

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:

MEREDITH CORPORATION,

Employer,

and

AMERICAN FEDERATION OF
TELEVISION AND RADIO ARTISTS
(AFTRA), KANSAS CITY LOCAL,

Petitioner.

Case No. 17-RC-068104

**PETITIONER'S BRIEF IN OPPOSITION TO EMPLOYER'S REQUEST FOR
REVIEW OF REGION 17'S DECISION AND DIRECTION OF ELECTION**

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I. INTRODUCTION

On November 3, 2011, the American Federation of Television and Radio Artists, AFL-CIO (hereinafter “AFTRA” or “Petitioner”) filed a petition to represent the “news producers” at KCTV, a television station owned by Meredith Corporation (hereinafter “Employer”). By its petition, AFTRA seeks to add the news producers to the existing AFTRA-represented unit at KCTV, in an “Armour-Globe” election.¹ See Globe Machine and Stamping Co., 3 NLRB 294 (1937); Armour and Co., 40 NLRB 1333 (1942).

The matter was heard by Region 17 of the National Labor Relations Board (the “Board”) on November 15, 2011, before Hearing Officer Donald S. Starling. By stipulation of the parties, the hearing concerned one issue only: whether the news producers are “supervisors” as defined in § 2(11) of the National Labor Relations Act (the “Act”), 29 U.S.C. § 152(11), and therefore may not be included in a bargaining unit. On December 1 2011, in his Decision and Direction of Election, the Regional Director found for Petitioner, finding that the news producers are not supervisors, and may be included in a bargaining unit, and therefore directing an election.² In that decision, the Regional Director conducted a thorough analysis of Board precedent, distinguishing inapplicable non-Board case law in the process, and comprehensively applying relevant law to the facts at hand. Consequently, the directed election took place on

¹ Included in the existing AFTRA bargaining unit are the following KCTV job titles: “Announcers, Newscasters (including freelance Announcers and Newscasters), Directors, Chief Director, News Photographers, Chief Photographers, News Editors, and Production Assistants.” (Joint Ex. 1.)

² The Decision and Direction of Election is referred to herein as “DDE [page number].” References to pages of the official transcript of the hearing in this case are designated Tr. ____. References to exhibits offered by Employer and entered at the hearing are designated Emp. Ex. ____, references to the Board exhibits appear as Bd. Ex. ____, and the sole joint exhibit is designated Joint Ex. 1. References to Employer’s Request for Review appear as “RFR [page number].”

December 28, 2011 at Employer's facility in Fairway, Kansas. The votes in that election remain impounded, pending the Board's determination on Employer's Request for Review.

The Board should not grant review or correction of the Regional Director's Decision, as the Regional Director correctly found that the news producers are not supervisory and, therefore, properly directed an election amongst those employees. While Employer maintains that the news producers are "supervisors" as defined in § 2(11) of the National Labor Relations Act (the "Act"), 29 U.S.C. § 152(11), and therefore may not be included in any bargaining unit (Tr. 19), Employer's position is contrary to the facts and well-established precedent. In its Request for Review, Employer mischaracterizes key testimony, and misinterprets Board precedent. In contrast, in his decision the Regional Director relied on only the most relevant, binding and long-settled precedent in his decision, and he correctly interpreted the record in applying those Board rules. Accordingly, the Regional Director's decision should stand, and the Board should allow these news directors' votes to be counted, as the Board has done with similarly situated news directors in the past.

II. STATEMENT OF FACTS

KCTV is a broadcast television station owned by Employer, and located in Fairway, Kansas. (Joint Ex. 1.) KCTV is organized into six departments, one of which is the news department, where the nine KCTV news producers work.³ (Tr. 25-31, 79-80.) The news producers at KCTV coordinate the newscasts to which they are assigned, working in a "collaborative" process with supervisors and coworkers to compile a finished newscast.⁴ (Tr. 37,

³ The other KCTV departments are administration, sales, creative services, commercial production and engineering. (Tr. 24, 79-80.)

⁴ KCTV produces at least nine separate newscasts each weekday, aired either on KCTV or on KSMO, its sister station. (Tr. 40-41.) There are also at approximately five newscasts scheduled for Saturday and Sunday each (Tr. 41), with each news producer assigned to one or more newscast each day. (Emp. Ex. 2.)

