) while they are being evaluated as a breeder or while they are in transition from training to breeder status. During such times, they may be housed in training department kennels and cared for by the CWTs. Once they are designated as breeding-dogs, they are returned to the homes of volunteer-custodians until they are called in to the Employer's facility for breeding purposes. Breeding-dogs are also sometimes kept in the receiving or boarding kennel, depending on the reason for their visit to the Employer's facility; at such times, they may be cared for by CWTs. Otherwise, the breeding dogs are regularly kept in the separate breeding kennel and not allowed to mix with training dogs. Most training guide-dogs are neutered prior to returning to the Employer's facility for training at about 15 months of age.

²⁰ In this regard, the job description states that the breeding colony supervisor performs the duties of the senior breeding stock coordinator, as needed, including providing guidance and support to the approximately 400

supervisor who supervises the reproduction coordinator. The breeding colony supervisor position requires a high school degree or its equivalent, a minimum of three years experience in livestock breeding and associated inheritable disorders and a minimum of two years experience in canine reproductive techniques. The person in this position is hourly paid at Grade 9, and works Monday through Friday, from 9 a.m. to 6 p.m., except on Thursdays, when she works from 9 a.m. to 12:30 p.m.

The *reproduction coordinator* spends 50% of her time in the breeding laboratory, handling routine breedings and insemination procedures; overseeing ovulation timing; performing semen evaluations; coordinating the diagnosis, treatment and record keeping in sub-fertility cases; and managing the cryo-genetic program, which includes collecting, freezing and shipping semen. The reproduction coordinator spends the other 50% of her time in the breeding department office. In the office, she handles the paperwork involved in the collection and exportation of semen, as well as data entry involving dog identification records, breedings and semen assessment. In addition, she handles administrative functions with regard to veterinary exams, maintenance of pedigree records, determination of breeding dates, and revision of breeding protocols. This position requires a high school degree or its equivalent and a minimum of two years experience in canine reproductive principles and practices, and/or a license as an animal health technician. In addition, the position requires advanced training in the areas of ovulation timing, semen evaluation and insemination techniques, and basic genetic principles. According to Phillips, such knowledge is largely acquired through on-the-job experience rather than schooling. The reproduction coordinator works Monday through Friday, 7 a.m. to 3 or 4 p.m., and is off work every other Friday. At times she is required to work on weekends. She is hourly paid at Grade 8, at a minimum wage of about \$17 an hour.

The *program coordinator* works at the front desk in the breeding department office and acts as a receptionist. She assists Phillips and oversees the volunteers and temporary staff who work in the office. Her position involves extensive keyboard, telephone and filing work, and requires three years experience in administrative positions and knowledge of Microsoft Office and data base applications. She is hourly paid at Grade 7.

volunteer custodians in the program; recruiting and screening custodian applicants; and making placement decisions.

As indicated above, training department employees do not generally enter the breeding kennel. However, on the occasions when CWTs from the training department are taking care of dogs being evaluated as breeders or dogs that have been designated as breeders but not yet moved into the breeding kennel, CWTs may enter the breeding office in connection with caring for such dogs and they may also have telephone and e-mail contact with the breeding department about such dogs.²¹ The breeding department also uses reports prepared by the CWTs and instructors in deciding whether a specific dog should be used for training or breeding purposes. The heads of the breeding and training departments also periodically confer to ensure that there is a sufficient number of dogs being bred to supply the training program and that the dogs will have ideal behavioral and physical characteristics. In addition, there are informal contacts between the breeding and training department employees in and around the kennel area. However, there is no evidence of any permanent or temporary transfers of employees between the breeding department and the training department. The record shows that breeding department employees do have frequent daily contact with kennel, puppy-raising and veterinary department employees, who are providing care to the breeding dogs and their pups.

Kennel Department Employees. The Employer argues that approximately 25 kennel department employees in the following classifications must be included in the unit: kennel technicians I and II, dog care specialists, senior dog care specialists, assistant kennel managers, kennel supervisors, kennel training supervisors and the kennel program coordinator. Petitioner takes the contrary view.

The Employer's kennel complex is large and divided into several separate, free-standing kennels, including: a breeding kennel (kennel 4); a puppy-raising kennel; kennels 1, 2 and 3, where training guide-dogs are kept; and receiving and boarding kennels. Also within the kennel complex is a kennel office/computer area, a kitchen/locker and an employee lounge area used by all employees, the breeding department and the veterinary clinic and office. As indicated above, the training department office is located across the street from the kennel complex, but training department employees are also permitted to use computers in an office located above the

²¹ Between twelve and twenty of the approximately 275 dogs boarded at the Employer's facility are being assessed for breeding purposes at any given time. In addition, CWTs may occasionally take care of breeding dogs when they are in the boarding kennel or being kept in the training kennels because of construction work at the Employer's facility.

veterinary clinic in the kennel area. The dormitory, where the training department instructors conduct classes, is in a separate building from the kennel complex. A walkway runs through the center of the kennel complex.

The kennel department is part of the community operations division. All of the kennel department employees report directly to Kennel Manager Kathy Fenger, who, in turn, reports to Community Operations Division Director Ruppel. Kennel department employees generally work only in the breeding, puppy-raising and receiving kennels. The kennel department provides physical care (i.e., cleaning kennels and feeding, grooming, bathing, exercising and administering medications) for all dogs other than the training guide-dogs.²² As indicated above, CWTs take care of the training guide-dogs except overnight from about 10 p.m. to 7 a.m., when one senior kennel department employee is responsible for the all dogs at the facility, including the training guide-dogs. The kennel department operates 24 hours a day, seven days a week, and kennel department employees work a variety of different shifts.

The three *kennel technicians* are responsible for providing basic care, such as feeding, weighing, grooming, bathing, medicating and exercising dogs and pups. They also clean the kennels and maintain feeding records. The kennel technicians are non-exempt, hourly paid employees at Grade 5.

