

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

Community Voices Heard,
Employer

-and-

Case No. 2-RC-93771

Communications Workers of America, AFL-CIO
Petitioner

DECISION AND DIRECTION OF ELECTION

Community Voices Heard (“Employer”) is an organization whose mission is to empower and improve the lives of low-income families and communities. The Communication Workers of America, AFL-CIO (“Petitioner”) filed the instant petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act, as amended (“the Act”) seeking to represent all full-time and regular part-time employees at its four New York locations in Manhattan, Newburgh, Yonkers, and Poughkeepsie, excluding all other employees, including guards, professional employees, and supervisors as defined by the Act.

Upon a petition filed under Section 9(b) of the Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Based upon the entire record in this matter¹ and in accordance with the discussion above, I conclude and find as follows:

¹ The briefs filed by the parties have been duly considered.

1. The Hearing Officer's rulings are free from prejudicial error and hereby are affirmed.

2. The parties stipulated, and I find, that the Employer, is a 501(c)(3) not-for-profit New York State corporation, with an office and principal place of business located at 115 East 106 Street, 3rd Floor, New York, NY 10029, and facilities located in Newburgh, Yonkers, and Poughkeepsie. The Employer is engaged in providing training to low-income people about their rights, political education, civic engagement and organizing direct action campaigns on specific issues. Annually, in the course and conduct of its business operations, the Employer derives gross revenues in excess of \$250,000, and purchases and receives at its New York facilities, goods and materials valued in excess of \$5,000, directly from suppliers located outside the State of New York.

Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction here.

3. The parties stipulated, and I find that Communications Workers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and 2(6) and (7) of the Act.

5. In its petition, Petitioner seeks to represent all full-time and regular part-time organizers and coordinators in New York State, employed by the Employer, excluding all supervisors, security officers and confidential employees as defined by the Act. The two issues raised at the hearing are: (i) whether the Policy Research and Participatory Budgeting Coordinator ("the PRPB Coordinator") is a supervisor within the meaning of

Section 2(11) of the Act and should therefore be excluded from the unit; and (ii) whether the petitioned-for unit is inappropriate because the PRPB Coordinator does not share a community of interest with the organizers and the Public Housing Field Coordinator.²

Petitioner contends that the Employer has not established that PRPB Coordinator Vincent Villano (“Villano”) possesses any indicia of supervisory status. To the extent that the record suggests the exercise of some supervisory authority, Petitioner argues that Villano’s actions were occasional and isolated, and therefore the Employer failed to establish that he is a supervisor. Further, Petitioner asserts that the petitioned-for unit is a presumptively appropriate wall-to-wall unit, and in light of the high level of functional integration between the organizers and the coordinators, the Employer has not met its burden to rebut this presumption. Notably, the Employer’s proposed unit would group the organizers with the Public Housing Field Coordinator, leaving Villano as the only unrepresented employee in the organization.

The Employer contends that the PRPB Coordinator is a “mid-senior” position in the Employer’s management team. In that regard, the Employer claims that Villano’s job duties recently shifted so that most of his time is spent participating in a citywide committee comprised of, among others, City council members. In the alternative, the Employer claims that Villano supervised Pamela Brown, who was hired as a full-time fellow for a six month period. With respect to scope, the Employer argues that if Villano is found to be an “employee” within the meaning of Section 2(3), he should still be excluded because he does not share a community of interest with the organizers.

² The record does not fully explore the job duties of the Public Housing Field Coordinator, however, the parties appear to agree that his job duties are indistinguishable from the organizers, notwithstanding his title. He is indisputably included in the petitioned-for unit.

I have considered the evidence and the arguments presented by the parties on these related issues. As discussed below, I find that the PRPB Coordinator is eligible to vote and that he is properly included in the unit.

I. FACTS

A. Overview

The Employer is a non-profit, grassroots, community-based organization that seeks to provide training to low-income people about their rights, political education, civic engagement and direct action issue campaigns. It uses a multi-pronged strategy to achieve its goals, with a strong emphasis on grassroots organizing. For example, the Employer organizes individuals receiving public assistance to involve them in a campaign to change policies that affect them, such as job creation, workforce development, and access to training.

The Employer's main office is in New York City and its branch offices are in Yonkers, Newburgh and Poughkeepsie.³ The Employer currently has 13 full-time employees, most of whom work in the Employer's New York City office. It is undisputed that six of the 13 full-time employees are managers and/or supervisors.