128, 145; Emp. Ex. 2.) While responsible for the completion of their broadcasts, they do not have the authority to hire, fire, impose discipline, change schedules, or approve vacation time or sick leave. (Tr. 134.) They cannot carry out performance appraisals. (Tr. 142.)

Working above the news producers in the news department are at least eight employees referred to as “news managers” – supervisory employees who do possess those powers. (Tr. 25, 27, 43, 79-80, 130.)⁵ At least six of the news managers oversee the work of news producers—namely the news director, assistant news director, the executive producers and the managing editor. (Tr. 43-44.) While news producers request content from colleagues for completing reports, only news managers have the final say on work assignments. (Tr. 133.) News managers also retain the power to approve or deny the overtime associated with those requests (Tr. 115-16.) News managers have the final say on the content of a broadcast’s script (Tr. 92), and the order of stories within the broadcast. (Tr. 129-30.) Whereas news producers only have the power to give suggestions on personnel action, news managers have the authority to conduct investigations and impose discipline.⁶ (Tr. 55.)

Of those managers, the three executive producers directly oversee the news producers, with one executive producer supervising the three news producers working on morning programming, a second executive producer supervising the six news producers working on evening programming, and the third executive producer overseeing all KCTV investigative

⁵ The parties stipulated on the record that the following employees are supervisory under § 2(11): the 1) the news director; 2) one assistant news director; 3) one managing editor; 4) three executive producers; 5) one assignment manager; 6) and one web content manager. (Tr. 25, 27, 43, 79-80, 83-84, 130.) A “general manager” from the administration department also oversees at least some of the station operation at KCTV (Tr. 79-80), though the record does not reflect the parties’ positions as to the status of that individual under the Act.

⁶ Importantly, when asked which of the § 2(11) supervisory powers the news producers possess, Employer stated they lack all but two, the power to assign and to responsibly direct. (Tr. 55.) Petitioner maintains that the news producers lack those or any other supervisory authorities.

programming.⁷ (Tr. 30-33.) Executive producers are responsible for overseeing all aspects of the content within their jurisdiction, including the work of producers. (Tr. 89.) In supervising the news producers, the executive producers have “final say” over the products in their control, including the graphical appearance of a show. (Tr. 30-31.) Though the assignment of staff to stories is a “joint” decision, made in consultation between news producers and the assignment desk (Tr. 27-29, 42, 91),⁸ the executive producers maintain final say over assignment of reporters to stories. (Tr. 129.)

In morning and afternoon editorial meetings, the news producers and news managers consult to decide on the stories to run for each broadcast, with those choices memorialized in a “rundown” of the second-by-second run-through of each broadcast. (Tr. 48; Emp. Ex. 1.) News producers *do not* set up the rundown of shows on their own, but rather help create the rundown in a collaborative process involving the aforementioned attendees at editorial meetings. (Tr. 48-49.) The executive producers maintain the ability to change the rundown for any program, (Tr. 49), and producers must clear any changes to the rundown that will impact the station’s physical or financial resources. (Tr. 50-51.) Further, if a breaking news or other story requires deviation from the rundown, the news producers clear those changes with news managers first. (Tr. 131.) News managers regularly override news producers’ decisions as to the content for the rundown. (Tr. 129-30.)

Following those meetings, the news producers work in tandem with news department colleagues to develop content. (Emp. Ex. 2.) The approximately eight reporters gather information from and interview sources, write scripts and present their reporting on air.

⁷ The parties in this matter stipulated on the record that the executive producers are supervisory. (Tr. 20-21.)

⁸ Assignment editors act as “traffic police,” culling the Internet and other sources for potential news stories, while helping coordinate the assignment of employees and station resources to scheduled stories. (Tr. 28.) The assignment manager oversees that work. Id.