The fourteen *dog care specialists* and one *senior dog care specialist* provide similar services as the kennel technicians. In addition, they are also responsible for prioritizing and coordinating the completion of daily kennel duties, assisting in the breeding and birthing process, caring for newborn pups, and assisting persons who are dropping off or picking up dogs. Employees in both of these classifications are nonexempt and hourly paid at Grade 8.

In addition to performing the same tasks as the other kennel employees, the three *kennel supervisors* assist the kennel manager in overseeing the department's operation by prioritizing work, scheduling department employees, and assisting with counseling and evaluating the kennel staff. The task of preparing annual performance appraisals for kennel employees is shared among the kennel supervisors, assistant kennel managers and the kennel manager.

²² This includes the breeder dogs, "career change" dogs, retiring dogs, and puppies up to ten weeks of age that are housed in the receiving kennel, puppy kennel and whelping kennel.

The two *kennel training supervisors* are responsible for training kennel department employees on proper dog care techniques and developing operational protocols for the department. They also spend a significant portion of their work time performing the same duties as other kennel technicians. Frequently, they are on-call on nights and weekends. The major difference between the job of the kennel supervisor and the kennel training supervisors is that unlike the kennel supervisor, the kennel training supervisors do not assist in preparing appraisals. The kennel training supervisors are non-exempt and hourly paid at Grade 9.

The two *assistant kennel managers* spend 50 to 60% of their time performing the same tasks as other kennel department employees. They spend the remainder of their time assisting the kennel manager in overseeing the department's operation by prioritizing work, and assisting with hiring, scheduling and preparing performance appraisals. These individuals are full-time, non-exempt and hourly paid at Grade 11.²³ Like the kennel manager, the assistant kennel managers are on-call during the evening.

The kennel program coordinator is an administrative position that also assists in the kennel department.

All kennel department staff are non-exempt, hourly paid employees. All are eligible for the same benefits as other employees. In addition, the kennel employees receive an allowance for scrubs, shoes and rainwear. It is unclear from the record whether they are required to wear scrubs.

Currently the Employer has two kennel technicians who were formerly CWTs. The record contains no evidence of kennel employees transferring to and become training department employees. Kennel and training department employees may come into contact with each other on the walkway that runs through the kennel complex, in areas where dog food is prepared for distribution and where dogs are bathed and walked, and in the veterinary clinic. All of the kennel department employees have frequent daily interactions with the employees in the breeding and puppy-raising departments, whose dogs are cared for by the kennel employees. Kennel employees also have frequent interactions with the employees working in the veterinary clinic.

²³ The parties dispute the supervisory status of the kennel supervisors, kennel training supervisors and assistant kennel manager. However, I find it unnecessary to address the issue of their supervisory status, given my decision that the petitioned-for unit, which excludes the kennel department employees, is an appropriate unit.

Puppy-Raising Department Employees. The Employer argues that nine employees in the puppy-raising department must be included in the unit. These include seven *community field representatives (CFRs)* and two *dog placement coordinators*. The puppy-raising department is located within the kennel complex and there is a separate kennel for the puppies. Administratively, this department is within the community operations division overseen by Brent Ruppel. All of the employees in the department report directly to the puppy-raising manager, who, in turn, reports to Ruppel.

The puppy-raising department performs a variety of functions for puppies ages eight weeks to 15 months and for volunteer-custodians who raise them. Puppies are housed in the puppy-raising kennel at the Employer's kennel complex until they are about eight weeks old. At that time, they are placed in the homes of volunteer-custodians. They stay with the volunteer-custodians until they are about 15 months old, at which time they are returned to the Employer for training or breeding purposes. The puppy-raising department recruits volunteers and evaluates prospective homes for the puppies. It also participates, along with kennel, training and veterinary staff members, in putting on orientation programs for such volunteers.

Each of the seven CFRs is assigned to cover a different region of the country and they closely monitor the health and behavior of about 120 puppies in their respective regions. All but two of the CFRs work out of their homes, including four in California, one in Oregon, one in Washington, and one in Colorado. The CFRs also oversee and assist the volunteer-custodians within their regions and prepare reports on the growth and development of the puppies. These reports are entered into the Employer's computer data-base and can be accessed by employees in all departments. Seventy-five percent of a CFR's job involves traveling. CFRs regularly communicate with the puppy-raising manager in San Rafael by telephone and e-mail. They also visit the San Rafael facility about four to six times a year to attend departmental meetings and handle special projects. The director of the training department and the training/class supervisors sometimes attend these puppy-raising departmental meetings in order to provide input concerning appropriate equipment and techniques for volunteers to use in handling the puppies. CFRs also respond to inquiries from training department personnel regarding the CFRs' reports on the development of a particular dog. They also work with volunteers and do outreach work in their geographic regions. CFRs are salaried, exempt employees and are paid at Grade 10. They

receive the same benefits as the petitioned-for employees except that they do not receive the allowance for shoes or rainwear.

The two *dog placement coordinators* work full-time in the San Rafael kennel complex. They are primarily responsible for facilitating the care and placement of non-training dogs (such as retired or career-change dogs) into appropriate custodial or adoptive settings. They are hourly paid at Grade 8.

The puppy-raising department works with the training and breeding departments to determine the appropriate number of dogs to be raised each year and to trace the development of particular training guide-dogs. The puppy-raising department also works with the training department to resolve issues relating to particular dogs and to ensure that the Employer is using the most appropriate protocols for puppy-raising. However, the record contains no evidence of any training department employees transferring either permanently or temporarily into puppy-raising department positions or vice versa.

ANALYSIS

Whether the Petitioned-For Unit Is An Appropriate Unit. As indicated above, Petitioner seeks to represent the petitioned-for employees in the training department and the Employer contends that the unit must also include additional individuals in the training department as well as in other departments. Petitioner takes a contrary view.