With respect to management structure, the head of the office is the Executive Director, Sondra Youdelman. Five people report directly to her: Michelle Perez, Director of Administration & Institutional Giving; Mo George, Public Housing Partnership and Special Projects Director; Chris Keeley, Political & Communications Director; Henry Serrano, Senior Organizer; and Jenny Loeb, Regional Lead Organizer.

³ The Employer's New York City Chapter four offices are located at: 115 East 106th Street, 3rd Fl., New York, NY; 28 N. Broadway Ave. 2nd Fl., Yonkers, NY; 18 Lander Street, Newburgh, NY; and, 29 North Hamilton St., Suite L06, Poughkeepsie, NY.

Keeley supervises PRPB Coordinator Vincent Villano. Serrano supervises three organizers and Loeb supervises the other three organizers who work in the Employer's offices outside of New York City.

B. Terms and Conditions of Employment

Organizers and coordinators enjoy the same health and retirement benefits. All employees accrue vacation leave at the same rate. The organizers' salary ranges between \$33,000 and \$40,000, annually. The job description of a field organizer provides that salary depends on experience. Villano's starting salary in 2008 was slightly greater than the organizers' annual salary range, and he currently earns about approximately \$3,000 more than when he commenced his employment with the Employer. While there is no educational requirement to become an organizer, the record demonstrates that some of the organizers have bachelor and graduate degrees. The PRPB Coordinator is required to have some college-level coursework and a master's degree is preferred. Villano has a Master's degree.

Organizers work about 40 to 50 hours a week and spend about 40 to 50% of their work time in the field and the rest of the time in the office. Organizers do not have a set schedule and their time in the field varies depending on the campaign. Their duties generally cannot be performed at home. Villano testified that he works an average of about 45 and 50 hours a week. He spends around $\frac{3}{4}$ of his time in the office and the rest of the time in the field to attend meetings with the Citywide Steering Committee and other community partners. Villano has a set schedule which is generally from 10:00 am to 6:00 pm, and he is permitted to work at home.

The Manhattan office is designed as a “shared” office space which means that the organizers work in an open area separated by partitions. Villano has an office with a door, as do some directors. Villano’s direct supervisor, Director Chris Keeley, sits in the partitioned open space with the organizers, instead of an office. Villano also testified that staff members regularly use his office space when he is in the field or working at home.

Organizers are tasked with mobilizing the community and engaging people in the Employer’s campaigns. Organizers perform the following duties:

- public outreach
- campaign development
- planning and implementation
- campaign research on campaign topics such as participatory budgeting and funding mechanisms
- committee development
- leadership development
- coalition and stakeholder work; and,
- fundraising.

Essentially, the organizers have three major tasks. The first is “base building” which involves going out into the community to talk to people that might be affected by particular issues. The second is “mobilizing the community” which employs several strategies, such as, phone banks and mass mailings. The third is to choose targets or goals which legislatures have the power to develop.

Villano’s duties include coordinating with City council members, researching and determining how funding can be used to move campaigns forward, researching policy for campaign support, and documenting issues related to his research. For example, Villano has researched potential funding sources for the Public Housing Campaign in order to push for more building repairs of public housing. Keeley and Youdelman

testified that Villano spends about 90% of his time working on participatory budgeting and 10% of his time doing research and policy work.

The PRPB coordinator position is not interchangeable with the organizers and vice versa. If one organizer is out, another organizer can replace the absent organizer. Villano has never filled the role of an absent organizer.

Supervisor Serrano stated that the organizers do not have any work-specific interactions with Villano, and this contention was disputed by Villano, who testified that his job duties and responsibilities require him to work with the organizers. Specifically, Villano stated,

“[w]ell, in research for organizing you need to ensure that the research you’re doing is going to help push the campaigns forward. So it’s difficult to do that if you don’t interact with the organizers who are on the ground with the campaigns.”

Villano provided specific examples of instances where he worked with the organizers while performing his job duties in participatory budgeting. For example, Villano worked with Organizer Juanita Lewis to create a proposal for a research project in Yonkers and met with Public Housing Field Coordinator Kflu Kflu on how to move forward on the public housing campaign.

C. The PRPB Coordinator Position

The issue raised by the Employer relating to Villano’s alleged supervisory status mainly involved his job duties and relationship with Pamela Brown, the Gail Aska Policy & Research Fellow (“the Fellow”), during her employment from March to December 2011. The Fellow position Brown held was a paid, full-time position for a temporary fixed term. Since the end of Brown’s fellowship, the Employer has not hired a replacement Fellow. The Employer currently does not have the funding to hire a Fellow and it is

unclear when or if funding may become available to enable the Employer to hire another Fellow. Executive Director Youdelman stated that in the event the Employer receives additional funding in the future, another Fellow would be hired.