(Tr. 36.) The approximately nine anchors read the news to the viewing public. (Tr. 35.) The approximately 17-18 photographers at KCTV gather video and audio for stories, in addition to operating live trucks and sometimes editing video to be aired. (Tr. 29-30.) Editors cut and compile that video for newscasts (Tr. 141), and one or more editors function as a “tape cop,” who, jointly with producers, chooses which pieces of video editors should cut for airing. (Tr. 74-75.) Web producers are overseen by a web manager, and together they are responsible for all content put on the KCTV webpage. (Tr. 29-30.) News producers work with the web staff to provide content for the KCTV website. (Tr. 108-09.) Technical producers work in the engineering department, and work with news producers to properly execute the technical aspects of a news program as it airs, including proper functioning of video and audio equipment. (Tr. 66-68.) News producers also work with graphics employees to develop the graphical components that appear on-screen during broadcasts (Tr. 109.)

Though working closely with these individuals, Employer concedes that news producers do not supervise photographers, and that reporters and photographers report directly to the managing editor.⁹ (Tr. 29.) The tape cop, not the news producer, gives assignments to editors. (Tr. 74-75.) Once assigned, editors regularly make cuts without the need to clear those edits with news producers. (Tr. 141.) Where oversight does exist, while producers may make suggestions as to an editor’s cuts, the process is collaborative between producers and editors, with executive producers and the assistant news director maintaining final decision-making authority. (Tr. 74-75.) The news director maintains a final say in some editing decisions, such as rules against looping of video. (Tr. 145.) For all these employees, when unexpected errors occur on air, the employee must answer to news managers, not to the news producers. (Tr. 130.)

⁹ By Employer’s own admission, the news producer is not the supervisor of any of the following employees: “the announcers, the newscasters, the directors, the chief director, the chief photographer, the photographer, the news editor [or] the production assistant.” (Tr. 70.)

III. ARGUMENTS

A request for review will be granted only where “compelling reasons exist therefor.” NLRB Rules and Regulations, § 102.67(c). Though the Rules list several potential compelling reasons justifying review, Employer raised only two in its Request for Review: 1) that “a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent,” § 102.67(c)(1), and that 2) “the Regional Director’s decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.” § 102.67(c)(2). *The burden of establishing supervisory status lies with the party asserting that status*, NLRB v. Kentucky River Community Care, 532 U.S. 706, 711–12 (2001), and *merely conclusory evidence will not satisfy the burden of proof*. Lynwood Manor, 350 NLRB 489 (2007).

Here, Employer fails to allege compelling reasons for review on either ground, and continues to fail in meeting its burden of proof. Where they lack any § 2(11) authority, it is well settled that news producers as a category of worker may be organized under the Act, and that their responsibilities are not inherently supervisory. *See e.g.*, King Broadcasting, 329 NLRB 378 (1999); McGraw-Hill Broadcasting Co. (KGTV-TV), 329 NLRB 454 (1999); Westinghouse Broadcasting Co. (WBZ-TV), 215 NLRB 123 (1974). The two matters Employer relies on in discussing non-supervisory news producers are either highly fact-specific, Hearst Broadcasting, 267 NLRB 326 (1983), or, in the other case, a non-supervisory finding in dicta in a non-Board, non-precedential Circuit Court matter discussing outdated newsroom practices. Meredith Corp., 679 F.2d 1332 (10th Cir. 1982).

Accordingly, Employer’s Request for Review should be denied, for two reasons: First, contrary to Employer’s position, the Regional Director correctly distinguished the Hearst

and Meredith matters from the present case. Second, the Regional Director correctly stated and applied to the facts the Board rule on responsible direction of employees, from Oakwood Healthcare, Inc., 348 NLRB 686 (2006). Employer mischaracterizes the Regional Director's analysis of that rule, and mischaracterizes the facts of this case in attempting to justify review on that basis.

A. REVIEW AND CORRECTION BY THE BOARD IS NOT WARRANTED BECAUSE THE REGIONAL DIRECTOR'S DECISION CORRECTLY DISTINGUISHES THE HEARST AND MEREDITH MATTERS FROM THE PRESENT CASE.

The Regional Director's analysis correctly distinguished the Hearst Broadcasting and Meredith cases in a thoughtful and thorough manner, far from relying on "bogus" reasoning, as Employer alleges. (RFR 17, citing Hearst Broadcasting, 267 NLRB 326; Meredith Corp., 679 F.2d 1332.)