The Board examines several factors to determine whether employees share a community of interest, including: management and supervision; skills, training and duties; geographic proximity; interchange, integration and contact; wages, benefits and hours; and bargaining history. See *Overnite Transportation Co.*, 322 NLRB 723, 724 (1996). The Board first considers the petitioned-for unit and whether that unit is an appropriate unit. If it is, the inquiry ends. Only if the petitioned-for unit is not an appropriate unit does the Board examine alternative units urged by the parties. *Id.* at 723. The unit need not be the most appropriate unit but only *an* appropriate unit. *Id.*; see also *Home Depot USA*, 331 NLRB 1289 (2000); *Alamo Rent-a-Car*, 330 NLRB 897 (2000); *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988).

Application of the community of interest criteria to the facts of this case supports a finding that the petitioned-for unit is an appropriate unit for collective-bargaining purposes.

Thus, the petitioned-for employees all work at the same facility within the same administrative division and department. All have the same departmental manager. All work hands-on with the training guide-dogs, either by providing their daily physical care or by training such dogs. CWTs and instructors are assigned to the same group of training guide-dogs during a training cycle, and they interact on a daily basis about such dogs and work cooperatively to ensure the health, well-being, and positive behavior of such dogs. Both CWTs and instructors work with students; CWTs orient and assist the students and the resident advisor/CWT I (modified) stays in the dorm with the students and provides classes and workshops to them. The instructors teach the students how to work with their assigned training guide-dogs. Virtually all of the apprentice instructors are hired from the ranks of the CWTs and ninety-five percent of the instructors are promoted from the ranks of the apprentice instructors. All of the petitioned-for employees, except for the APO&M Instructor, whose unit placement is discussed separately below, are hourly paid and receive similar benefits. All are subject to the same Employer policies. No history of collective-bargaining exists to warrant finding a different unit appropriate. In sum, the employees in the petitioned-for unit share a substantial community of interest with each other.

I do not find, as argued by the Employer, that the employees from the veterinary department must be included in the unit in order for it to be appropriate. Thus, the veterinary department employees have separate immediate supervision; work in the veterinary clinic; have different skills; and perform different functions from the employees in the petitioned-for unit. Further, unlike employees in the petitioned-for unit, there is no evidence that employees in the veterinary department work or interact with students. While the veterinary department employees regularly come into contact with the employees in the petitioned-for unit, as do those from all of the other dog-handling departments, there is no evidence of permanent transfers or temporary substitutions between veterinary clinic and training department classifications. In sum, there is no overwhelming community of interest which requires the inclusion of the veterinary employees in the unit.

Likewise, I find that the FSMs employed in the AGSO department need not be included in the unit in order for it to be an appropriate unit. Thus, FSMs have separate supervision from the unit employees, and all but one work out of their own homes, which are mostly at distant locations from the Employer's San Rafael facility. In addition, FSMs are salaried, whereas all but one of the petitioned-for employees is hourly paid. FSMs are also paid at a higher pay-rate

than all but one of the employees in the petitioned-for unit. While FSMs are licensed instructors and perform similar training on dogs in the field, the training they provide is also different in that it is focused on the individual issues of clients and dogs in their own homes and communities. Further, while the record shows that FSMs at times work with instructors, and that one instructor was recently promoted to an FSM position in Seattle, there is no evidence that FSMs have returned to become instructors. Nor is there any evidence that employees in these two departments have regularly substituted for each other. In sum, I do not find that the similarities in training and job duties or the evidence regarding interchange and contact is sufficient to require the inclusion of the FSMs in the unit, given that the FSMs are in a separate division and department; have separate supervision; work at locations distant from the Employer's San Rafael facility; are salaried; and are more highly compensated than most training department employees.

Nor do I find that the breeding department employees must be included in the unit in order for it to be an appropriate unit. The breeding department employees work in a different department within an administrative division different from that of the employees in the petitioned-for unit. They have also different immediate supervision; work in a separate office and laboratory; and work with a different population of dogs, which is kept in separate kennels from the training guide-dogs. In addition, unlike employees in the petitioned-for unit, there is no evidence that breeding department employees work with or interact with students. Breeding department employees also have different skills and functions, which are unrelated to the functions of the employees in the petitioned-for unit. Thus, two of the three breeding department employees are involved in the technical aspects of dog breeding, and the third employee, the program coordinator, is a clerical employee whose job involves greeting the public and doing extensive filing, computer and telephone work. While the record reflects that the training department depends on the work of the breeding department to produce its training guide-dogs, and that the breeding department coordinates with the training and other departments in determining the number and type of dogs to be bred, it is plain from the record that the two departments are focused on different aspects of the Employer's operation. In such circumstances, the inclusion of the breeding department employees in the unit is not necessary to render the petitioned-for unit appropriate.

I likewise find that the kennel department employees need not be included in the unit in order for it to be an appropriate unit. The kennel department employees are in a separate administrative division and department and they have separate supervision from the petitioned-for employees. Although the kennel technicians perform work similar to that of the CWTs, the kennel technicians care for a different population of dogs, which is kept in separate kennels from the training guide-dogs cared for by the CWTs. In addition, unlike employees in the petitioned-for unit, there is no evidence that the kennel department employees work or interact with students. Kennel technicians also possess different skills and perform different functions from CWTs and instructors. Thus, they are given special training for their work in assisting with breedings and caring for breeding dogs and puppies. Further, while two CWTs have become kennel technicians, there is no evidence that any kennel employees have temporarily substituted for training department employees or permanently transferred into positions within the training department. Although the record shows that one senior kennel department employee looks after the entire population of dogs during the graveyard shift, it also shows that generally, kennel department employees take care only of dogs other than non-training guide-dogs. Lastly, kennel department employees also have different work hours from training department employees and are scheduled to cover a 24-hour a day, seven-days-a-week operation. In sum, given their different administrative division and department; different supervision; different skills and work; different dog population; different work schedules; lack of interaction with students; and their lack of significant interchange with employees in the petitioned-for unit, I find that the kennel department employees need not be included in the unit for it to be appropriate.