Villano has been working for the Employer since about October of 2008. It appears that Villano did not have much, if any, involvement with the individual hired as the first Fellow employed by the Employer. The record does not contain any evidence regarding the nature of the work or the supervision of this individual who was the first Fellow hired by the Employer. It appears that when Pamela Brown began working in March 2011, Villano was on parental leave and the record does not disclose to whom Brown reported during this period. Upon his return to work in May 2011, Villano worked with Brown until her fellowship ended in December of 2011.

Villano stated that Youdelman asked him to look over eight Fellowship resumes and asked for his hiring recommendation. However, she hired Brown over his recommendation to hire someone else. It appears that Villano did not attend Brown's interview and could not recall being invited to attend. The record contains a broad statement by Youdelman that Villano had the authority to hire and fire but there is no support for this assertion.

Regarding assignment and responsible direction, the record is unclear what role Villano had in Brown's assignments. Brown worked almost exclusively on the Welfare Workforce Development campaign and Villano was not part of the decision that Brown would be working on this particular campaign. Similarly, Brown worked on another project linked to welfare workers referred to as "the excluded workers conference" . Villano described his relationship to Brown as:

"[it] was kind of like work that if we get it done that's great. So it was a project crafted for her to do, but it wasn't like on my plate and then I passed it on to her."

Youdelman stated that as Villano's supervisor, she asked him the status of Brown's research and stated that they would talk about some of the challenges and would strategize how Villano was going to work with Brown to make sure that her assignments were completed. Youdelman further claimed that Villano was ultimately held accountable for the completion of Brown's work, and that he had the authority to train and prioritize her work. Again, the record has only a bare assertion by Youdelman that Villano was responsible for Brown's work, but no documentation or other support for this assertion was provided.

Villano states that he was not told that he had the authority to discharge or discipline Brown. On one occasion, Villano was asked by Youdelman to question Brown regarding her time sheets. Villano asked Brown to provide some documentation to prove that she had worked on specific days. The record contains no documentary evidence regarding this incident, such as, the actual time sheets, or authorized approvals showing some verification regarding this time and attendance issue. Youdelman testified that during the course of Brown's employment, Villano had the authority to terminate and discipline Brown. As an example, she noted that Villano exercised this authority by having some disciplinary conversations with Brown that he subsequently reported to Youdelman, but no specifics were provided regarding any discipline that Villano meted out or recommended be given to Brown.

Whenever Brown wanted to take time off, she merely informed Villano that she was leaving, but it appears Villano possesses no authority to grant time off. Although Youdelman testified that Villano had the authority to authorize leave for the Fellow, no

documentary evidence to support this assertion was offered. It does appear that when Brown asked whether she could work from home, and Villano agreed, Youdelman disapproved this request and Brown was no longer permitted to work at home.

Finally, the record demonstrates that Villano drafted an evaluation of Brown's work performance at the end of her tenure having received input from Youdelman and Hadlock. Youdelman, after adding her own comments, finalized the evaluation. It appears that there were no recommendations in this evaluation concerning Brown's employment status with the Employer. Youdelman agreed that this evaluation did not have an impact on Brown's employment with the Employer since her fellowship was ending.

II. ANALYSIS

A. Managerial Status

Managerial employees, who are excluded from the protection of the Act, are defined as employees who have authority to formulate, determine, or effectuate employer policies of the Employer by expressing and making operative the decisions of their employer and those who have discretion in the performance of their jobs independent of their employer's established policies. *Tops Club, Inc.*, 238 NLRB 929 fn. 2 (1978). The Supreme Court, in *NLRB v. Yeshiva University*, 444 U.S. 672 (1980), described managerial employees:

“as those who ‘formulate and effectuate management policies by expressing and making operative the decision of their employer.’ These employees are ‘much higher in the managerial structure’ than those explicitly mentioned by Congress, which ‘regarded [them] as so clearly outside the Act that no specific exclusionary provision was thought necessary.’ Managerial employees must exercise discretion within, or even independently of, established employer policy and must be aligned with management. Although the Board has established no firm criteria for determining when an employee is so aligned, normally an employee

may be excluded as managerial only if he represents management interest by taking or recommending discretionary actions that effectively control or implement employer policy.”