Firstly, In finding the KCTV news producers to be mere employees, the Regional Director correctly noted four critical differences between KCTV news producers and the supervisory news producers in Hearst: 1) that the Hearst news producers directly effectuated discipline, unlike the KCTV news producers; 2) that Hearst producers could authorize overtime, whereas KCTV producers cannot; 3) that Hearst producers used independent judgment to assign work, while KCTV producers cannot; and 4) that Hearst workers were told the producers were "supervisors," whereas KCTV management never characterized the news producers as supervisors. The distinctions the Regional Director drew are accurate, finding substantial support in the record and in the text of Hearst, and more than adequately distinguishing the two sets of employees.

With regard to the first difference, the Regional Director correctly contrasted the passive role of KCTV news producers in the disciplinary process from the very active role of

Hearst producers. (DDE 10-11.) The Regional Director correctly notes that work evaluation and discipline at KCTV are handled exclusively by Executive Producers or other management. (DDE 11.) In contrast, Hearst producers had independently suspended an employee on at least one occasion, 267 NLRB at 327, whereas no KCTV news producer has even come near such independent disciplinary power. Even KCTV News Director Blaise Labbe, when asked to characterize the part played by news producers in discipline, characterized it only as a reporting “role,” declining to provide further specifics, and stopping short of imputing the producers with the power to effectuate discipline independently. (Tr. 78.) Employer very notably glosses over these important differences in its Request for Review. (RFR 19.)

The Regional Director’s finding is still correct when considering the power to “effectively recommend” discipline as defined by the Board. It is settled Board precedent that recommendations to management must be more than mere “opinion,” and must be more than “one source of information considered by management in evaluating an employee.” Post-Newsweek Stations, 203 NLRB 522 (1973). Moreover, the power to effectively recommend does not rise to supervisory status unless action is taken by management without the need for an independent investigation. WBZ-TV, 215 NLRB at 123-25. In Post-Newsweek, the Board held that news radio editors (performing job duties nearly identical to KCTV producers) were not supervisors, even where they “freely relayed to management” feelings on colleagues’ competence or reliability on the job, or where management “sought out their opinion with respect to such matters.” Post-Newsweek, 203 NLRB at 523-24. The Board reasoned that even where the editors “declaimed loud and long” on the alleged shortcomings of various employees, where there is no evidence the recommendation was the *sole* basis for personnel action, there could be no supervisory finding on that basis. Id. at 524.

The Regional Director duly noted the lack of power to effectively recommend discipline, as that term has been interpreted by the Board. (DDE 8.) Mr. Labbe himself noted this lack of power, when unequivocally stating on the record that managers will only act on recommendations for discipline after conducting an independent recommendation. (Tr. 55-56.) In accord, news producer Amanda Palumbo stated that she, indeed, has never independently disciplined anyone, nor has she recommended anyone in that regard. (Tr. 133.) Further, Palumbo has also never even been involved in the performance appraisal of another employee. (Tr. 132.) The KCTV news producers' recommendations having "more gravity" than others' is not sufficient. (RFR 19.) Because the record does not reveal a single instance of news producers sufficiently independent disciplinary authority, because the Regional Director duly noted that fact, and because of the binding Board precedent in this area, there is effectively no dispute that the Regional Director was correct in distinguishing Hearst on that basis.

As to the second contrast with Hearst, the Regional Director was correct in distinguishing the Hearst producers as able to assign overtime, whereas KCTV news producers cannot. The Regional Director correctly notes on page 12 of his decision that there is simply no evidence in the record that news producers could assign overtime without having to report that request to managers. News producer Palumbo stated this clearly on the record, saying she has "never" authorized overtime. (Tr. 136.) Moreover, the record states that where unexpected changes to the rundown occur at the last minute, while the producer will request team members alter their duties accordingly, managers will still be involved in the conversation, and such occurrences are quite rare. (Tr. 115-17.) When asked very clearly whether KCTV producers were able to authorize overtime, the employer representative refused to give an unequivocal answer. (Tr. 115-16.) In contrast, the Hearst decision is unequivocal in stating that news producers there

were explicitly authorized to assign overtime. Hearst, 267 NLRB at 327. Given that, the Regional Director correctly contrasted Employer's general allegations on overtime with the clear finding in Hearst, and correctly distinguished the cases on that basis.