Lastly, I do not find that the puppy-raising department employees must be included in the unit in order for it to be appropriate. As is true with breeding and kennel employees, puppy-raising employees work in a different division and department from the employees in the petitioned-for unit and they have separate supervision. Moreover, most of the puppy-raising department employees work out of their homes at locations which are distant from the Employer's facility. They also work with a different population of dogs which are not in the training program, and they have skills in working with puppies that are dissimilar from those of the training department employees. Nor is there any evidence that they work with or interact with students as do the employees in the petitioned-for unit. In addition, the puppy-raising employees spend a substantial portion of their work time recruiting and assisting volunteer-

caregivers who are raising puppies in their homes, which is not part of the work of the training department employees. Thus, their job functions are quite distinct from those of the employees in the petitioned-for unit. Lastly, most of the puppy-raising employees are salaried and paid more than most of the employees in the petitioned-for unit. In these circumstances, I find that inclusion of the puppy-raising employees in the unit is not required.

In sum, I find that the petitioned-for unit, as modified herein, is an appropriate unit for collective-bargaining purposes and that none of the employees urged by the Employer are required to be included in the unit in order for it to be an appropriate unit.

Whether the APO&M Instructor Is A Professional Employee. The Employer contends that the APO&M Instructor is a professional employee who should be excluded from the unit. Petitioner argues that the APO&M Instructor is not a professional employee and, in the alternative, if the APO&M Instructor is found to be a professional employee, she should not be excluded from the unit as urged by the Employer, but rather be given a *Sonotone* election, together with the other instructors who have the same job prerequisites and duties, in order to determine whether they should be included in the unit.

Section 9(b)(1) of the Act provides that professional employees may not be included in a bargaining unit with nonprofessionals unless they vote in favor of such inclusion. Section 2(12)(a) of the Act defines a professional employee as those:

engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes. . . .

Section 2(12) was meant to apply to a small and narrow class of employees and employees must satisfy each of the four requirements set forth in Section 2(12) in order to qualify as professional employees within the meaning of this Section. See *Arizona Public Service Co.*, 310 NLRB 477, 482 (1993); *The Express-News Corp.*, 223 NLRB 627, 630 (1976). Section 2(12) defines a professional employee in terms of the work that the employee performs,

and it is the work, rather than the individual qualifications, which controls under that section. *Aeronca, Inc.*, 221 NLRB 326 (1975).

In the instant case, the APO&M Instructor, Kristen Lucas, works in the training department with other instructors in the petitioned-for unit. She is responsible for developing coursework and providing instruction to ensure that all training department staff learn proper techniques for teaching orientation and mobility skills to blind and visually-impaired students. She also provides orientation and mobility advice to applicants to the program, to students in class, and to program graduates. Lucas is required to have a Masters Degree in Orientation and Mobility. All of the predecessors in her position were also required to possess such a degree. Lucas is a salaried, exempt employee in Grade 11.

Training Division Director Barrett testified generally that the Employer has an APO&M Instructor because the blind and visually impaired students that it teaches are accustomed to working with individuals that have this degree and the Employer wanted to use the same “kind of basics,” and “problem solving,” techniques that a visually impaired student would be accustomed to using, whether they were handling a dog or a cane. Barrett explained that individuals come into the Employer’s program with different skills, and that if an individual needs additional assistance to continue his or her training or to be able to succeed in said training, the APO&M Instructor would use her specific skills to assist the student or student-applicant. Barrett testified that the types of problems dealt with by the APO&M Instructor may involve a student’s difficulties with spatial and/or tactile awareness or an inability to read audio cues, such as in traffic. According to Barrett, it requires “judgment and discretion,” and the use of “education and background” for the APO&M Instructor to be able to do her job. Barrett testified that, in addition to assisting clients, the APO&M Instructor also reviews the Employer’s curriculum and develops instructional materials for use by instructors and students. She also teaches and monitors the classroom instruction of apprentice instructors and students.

Barrett further testified that about three or four other training department instructors also have the same Masters degree in Orientation and Mobility (O&M degree) as Lucas, and also assist in helping students and providing special assessments involving orientation and mobility issues for student-applicants. The job description for the instructor position indicates that such a degree is required in order for the instructors to be permitted to provide such support and services. According to Barrett, these instructors do not receive additional compensation for such

work. The record does not specifically disclose what distinguishes the work of these instructors from that of Lucas, except that it appears Lucas is more involved in developing the curriculum than these instructors may be. The Employer does not contend that other instructors with O&M degrees are also professional employees.

Neither Lucas nor her direct supervisor nor any of the other instructors with the same degree testified at the hearing about their orientation and mobility work, and, as shown above, Barrett's testimony only generally addresses the nature of Lucas's work and does not indicate with specificity what distinguishes her work from that of the other instructors who have the same degree. In particular, the facts do not establish that Lucas's work is predominantly intellectual and varied, cannot be standardized in terms of measuring accomplishment, or requires advanced knowledge as opposed to general academic education. In these circumstances, the record evidence does not establish that Lucas's work fulfills the four requirements set forth in Section 2(12). Accordingly, I find that neither Lucas nor the other instructors who perform orientation and mobility work and hold the same degree are professional employees who must be given a *Sonotone* self-determination election in order to be included in the unit.

