

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

**WASHINGTON EMPOWERED AGAINST VIOLENCE,**

**Employer,**

**v.**

**Case 5-RC-067955**

**WASHINGTON-BALTIMORE NEWSPAPER GUILD,  
LOCAL 32035,**

**Petitioner.**

**WASHINGTON-BALTIMORE NEWSPAPER GUILD'S  
OPPOSITION TO EMPLOYER'S  
REQUEST FOR REVIEW**

Washington-Baltimore Newspaper Guild, Local 32035 ("Guild"), the Petitioner herein, pursuant to Section 102.67(e) of the NLRB Rules and Regulations, hereby files this Opposition to the Request for Review filed by Washington Empowered Against Violence ("WEAVE") on December 19, 2011.

**PRELIMINARY STATEMENT**

On November 1, 2011, the Guild filed the instant petition seeking certification as the representative of a wall-to-wall unit of employees of WEAVE. After a hearing on November 16, 17 and 18, 2011, the Regional Director for Region 5, on December 5, 2011, issued his Decision and Direction of Election "(DDE)". In the DDE, the Regional Director concluded that the position of Legal Services Supervisor, held by Cecilia Levin, was supervisory within the meaning of §2(11) of the Act, and rejected WEAVE's contentions that three other employees - out of a

unit of only 9 employees - should be excluded from the unit as either supervisors or managerial employees.

In its Request for Review, WEAVE asks the Board to overturn the Regional Director's findings with respect to the position of Legal Services Supervisor - Lighthouse, occupied by Erin Scheick, and the position of Counseling Services Supervisor, held by Donna Alexander.

As we will demonstrate, WEAVE's arguments fall far short of the "stringent standards" for review required by Section 102.67(c), St. Barnabas Hospital, 355 NLRB No. 39 (2010), and, in so doing, merely renew assertions that the Regional Director properly found to be flatly contrary to the record. We submit that there are no "compelling reasons" whatsoever to warrant a vacatur of the Regional Director's rulings.

## ARGUMENT

### I. OVERVIEW

WEAVE is a non-profit organization with headquarters in Washington, DC. Its mission is to provide legal representation, counseling and community education for victims of domestic violence and related matters. WEAVE's main office is on K Street in Washington, but it has an office at the Lighthouse Center for Hearing, 5321 First Place NE, less than 5 miles away. WEAVE also uses space at the Whitman-Walker Health Max Robinson Facility, also less than five miles from the main office. Tr. 19-20; Bd. Ex. 4.

Dr. Jeni Gamble is the Executive Director of WEAVE, and reports to its Board of Directors. As of the hearing, Lolita Youmans serves as the new Legal Services Director; Liz Harens is HR and Development Manager, and Norma Floriza is the Finance and Administration Director. Er. Ex. 1. Gamble is the ultimate authority - subject to the Board of Directors' approval - on all matters. Tr. 110. "Everything ultimately comes from me." Id.

WEAVE's staff is organized into two work areas - those employees who provide legal services, and those who provide counseling services. With regard to legal services, WEAVE's current intake coordinator, Ryann Alexander performs intake services - fielding calls from potential clients, referrals from court agencies, or referrals from WEAVE's counselors. After obtaining basic information from these potential clients, their names are placed on an intake list so that the potential clients may be selected, if they are, either by a staff attorney, or by an outside pro bono attorney. If a staff attorney selects a client, he/she will meet with the client and thereafter, with advice and counsel from office colleagues as necessary, represent that client in any legal proceedings. Similarly, clients who seek counseling services are selected for therapy by Donna Alexander or by one of the staff therapists. No case work - whether legal representation by a WEAVE lawyer or counseling from a therapist - is assigned.

On the legal side, the legal services supervisors - Cecilia Levin, Eric Scheick, and Morgan Lynn - conduct "case rounds" with the staff attorneys to discuss their caseload and, as necessary, kick around legal strategies. These sessions are "not about job performance." Tr. 374. Employees self-evaluate their own performance, and no evaluations affect terms of employment. Tr. 293-94. No supervisor has authority over wages of the staff; none have authority to discharge; and while they do review leave requests or time sheets for numerical accuracy, they have no authority over these matters. As noted, none of the alleged supervisors assign work - contrary to the assertion of Dr. Gamble. Tr. 86, 140; cf. 296, 301, 306, 232, 524.<sup>1</sup> Each of the supervisors has her own caseload, which constitutes at least half of her job.<sup>2</sup>

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<sup>1</sup> The same is true on the counseling services side. Tr. 361-62.

<sup>2</sup> On the counseling side, Donna Alexander, the Counseling Services Supervisor, works an 80% schedule but devotes most of her time to her own cases and to serving as a clinical supervisor to those therapists who are not yet licensed. Tr.171, 364-67, 369.

II.  
THE POSITION OF COUNSELING SERVICES SUPERVISOR  
IS NOT SUPERVISORY UNDER THE ACT

In its appeal, WEAVE renews four arguments previously advanced to the Regional Director in support of its plea that the Board overturn the finding regarding Donna Alexander. First, WEAVE contends that the text of a self-evaluation form used by Alexander, *ipso facto*, establishes supervisory status, and that the Regional Director's "failure to consider this evidence is clearly erroneous." RR, p. 12. Second, WEAVE insists that a single episode of a minor quarrel between two employees demonstrates that Alexander has the authority to resolve grievances and discipline employees. Next, WEAVE argues that Alexander's role over hiring establishes supervisory status. Finally, WEAVE resurrects an argument flatly repudiated by the record - that Alexander (like the other alleged supervisors) assigns work. Yet, not one of these arguments warrants review.