The Board has recognized that employees whose decision-making is limited to the routine discharge of professional duties in projects to which they have been assigned cannot be excluded from coverage even if union membership arguably may involve some divided loyalty. Only if an employee’s activities fall outside the scope of the duties routinely performed by similarly situated professionals will he or she be found aligned with management. *Id.* The party asserting managerial status bears the burden of proof. *Allstate Insurance Co.*, 332 NLRB 759, 759 n.2 (2000).

In the instant case, the record is insufficient to determine that Villano is so aligned with management as to be excluded from the petitioned-for Unit. The record does not establish that Villano has formulated any policies or practices regarding the strategic goals of the Employer. He has no control over budgetary matters and lacks hiring authority. To the extent that his research duties were modified by his assignment to the New York City Participatory Budgeting initiative, no record evidence supports that Villano substantially changed any of the Employer’s established practices or that he implemented any new policy-level initiatives. *Holly Sugar Corp.*, 193 NLRB 1024 (1971)(an employee does not acquire managerial status by making some decisions or exercising some judgment within established limits set by higher management). Based on the record evidence as discussed above, I find that Villano is not a manager.

B. Supervisory Status

In defining “employees,” Section 2(3) of the Act specifically excludes supervisors as,

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

Pursuant to this definition, individuals are statutory supervisors if (1) they hold the authority to engage in any one of the 12 supervisory indicia listed above; (2) their “exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment,” and (3) their authority is held “in the interest of the employer.” *In re Oakwood Healthcare, Inc.*, 348 NLRB No. 37, 687 (2006). Supervisory status can be established if the individual has the authority to either perform a supervisory function or to effectively recommend the same. *Id.*

As the party seeking to exclude the PRPB Coordinator from the coverage of the Act in this proceeding, the Employer has the burden of proving his supervisory status. *See, e.g., NLRB v. Kentucky River Community Care*, 121 S. Ct. 1861, 1866-1867 (2001); *S.S. Joachim & Anne Residence*, 314 NLRB 1191, 1194 (1994). The Employer claims that Villano has the authority to hire, discipline, assign and direct work to employees.

Concerning hiring, the evidence suggests that Villano gave some input as to who the Employer should hire as its fellow. He reviewed resumes from a pool of candidates selected by Youdelman. Ultimately, the Employer did not adopt Villano's

recommendation. Additionally, Villano was not present in the Fellow's interview and could not remember being asked to attend the interview. Accordingly, the record does not demonstrate that Villano's input in the hiring process of the Fellow was effective or substantial.

Regarding firing and issuing discipline, the record indicates that Youdelman asked Villano to have a disciplinary conversation with Brown regarding her time sheets. Villano followed Youdelman's instructions and then reported back to Youdelman. The evidence suggests that Villano was merely a conduit between Brown and Youdelman, rather than possessing the authority to initiate disciplinary conversations with Brown. Accordingly, the record evidence is insufficient to establish that the conversation Villano had with Brown involved the exercise of independent judgment or that Villano had any impact on employees' job status. *Pepsi-Cola Bottling Company of Merced-Modesto*, 154 NLRB 490, 493-494 (1965).

With respect to the approval of time off, Brown informed Villano when she would be out on leave. However, there is no evidence that Brown requested permission from Villano to be out of work, or that Villano exercised any independent judgment when Brown advised him of her leave. The record does not disclose whether Villano ever refused Brown's request to be on leave or that he knew he had the authority to do so. Accordingly, it is not possible to conclude that Villano exercised independent judgment on this record. *See, University of Great Falls*, 325 NLRB 83 (1997) (testimony was too vague to permit a meaningful assessment of the employees' actions and the evidence was insufficient to find that recommendations were generally followed).

Villano was not involved in deciding what work Brown would be performing or which campaign she would do research for during her tenure. To “assign” for purposes of Section 2(11) refers to the change of an employee’s designation of significant overall duties, not a change to an employee’s ad hoc instruction that the employee perform a discrete task. *Oakwood Healthcare*, 348 NLRB at 689 (2006). For example, the assignment of an employee to a certain department, shift, or to “significant overall tasks” generally qualifies as “assign.” *Id.* Here, the record does not demonstrate that Villano assigned particular projects. Rather, it appears that Villano simply provided Brown with guidance. The Board, in *First Western Building Services*, 309 NLRB 591, 601 (1992), held that instructions given by a more experienced employee to a less experienced employee is not “responsible direction” within the meaning of Section 2(11) because the use of independent judgment is not involved; rather, it is the authority of a skilled employee over an unskilled employee. *North Jersey Newspapers Co.*, 322 NLRB 394, 395 (1996).