I further find that Lucas, as well as the other instructors with O&M degrees, clearly share a substantial community of interest with the other members of the petitioned-for unit, given their common supervision, work situs, and the fact they work with petitioned-for employees on a daily basis teaching within the training program. It is true that Lucas's salaried status and higher pay,²⁴ and that the academic degree required of Lucas and other instructors, differentiate them from other petitioned-for employees. In view, however, of the significance of the aforementioned interests that all instructors share with petitioned-for employees, these distinctions are insufficient to warrant a finding that they should be excluded from the unit. Accordingly, I find that the APO&M Instructor and the other instructors holding the same academic degree are properly included in the unit.

Whether the Administrative Assistant and Administrative Coordinator Are Clerical Employees. Petitioner contends that the administrative assistant and administrative coordinator should be excluded from the unit as office clerical employees and the Employer takes the

²⁴ There was no testimony regarding other instructors' pay status other than the fact that they do not receive additional compensation, but their job description indicates that they are hourly paid.

opposite view. Both of these employees work in the Employer's training department office and report directly to Director of Training Charles Nathan.²⁵ The record shows that both perform administrative and clerical-type functions, such as processing timesheets, answering the telephone, filing, typing, entering computer data, compiling budget information, and assisting the director of training and other supervisors in preparing schedules and setting up rooms for committee meetings. There is no evidence that either of these employees takes care of or trains the training guide-dogs or interacts with students in the training program. The record reflects that the prerequisites for the administrative assistant job include three years of secretarial or administrative experience and being able to perform such duties as filing and extensive keyboard work. A high school diploma is required but business school or college is preferred for the administrative assistant position, which is hourly paid at Grade 6. The record does not include a job description for the administrative coordinator. I further note that the Employer has not insisted on the inclusion in the unit of clericals from other departments, such as the veterinary and AAGSO departments, whom it has characterized as clericals, and who appear to perform tasks similar to those of the administrative assistant and administrative coordinator.

In sum, I find that the record supports the conclusion that the administrative assistant and the administrative coordinator predominately perform traditional office-clerical type functions, and they are properly excluded from the unit. See *Peco Energy Co., Inc.*, 322 NLRB 1074, 1086 (1997).

Supervisory Issues: As indicated above, Petitioner contends that the canine welfare program manager, the apprentice program manager, the training/class supervisors and the class/training manager are statutory supervisors and must be excluded from the unit while the Employer takes the opposite view and seeks the inclusion of these individuals in the unit.²⁶

The term "supervisor" is defined in Section 2(11) of the Act as:
[A]ny individual having authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline

²⁵ Training Division Director Barrett testified that the administrative assistant job description erroneously indicates that they report to a different manager.

²⁶ Because I find that the petitioned-for unit, which is limited to the training department employees, is an appropriate unit, I find it unnecessary to address the supervisory status of the individuals in classifications outside the training department, i.e, supervising veterinary technician, kennel manager, assistant kennel managers and kennel supervisors, kennel training supervisors, breeding colony supervisor, senior field service managers and senior graduate support specialist.

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.

See also *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006). *Croft Metals, Inc.*, 348 NLRB 717 (2006) and *Beverly Enterprises-Minnesota, Inc. d/b/a Golden Crest Healthcare Center*, 348 NLRB 747 (2006) . In *Oakwood*, the Board further observed that the term supervisor was not intended to include “straw bosses, lead men, and set-up men,” who are protected by the Act even though they perform “minor supervisory duties.” (citing *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 280-281 (1974)). Rather, the putative supervisor must exercise “genuine management prerogatives,” identified as the twelve supervisory functions listed in Section 2(11) of the Act. If the putative supervisor has the authority to exercise or effectively recommend the exercise of at least one of these twelve functions, Section 2(11) status exists, provided that the authority is held in the interest of the employer and is exercised neither routinely nor in a clerical fashion but with independent judgment. *Id.*

Facts: Canine Welfare Program Manager. The Petitioner seeks the exclusion of Canine Welfare Program Manager, Marny Knowles, from the unit as a statutory supervisor, and the Employer takes the opposite position. This position is within the training department²⁷ and reports directly to Director of Training Charles Nathan. It is a full-time exempt Grade 10 position. Approximately 12 CWTs directly report to Knowles. As indicated above, CWTs are hourly paid at Grades 5 through 8.

The job description for the canine welfare program manager position states, in relevant part, that this individual is “responsible for managing the day-to-day care of all dogs on campus under the control of the Training Department,” and “for directing the work of the Canine Welfare staff as well as training new employees and volunteers in proper care techniques.” The job description lists more specifically among the “essential functions” that it:

supervises Canine Welfare staff; Prioritizes and assigns duties, monitors performance against goals and objectives. Conducts performance evaluations, recruits, and disciplines as necessary. Assists in considering canine welfare staff for advancement to Apprentice positions.

²⁷ Knowles works in the Employer’s training apprentice program (TRAP), a program under the training department.

In addition, the job description states that the canine welfare program manager designs and administers programs for the canine welfare staff; schedules all CWT staff; monitors expenses and operates within CWT budget parameters for training kennel supplies; ensures or supervises instruction of new training department hires and volunteers in accepted canine care and handling standards; and undertakes canine welfare duties as needed. Among the “essential requirements” listed for this position in the job description are a proficiency in canine handling typically gained by five to seven years experience in a training, veterinary, animal control or kennel position; a current driver’s license; and a high school diploma or its equivalent. The job description also states that three years “supervisory experience” is desirable.

Training Division Director Barrett testified that he is familiar with Knowles’s duties, and that the job description correctly describes such duties. Barrett estimated that Knowles spends about 40% of her work time performing the same duties as other CWTs. According to Barrett, Knowles’s duties also include participating in hiring interviews. Barrett was not personally aware of any interviews that Training Director Nathan had participated in, but testified generally that Nathan and the Employer’s human resources department must ultimately approve all hirings of CWTs. Witness Shauna Whooley testified that when she was hired by the Employer as a CWT in about 2003, she was interviewed only by Knowles and Training/Class Supervisor Kelly Martin. According to Whooley, neither Barrett, who was the director of training at the time, nor anyone from human resources interviewed her. According to Whooley, a person from the human resources department notified her that she had been hired.