Similarly, the Regional Director was correct in drawing a third contrast with Hearst: distinguishing the independent judgment used by Hearst producers in assigning work from the merely "collaborative effort" of which KCTV news producers are a part. (DDE 11.) The Board has held that where giving direction to reporters, photographers and editors, that direction such as script edits, camera angles and the length of video edits are merely "incidental to the producers' ability to perform their own work" as it is "the procedures [sic] who are responsible for organizing and coordinating the productions." McGraw-Hill Broadcasting Co. (KGTU-TV), 329 NLRB 454, 456 (1999). In King Broadcasting, a case the Regional Director discussed at length, news producers were found non-supervisory though they "selected stories, decided on visual and audio presentation of stories, assigned story writing to reporters, compiled rundowns, made changes in the rundowns, and directed others in the production activities of daily newscasts, including asking reporters to revise scripts, requesting photographers to use certain segment lengths and camera angles, and having editors alter the length of videos." (DDE 11, citing King Broadcasting, 329 NLRB 378.) There, the Board characterized the news producers and other employees together as "co-workers involved in separate but sequential functions in the development of a single product." Id. at 383.

Moreover, the Regional Director noted that "where individuals have the authority only to request rather than require that employees work in certain areas, they are not found to have the authority to assign work." (DDE 10, citing Golden Crest Healthcare Center, 348 NLRB 727 (2006)). In other words, the Board has drawn a distinction between mere "communication

and coordination of work requirements and efforts” by news producers to complete their work requirements (which is non-supervisory) and “assignment of work,” which requires the use of independent judgment (and is supervisory). (DDE 10.) “Independent judgment” is, at a minimum, the authority to “act or effectively recommend action, free of the control of others.” Oakwood Healthcare, 348 NLRB at 689. In other words, an assignment is not supervisory where it is limited by the directions of higher officials who have not delegated the power to make significant judgments, or if those judgments are limited by employer-specified standards. Kentucky River, 532 U.S. 706. Accordingly, news producers do not independently assign work where they act as part of an “integrated production team,” in which each person is independently capable of executing his or her own assignment, and is independently accountable to management. King Broadcasting, 329 NLRB at 382-83.

Here, the Regional Director correctly notes that the news producers are merely coordinators acting as one part of a collaborative effort, like the producers in King and in marked contrast to the producers in Hearst. In Hearst, the Board explicitly describes those producers as having “final authority to change work assignments.” 267 NLRB at 327. In contrast, in a thorough analysis over four pages of his decision, the Regional Director notes that work assignments are the exclusive purview of Executive Producers, the Managing Editor and the Assignment Manager. (DDE 9-12.) Moreover, he notes the lack of any concrete testimony on instances where news producers had to make assignments in the absence of a news manager’s supervision or control. (DDE 9-10.) He correctly notes that even if such an assignment did occur, it would not likely constitute an assignment made with “independent judgment,” as required by the Act. (DDE 9-10, citing Golden Crest Healthcare Center, 348 NLRB 727 (2006).)

None of the four instances of purported independent judgment in assigning work rise to the standard the Board set in King Broadcasting and elsewhere. (RFR 20-21.) Each only shows the news producers functioning as part of an integrated team. First, Employer cites Employer's Exhibit 5, purporting to show news producer Palumbo assigning work to another KCTV staffer. (RFR 21.) That characterization is a vast overreach by Employer, however, as nothing in the record says Palumbo directed the reporter, as opposed to consulting with the reporter to ask if he was available. Further, the independent judgment requirement is also missing, with a managing editor having prompted Palumbo to make the call she did. In each of the three other examples cited by Employer, there is nothing to suggest the emails are direction rather than requests; each appears to be "merely communication and coordination of work requirements" and efforts by the news producers to complete their own work requirements, rather than assignment of work. (DDE 10.)