1. With regard to the evaluation form, the fact that the Regional Director did not *cite* the form in his DDE manifestly does not establish that the Regional Director failed to consider it. More importantly, a failure to cite or even rely on the form is hardly "clearly erroneous." Rather, the Board has historically determined questions of supervisory authority by record evidence of duties and responsibilities, not words in a job description or even a job title. Atlantic Scaffolding Co., 356 NLRB No. 113 (2011); Shen Automotive Dealership Group, 321 NLRB 586 (1996); Harvey's Resort Hotel, 271 NLRB 306, 312-13 (1984); Western Union Telegraph Co., 242 NLRB 825, 826 (1979); Ross Porta-Plant, Inc., 166 NLRB 494 (1967), *aff'd.*, 404 F.2d 1180 (5<sup>th</sup> Cir. 1968). In any event, Alexander explained that while the form, for example, mentions "delegating work," she, in actual fact, assigns no work at all. All work is self-assigned. Tr. 361-62. She conducts one-on-one sessions with the staff therapists to discuss their own individual

cases, but does not assess their performance. Tr. 373-74. "[These sessions are] not about job performance..." Tr. 374.

2. WEAVE introduced testimony about a spat between two of the therapists, Heather Powers and former therapist Anne. Tr. 199-200. As explained by Alexander, this was just a personal conflict between the two of them that they raised directly with Gamble, and which Gamble then shared with Alexander. Gamble indicated that Alexander should deal with the issue or "she would deal with it." Tr. 395. Alexander spoke with both of the employees, and they indicated that they wanted assistance of an outside mediator to help address the issue. Given WEAVE's budgetary considerations, Alexander could not identify a pro bono mediator by the time that Anne announced she was resigning her employment. Tr. 397-99. As a result, the issue went away. Based on the facts, WEAVE's contention that Alexander's limited role in this trivial "squabble" constitutes the authority to discipline and handle grievances is plainly an exaggeration of the record, and contrary to Board law. St. Francis Medical Center-West, 323 NLRB 1046, 1048 (1997).

3. As to hiring, the record amply supports the Regional Director's findings as to Alexander's limited role in the process. Alexander has never hired a single employee. Just prior to the hearing, Dr. Gamble dictated to Alexander very specific instructions as to what to ask various candidates about their level of interest in a position. Further, the record establishes that Dr. Gamble will herself interview finalists for the position. Tr. 363. As the Regional Director concluded, Alexander's minor role in the process is insufficient to establish supervisory status. Aardvark Post, 331 NLRB 320, 321 (2000).

4. Finally, WEAVE's continued assertion that Alexander - like the other "supervisors" - assigns work is fully contradicted by the record. Every witness, including Alexander, flatly

repudiated Dr. Gamble's contention that these individuals assign cases to their staffs. No one in the legal services section does that, nor does Alexander with regard to counseling clients.

In short, there is no legitimate basis for setting aside the Regional Director's finding that Alexander's position is not supervisory.

### III. THE POSITION OF LEGAL SERVICES SUPERVISOR - LIGHTHOUSE IS NOT SUPERVISORY

Succinctly stated, WEAVE argues that a finding that the position of "Legal Services Supervisor - Lighthouse" is not supervisory while finding that the "Legal Services Supervisor - Downtown" satisfies the statutory test is "incongruous" and must be set aside. WEAVE's argument centers on what it describes as a difference in work schedules. RR, p. 16. Yet, WEAVE's argument misses the mark - and ignores the facts.

As stated in the DDE, there are critical, substantive differences between the two positions.<sup>3</sup> Levin oversees the work of two staff attorneys, another one to be hired, and the non-attorney Legal Services Intake Coordinator. As the Regional Director held, Levin also effectively recommended discipline of an employee. Scheick, by contrast, works with only two attorneys. Scheick has never engaged in discipline; assigns no work; is not accountable for any employee's work; evaluates no employees, and spends the bulk of her time on the legal cases which she has selected to handle. Granted, the two positions may be similar in title, but the Board has historically refused to judge the supervisory status of a job based on the employee's title. See cases, supra. The fact of the matter is that WEAVE had the burden of establishing supervisory status, and the facts simply aren't there.

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<sup>3</sup> While the Petitioner is not appealing the Regional Director's finding with regard to the Legal Services Supervisor - Downtown position held by Cecilia Levin, a fair reading of the DDE suggests that the ruling with regard to supervisory status was almost borderline and based largely, if not exclusively, on a single incident of discipline with which Levin was involved.

CONCLUSION

In view of the foregoing, we urge the Board promptly to deny WEAVE's Request for Review.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed, first class mail, postage prepaid, this 22<sup>nd</sup> day of December, 2011, to Elizabeth Cyr, Esq., Akin, Gump, Strauss, Hauer & Feld, LLP, 1333 New Hampshire Avenue NW, Washington, DC 20036-1564.



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Robert E. Paul