Whooley testified that during her first year as a CWT, she was trained by a more senior CWT and by Knowles and that Training Department Director Nathan was not involved in her training and seldom observed her work. Nor was Nathan involved in her 90-day appraisal, which was conducted by Knowles with a more senior CWT also present. Barrett testified generally that Knowles prepares evaluations for the CWTs but does not have independent authority to set pay rates, which must be approved by the training director. In this regard, the record establishes that appraisals are the primary tool used by the Employer to decide promotions and pay raises for its employees. Barrett further testified that Knowles is responsible for setting up scheduling for her staff and that although overtime work is infrequent, if Knowles received information that overtime work was needed, she would be expected to make the “correct judgment call.”

Analysis: Canine Welfare Program Manager. Based on the foregoing, I find that Knowles is a statutory supervisor who is properly excluded from the unit. Thus, the testimony of Barrett and Whooley, taken together with the job description for this position, show that Knowles is in charge of the CWTs, and directs, trains, schedules and appraises them, and has authority to determine their overtime. Training Director Nathan relies on Knowles's evaluations of the CWTs in making decisions regarding pay increases and promotions, since Nathan is not personally involved in the CWTs' training and rarely observes their work. In addition, my finding that Knowles is a statutory supervisor is also supported by the fact that she is in an exempt salaried position, whereas all of the CWTs reporting to her are hourly paid at pay grades which are between two to five pay grades lower than that of Knowles's. Accordingly, she will be excluded from the unit.

Facts: Apprentice Program Manager. Petitioner seeks the exclusion of the Apprentice Program Manager (APM), currently, Kathy Kelly, as a statutory supervisor, and the Employer takes a contrary position. The APM is a salaried, exempt Grade 12 position, which heads the three-year Training Apprentice Program (TRAP) within the training department.²⁸ Kelly reports directly to Training Director Nathan and seven apprentice instructors and the APO&M Instructor report to APM Kelly.²⁹

The job description for this position states that the APM "is responsible for the proper guidance and supervision of Apprentice Instructors and SFSU students pertaining to all aspects of the instructor position." The position also involves preparing and maintaining the apprentice training budget, coordinating the O&M program, monitoring and evaluating the O&M float instructors, acting as a liaison with the State's Guide Dog Board, and preparing apprentices for the State licensing process. The essential functions of the position include that it:

"provides on the job instruction, supervision, and problem solving to all Instructors."; "supervises . . . monitors and evaluates performance of the Training

²⁸ In addition to TRAP, the Employer's training department is further divided into two other sub-departments, called dormitory and RN. Barrett testified that the Employer has managers over its dormitory staff and its nurses who also report directly to Nathan. However, as indicated above, no party seeks to include these managers or their staff in the unit.

²⁹ The job description of the apprentice instructors indicates that they report to both Kelly and Nathan and the APO&M Instructor reports directly to APM Kelly. However, Barrett testified that APM Kelly has only one direct report, and that is the APO&M Instructor.

Department APO&M Instructor, SFSU students and of apprentices. Counsels and disciplines as needed. Evaluates apprentice candidates.”

According to the job description, the APM is also responsible for updating the instructor’s manual as needed. When not in class, the APM conducts exit interviews, and fills in for training/class supervisors as needed. The requirements for the job include: a high school diploma or its equivalent, a minimum of five years’ experience as a licensed California Guide Dog Instructor, a California drivers license, and a demonstration of strong skills in writing curriculum, reports and evaluations. Barrett testified that the APM’s job description is generally an accurate description of her duties.

According to Barrett, the APM works out of the training department office and provides guidance and oversight to the apprentice program and the San Francisco State University Program. Barrett testified that both Training Director Nathan and APM Kelly participate in hiring interviews and they jointly make hiring decisions for the apprentice program. Instructor Shauna Whooley testified that when she interviewed for an apprentice instructor position in 2004, she interviewed only with APM Kelly and not with Nathan.³⁰ Whooley testified that human resources department notified her of her hire but was not involved in the interview process.

Training Division Director Barrett testified that APM Kelly evaluates the apprentice instructors and APO&M Instructor and prepares their appraisals, which are accompanied by pay increases and promotions from one apprentice level to the next. According to Barrett, Nathan makes the final decision on all promotions and pay increases, but he bases his decisions on Kelly’s input. In this regard, the record reflects that Nathan does not work directly with the apprentices and apparently makes no independent effort to verify Kelly’s evaluation other than by asking Kelly questions. Barrett’s testimony is confirmed by the testimony of Instructor Shauna Whooley, which indicates that it was APM Kelly, not Nathan, who provided classroom instruction to Whooley and the other apprentices, and who evaluated them with the assistance of the training/class supervisors and the APO&M Instructor; and it was Kelly who informed her she had been promoted. According to Whooley, Nathan was not involved in her training; rarely observed her work; and was not involved in the appraisal process connected to her promotion

³⁰ According to Whooley, the APO&M Instructor also sat in on her interview.

from apprentice levels one to two and two to three. Whooley further testified that no one from human resources was involved in her promotions, except that when she was promoted, she was required to fill out a status-change form that was sent to human resources. According to Whooley, it was not until she applied for a qualified instructor position that Nathan became involved in the appraisal/promotion process. Specifically, she testified that Nathan, APM Kelly and the APO&M Instructor all participated in administering the required oral examination to her and the decision to promote her to the position of qualified instructor.³¹

With regard to disciplinary authority, Barrett testified that APM Kelly cannot discipline an employee without the direct involvement and approval of Director of Training Nathan. Barrett testified that she knew of no instance in which APM Kelly had disciplined an apprentice instructor without the direct personal involvement of the director of training. However, according to Barrett, the APM can participate in communicating counselings and disciplinary decisions to apprentice instructors.