Finally, with regard to the fourth area in which the Regional Director contrasted Hearst, communication of supervisory status to employees, Employer grasps at straws in parsing the meaning of the word "leader." (RFR 22.) The Regional Director dispatches with this argument appropriately, in noting that a mere conferral of a title "falls far short of showing that news producers have supervisory authority" or "are considered by themselves or other employees to be statutory supervisors." (DDE 12.) In its cases cited on Request for Review, Employer admits as much, quoting, "[t]he proper consideration is whether the functions, duties, and authority of an individual, regardless of title, meet any of the criteria for supervisory status defined in the Act." (RFR 23, citing Talmadge Park, Inc., 351 NLRB 1241, 1243-44 (2007).) Accordingly, Employer's discussion of the word "leader" appears all the more irrelevant, and the Regional Director properly contrasted Hearst on the aforementioned four bases.

Beyond Hearst, Employer is also incorrect in its characterization of the Regional Director's analysis of the Tenth Circuit decision in Meredith Corp. v. NLRB. (RFR 13, citing Meredith Corp., 679 F.2d 1332.) The Regional Director correctly noted that in Meredith, the Tenth Circuit confirmed the Board's decision that directors at KCTV (currently called technical producers) were not statutory supervisors. (DDE 13.) In so doing, that court compared KCTV news directors' job duties to those of the directors, and found the news producers to have comparatively more supervisory duties than directors. 679 F.2d 1332. That case, however, is far from the smoking gun Employer claims to have discovered. As the Regional Director notes, the supervisory status of news producers was neither at issue nor decided in that case. (DDE 13-14.) Moreover, the Regional Director notes that there is no basis to assume that the functions of news producers are the same as they were in the 1980's. Indeed, news producers' duties have changed significantly in the nearly thirty years since that case was decided. For example, the current news producers lack the authority to make final decisions on re-stacking of newscasts, whereas 1982-era news producers had that authority. 679 F.2d 1332. Even assuming there are some similarities between 1982 and 2012 KCTV news producers, Meredith goes only so far as to say news producers' jobs seem *more* supervisory in nature than directors, *not* that any of their authority rose to a statutorily sufficient level. Id.

Equally significantly, Meredith Corp. has no binding precedential value whatsoever in this matter, whereas more recent and binding Board precedent is both directly on point and supports Petitioner's position. The Regional Director acted in accordance with a longstanding Board policy: that court of appeals cases carry no precedential value with regard to Board decisions, even where the rule in those circuit cases runs contrary to Board precedent. See e.g., Ford Motor Co., 230 NLRB 716, 718 n.12 (1977), accord Ford Motor Co. v. NLRB, 441

U.S. 488 (1979). This case represents just such an instance. In decisions such as King Broadcasting, Post-Newsweek, McGraw-Hill, and others already cited by Petitioner, the Board faced facts similar to those here, and found news producers or their equivalent to be non-supervisory. See Petitioner's Post-Hearing Brief (filed with Region 17 in this matter). Far from "casually dismiss[ing]" the case as Employer contends, (RFR 23), the Regional Director adequately distinguished Meredith on these bases, and instead relied on such relevant and binding precedent. Here, the Board should adhere to its own longstanding precedent and follow the lead of the Regional Director, by dispatching with the non-binding dicta pointed to by Employer.

B. REVIEW AND CORRECTION BY THE BOARD IS NOT WARRANTED BECAUSE THE REGIONAL DIRECTOR DID NOT MISCONSTRUE THE TERM "RESPONSIBLY TO DIRECT" AND DID NOT MISAPPLY FACTS BASED ON SUCH A MISCONSTRUCTION AND THUS THERE WAS NO PREJUDICE TO MEREDITH ON EITHER BASIS.

Further, the Regional Director's should stand because his analysis correctly construed the term "reasonably to direct," and properly applied that construction of the law to an accurate reading of the facts. In its Request for Review, Employer argues that the Regional Director erred in his analysis of one § 2(11) authority in particular: that of a supervisor "responsibly to direct" employees. As the Regional Director and Employer both have correctly noted, this means that there must be a three-part showing by the party espousing supervisory status: that the purported supervisor 1) has the authority to direct work of others, *and* 2) has the authority to commence corrective action, *and* 3) is subject to adverse consequences for failure to direct *and/or* commence corrective action. See Oakwood Healthcare, 348 NLRB at 689.

The Board has defined "responsible" direction as that which requires oversight over the employee being directed, such that the one overseeing is "accountable for the

performance of the task by the other such that some adverse consequence may befall the one providing the oversight if the tasks . . . are not performed properly.” Id. at 692. Merely issuing instructions to others does not amount to directing, Byers Engineering Corp., 324 NLRB 740 (1997), and the ability of a manager to override a news producer’s direction is dispositive against supervisory status. Id.

Moreover, even if news producers do perform one of the § 2(11) functions, where those acts are “routine” and completed without independent judgment, the acts are not supervisory. As noted supra (but again relevant here) “independent judgment” is, at a minimum, the authority to “act or effectively recommend action, free of the control of others.” Oakwood Healthcare, 348 NLRB at 689. In other words, judgment is merely routine where it is limited by the directions of superiors who retain final say, or if limited by employer-specified standards. Kentucky River, 532 U.S. 706. News producers do not independently direct where part of an “integrated production team,” in which each person independently executes assignments, and is independently accountable to management. King Broadcasting, 329 NLRB at 382-83.

As with assignment of work, evidence of a “collaborative effort” undermines a claim of responsible direction of work. The Board has held repeatedly, most notably in King Broadcasting and McGraw-Hill, that despite producers giving direction on script edits, camera angles, the length of video edits, and otherwise selecting the visual and audio presentation of stories, that such direction is merely one of “co-workers involved in separate but sequential functions in the development of a single product,” King Broadcasting at 383, where news managers have the final say on the work performed as part of such a collaborative process. Again, as noted supra, in McGraw-Hill, the Board faced facts similar to those in King Broadcasting, and held that where a producer “requests” a task but cannot “require” it, the news

producer lacks independent judgment. McGraw-Hill, 329 NLRB 454, 456-57 at n.7; accord Golden Crest Healthcare Center, 348 NLRB 727 (2006).

Here, the Regional Director corrected interpreted “responsibly to direct” and properly found the KCTV news producers as lacking in final decision making authority as described herein. On page 13 of his decision, the Regional Director accurately notes that news producers, reporters, photographers, newscasters and anchors are each individually held responsible for their own work. Discussing the discrepancy reports created after each news show, the Regional Director correctly describes discipline coming from errors in that report as falling to the person committing the error, not necessarily to the news producer for that show. (DDE 13.) While Employer parses the Regional Director’s use of the term “held responsible,” (RFR 27), as a departure from the Oakwood language of “adverse consequences,” this represents just another semantic argument, showing a distinction without a difference. The fact remains that in all the examples cited on pages 28 to 29 of Employer’s Request for Review, individual employees receive discipline, but there is nothing indicating the news producers had directive authority in the conduct leading to that discipline. For example, in Employer’s Exhibit 4, producer Dan Dozar receives a disciplinary warning for failure to coordinate his shows, but not for failure to direct other employees, (Tr. 64-65), an authority he did not possess in the first place. When the Regional Director details the chain of command in place to deal with discrepancy reports, it is clear the chain ends with news managers, not supervisors. Because that analysis depicts the reality of KCTV’s operation, and because the Regional Director accurately applies the aforementioned Board precedent to those facts, the Board should not grant review of the Regional Director’s decision on this basis.

V. **CONCLUSION**

For the foregoing reasons, Petitioner respectfully contends that the Board should deny Employer's Request for Review of the Regional Director's Decision and Direction of Election. Petitioner maintains that the KCTV news producers are "employees," as that term is defined in the Act. Employer's contention that the news producers are supervisory is without support in case law or in the record. The Regional Director's decision agreeing with Petitioner was free from error, prejudicial or otherwise, and Employer fails to allege a single compelling reason why the Regional Director's decision should be reviewed. Thus, the Board should allow the KCTV news directors' votes to be counted, as the Board has done with similarly situated news directors in the past.

Respectfully submitted,



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Dated: January 12, 2012

CERTIFICATE OF SERVICE

The undersigned certifies that Petitioner's Brief to the Regional Director was served upon counsel for Employer, Kraig Schutter, via e-mail and Federal Express, to the address indicated below, on the 12th day of January, 2012:

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