Analysis: APM. The record supports that the APM is a statutory supervisor based on the testimony of Training Division Director Barrett that Training Director Nathan relies on APM Kelly's appraisals in his decision-making regarding promotions and pay increases for apprentice instructors and that Nathan has no direct involvement in training the apprentice instructors. I find that Whooley's testimony substantiates Barrett's testimony in this regard. In addition, my conclusion that the APM is a statutory supervisor is also supported by the description of the APM's authority in the job description for this position and by secondary indicia such as the fact that the APM position is a salaried, exempt Grade 12 position, at a pay rate substantially above that of all the hourly paid apprentice instructors and also above the APO&M Instructor, who is also salaried but at Grade 11. Accordingly, the APM will be excluded from the unit.

Facts: Training/Class Supervisors. Petitioner contends that the training/class supervisors must be excluded from the unit as statutory supervisors and the Employer takes the opposite view. The record discloses that there are seven training/class supervisors who report directly to Training Director Nathan. The position is a salaried, exempt position at Grade 12. The training/class supervisors are paid approximately 15% more than the next highest paid

³¹ Apprentice instructors III must also pass a written examination and field trial in order to become qualified instructors.

instructors. Because of their higher pay level, they do not receive the shoe or rainwear allowance given to other training department employees.

The job description for this position states that the training class supervisor is responsible for the “supervision, management and education” of the instructors, the facilitation of proper training of dogs and clients, and representation of the training department in outreach and public relations and advocacy for the blind and vision-impaired. The essential functions listed for the position include, in relevant part, providing guidance and supervision of instructors as it pertains to dog training and class instruction, completion of evaluations and giving feedback to instructors and CWTs as needed, undertaking annual employee performance reports and discipline as needed, and filling in for other training/class supervisors and instructors as needed. The prerequisites for the position include: a minimum of five years as a qualified instructor; a valid driver’s license, leadership qualities, and a high school diploma or its equivalent with some college preferred.

Training Division Director Barrett testified that the training/class supervisors work a similar schedule to that of the other instructors and apprentice instructors. They each have their own cubicle in the training office, unlike the instructors, who share common cubicles. The training/class supervisors are assigned to training teams (“strings”), which include four or five instructors (including apprentice, qualified, senior and master instructors) and about 15 training guide-dogs. The string works together in the field with only the training guide-dogs for about two months and then works with students and training guide-dogs in the classroom for another three weeks. According to Barrett, the training/class supervisors are assigned to a particular string through the duration of a training cycle, but may thereafter be switched to work with different teams of instructors and dogs when a new cycle begins. In this regard, Instructor Whooley, who has been an instructor for the past three years, testified that her experience has been that she has had the same training/class supervisor for an entire year. The training/class supervisor observes his or her assigned team, and may also assist by training a guide-dog or student; substituting for a mentor instructor; and by assisting instructors who are working with training guide-dogs and/or students. About 50 to 60% of the work-time of the training/class

supervisors is spent working directly with and observing and assisting the instructor teams in order to ensure that the Employer's standards and procedures are met.³²

Barrett testified that mid-way and at the end of a training cycle, the training/class supervisors offer feedback/evaluations to the four or five instructors on each of the teams they observe. At the end of training, they also prepare the annual appraisal for the instructors and apprentice instructors.³³ As discussed above, appraisals are the means by which the Employer determines wage increases and promotions. The training/class supervisors assigns ratings, such as outstanding, fully effective, highly effective or needs improvement. According to Barrett, the evaluations done at the mid-point and end of training are done on different forms but they correlate to the annual appraisals. The annual appraisals go to Director of Training Nathan who must approve or disapprove them and they are then sent to the Employer's human resources department. According to Barrett, it is rare for an employee to be deemed ineligible for a pay increase based on an appraisal, but it "can happen." According to Barrett, prior to approving the appraisals prepared by the training/class supervisors, Nathan reviews them for "consistency" and may ask questions of the training/class supervisor. However, he does not interview the instructor being appraised. Nor does the record indicate that he engages in any other independent investigation of the judgment made by the training/class supervisor about an instructor's performance. Barrett testified that there is some leeway in the amount of the wage increase that can be granted to instructors based on the appraisal ratings by the training/class supervisors.

Instructor Whooley testified that during each training cycle, she has been evaluated about halfway through the training cycle and then at the end of the cycle. She testified that the information used in these cycle evaluations was primarily about the performance of the dogs, but also reflected on her performance as an instructor. According to Whooley, at the end of every dog-training cycle, the training/class supervisor compiled this information and met with her to review it. Then, at the end of the year, an annual performance appraisal meeting was conducted with her, at which all of the information previously conveyed was included, plus information on any additional goals Whooley may have set for herself, and feedback from other persons with

³² According to Barrett, the other 40 to 50% of the work time of the training/class supervisors is spent working on a variety of projects assigned to them and doing the paperwork required of their job.

³³ As indicated above, the training/class supervisors and apprentice training manager both participate in the evaluation of the apprentice instructors.

whom she had worked. The training/class supervisor compiled such information and reviewed it with her one-on-one and identified any performance issues and positive or negative trends that had emerged with respect to her training. According to Whooley, only the training/class supervisor met with her to go over her annual appraisal, and at the end of the annual appraisal meeting, they both signed off on her appraisal. She testified that Training Director Nathan has not met with her about her annual appraisal, and to her knowledge he is not involved in their preparation. She further testified that Training Director Nathan has rarely observed her work.

Whooley further testified that on multiple occasions during each of the past three years when she has been an instructor, she has received counselings from training/class supervisors, the subject of which has later been addressed in her annual appraisals prepared by those same training/class supervisors. For example, she testified that last year, the training/class supervisor called her into multiple meetings and counseled her one-on-one about perceived problems with her interpersonal communications and manner, and explained to her that if she did not resolve the issues before the end of the year, they would show up in her annual performance appraisal. According to Whooley, after each of these counseling sessions, a summary of what was said was documented with an e-mail communication by her training/class supervisor. She testified that the same training/class supervisor prepared her annual appraisal and these issues were addressed in her appraisal in a similar manner as addressed during these one-on-one counseling sessions. According to Whooley, the criticisms did affect her appraisal performance rating. Whooley testified that she has had a similar experience during each of the three years she has been an instructor.

With regard to formal/written disciplinary actions, Barrett testified that she could not recall any ever occurring, but that if a training/class supervisor was going to prepare a written warning for an instructor, it would have to go through Nathan who would have the final say. Barrett testified generally that the responsibility of the training/class supervisor is to bring performance/disciplinary issues to Nathan's attention.

Barrett further testified that the training/class supervisors have the authority to approve overtime for instructors. The training/class supervisors also attend departmental management meetings, which are not attended by other employees unless they have been invited to address specific matters at a meeting.

Analysis: Training/Class Supervisors. I find that the training/class supervisors are statutory supervisors who are properly excluded from the unit. Thus, I find that training/class supervisors effectively recommend pay increases and promotions given the evidence that they evaluate the instructors and prepare their appraisals and that Nathan makes his decisions regarding pay increases and promotions based on such appraisals. There is no evidence that Nathan engages in any independent investigation when he makes such decisions, other than questioning the training/class supervisors. Further, the record shows that Nathan has no direct basis for assessing the instructors' performance since he does not train or work with them and rarely observes their work. Finding that the training/class supervisors are statutory supervisors is also shown by Barrett's testimony that they can approve overtime. In addition, my finding of their supervisory status is supported by the fact that the training/class supervisors attend management meetings; by the description of their supervisory authority contained in their job descriptions; and by their status as salaried, exempt Grade 12 personnel.

Facts: Class/Training Manager. Petitioner seeks to exclude Class/Training Manager Peter O'Reilly from the unit as a statutory supervisor and the Employer takes the opposite view. O'Reilly reports directly to Training Director Nathan. The class/training manager is a full-time, salaried, exempt, Grade 13 position. The record does not indicate that any employees report directly to O'Reilly.

The job description for this position indicates that the class/training manager is responsible for the proper guidance and supervision of instructors and other training/class supervisors pertaining to class instruction. The position also collaborates with the dormitory and nursing managers. Among the essential job functions listed are: providing on-the-job instruction and supervision to all class supervisors and instructors, directing and guiding their class work to ensure that they are performing according to accepted training procedures, practices and techniques; critiquing supervisor's work during class and providing feedback for their annual performance appraisals; supervising evaluation and progress of dog/person teams; and advising director of training of any particular problems to be resolved. The position is also responsible for ensuring program consistency between both campuses, and overseeing, documenting, developing and documenting new techniques/programs to be implemented on each campus; collaborating closely with dormitory and nursing managers to ensure that students' living and health needs are met; and participating in the admissions review committee, as needed, to

recommend how to handle prospective students in terms of class duration and dog-matching. The requirements for the position include being a licensed California guide dog instructor; a minimum of three years as a training/class supervisor; and having a high school diploma or equivalent with some college being preferred.

The testimony of Barrett and Whooley taken together with the job description for the class/training manager position support a finding that the class/training manager performs essentially the same job functions as the training/class supervisors and also supervises and evaluates the training/class supervisors. In addition, the record shows that O'Reilly also provides oversight to the managers and staffs of the dormitory and RN programs under the training department. Based on the fact that O'Reilly has the same functions and authority as the training/class supervisors, whom I have found to be statutory supervisors, I find that O'Reilly is also a statutory supervisor who is properly excluded from the unit.

In sum I find that the canine welfare program manager, apprentice program manager, training/class supervisors, and class/training manager are statutory supervisors and properly excluded from the unit.

CONCLUSIONS AND FINDINGS

Based upon the entire record, 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, 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.
3. The Petitioner is a labor organization within the meaning 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 Sections 2(6) and (7) of the Act.
5. 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 apprentice instructors I, II, and III, licensed instructors, qualified instructors, master instructors, master licensed instructors,

senior instructors, senior licensed instructors, senior qualified instructors, canine welfare technicians I, II and III, senior canine welfare specialist, resident advisor/canine welfare technician modified (RA/CWT Modified), canine welfare specialists, training/class specialists, and orientation and mobility instructors employed by the Employer at its San Rafael, California facility; excluding all other employees, students receiving instruction at the Employer's facility who are enrolled in the San Francisco State University Masters Program, President/CEO, CFO, director of human resources, director of training, director of development, director of community operations, and director of marketing and communications, canine welfare program manager, apprentice program manager, class/training manager, training/class supervisors, administrative assistant, administrative coordinator, executive assistant, office clerical employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by or no union. 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 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 20, 901 Market Street, Suite 400, San Francisco, CA 94103, on or before **March 8, 2010**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlr.gov,³⁴ by mail, or by facsimile transmission at (415)356-5156. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

³⁴ To file the list electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the "Accept" button. The user then completes a form with information such as the case name and number, attaches the document containing the election eligibility list, and clicks the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlr.gov.

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

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 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.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **March 15, 2010**. The request may be filed electronically through E-Gov on the Board's web site, www.nlr.gov,³⁵ but may not be filed by facsimile.

DATED AT San Francisco, California, this 1st day of March, 2010.

/s/ Timothy W. Peck

Timothy W. Peck, Acting, Regional Director
National Labor Relations Board
Region 20
901 Market Street, Suite 400
San Francisco, California 94103-1735

³⁵ Electronically filing a request for review is similar to the process described above for electronically filing the eligibility list, except that on the E-Filing page the user should select the option to file documents with the **Board/Office of the Executive Secretary**.