Although the Employer admitted that employees are annually evaluated, it failed to proffer documentary evidence or other support showing that Villano would be held responsible or accountable if Brown failed to complete this work. Youdelman’s testimony on this point was vague and speculative. For direction to be “responsible” as set forth in Section 2(11), the person directing the oversight of the employee must be held accountable for the performance of the task by the other, “such that some adverse consequences may befall the one providing the oversight if the tasks performed by the employee are not performed properly.” *Oakwood Healthcare, supra*. Villano testified that he was not held accountable for the completion of Brown’s work. Additionally, the

Employer did not provide any evidence demonstrating that there would be consequences for Villano if he did not effectively direct Brown.

Villano drafted Brown's evaluation at the end of her fellowship. However, the evidence establishes that Villano's evaluation did not have an effect on Brown's terms and conditions of employment. *Necadah Screw Machine Products*, 323 NLRB 574, 576 (1997); *Lincoln Park Nursing Home*, 318 NLRB 1160, 1162 (1995)(no evidence that appraisal was effective recommendation to have someone removed, discharged or transferred).

Notably, over the past four years of Villano's employment, he has only worked with a Fellow for about five months. The Employer does not currently employ a Fellow and it is uncertain if or when another Fellow will be hired. Accordingly, even if I were to conclude that Villano had some supervisory authority over Brown, it is entirely uncertain if and when Villano would have such authority in the future. Occasional isolated instances of actions which might otherwise be indicative of supervisory authority are generally insufficient to predicate a supervisory finding. *Volair Contractors, Inc.*, 341 NLRB 320 (2000).

Overall, the record demonstrates that Villano did not know he had the authority, nor did he effectively recommend or exercise the authority to hire, grant time off, discipline, assign or direct work to employees. Even assuming Villano exercised some independent judgment in writing Brown's evaluation, the record establishes that Youdelman edited the final evaluation and had final authority over its contents. Moreover, this appraisal did not have any effective impact on Brown's employment with this Employer. Based on the foregoing reasons, the weight of the evidence necessitates

a finding that the Employer has failed to demonstrate that Villano is a supervisor under the Act, and thus has failed to meet its burden of establishing that Villano was a statutory supervisor.

C. Scope of Unit

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. *See, e.g., Overnite Transportation Co.*, 331 NLRB 662 (2000). It is well-settled that the unit need only be an appropriate unit, not the most appropriate unit. *See, e.g., In Re Bartlett Collins Co.*, 334 NLRB 484 (2001); *Morand Bros. Beverage Co.*, 91 NLRB 409, 419 (1950), *enfd. on other grounds* 190 F.2d 576 (7th Cir. 1951).

In determining whether the employees possess a separate community of interest, the Board examines such factors as mutuality of interest in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. *See, e.g., Ore-Ida Foods*, 313 NLRB 1016 (1994).

The Board, in *Airco, Inc.*, 273 NLRB 348 (1984), noted that Congress expressly contemplated the plantwide unit in Section 9(b), and the Board has long held that “[a] plant-wide unit is presumptively appropriate under the Act, and a community of interest inherently exists among such employees, *citing Klamazoo Paper Box Corp.*, 136 NLRB 134 (1962). The standard is the same but the burden is on the employer to

demonstrate that the interests of a given classification are so disparate from those of the other employees that they cannot be represented in the same unit. See, e.g., *E.H. Koester Bakery*, 136 NLRB1006, 1011 (1962).

Here, the petitioned-for unit is a presumptively appropriate wall-to-wall unit consisting of just seven employees who all work for very similar goals. The PRPB Coordinator works on building the foundation and momentum for the Employer's campaigns, establishing funding and gathering the information necessary to get the community involved. The organizers are "on the ground" getting the campaigns going, working with the PRPB Coordinator to find out what can be done in terms of policy and funding to keep the campaigns moving forward. In varying degrees, all of the members of the petitioned-for unit conduct research on campaigns and funding. To be sure, the organizers spend most of their time in the field; however, the record demonstrates that Villano has regular contact with them. Even though the organizers and the PRPB Coordinator are not interchangeable positions, the record demonstrates that petitioned-for unit is highly integrated in terms of common functions and degree of skill. In that regard, although the PRPB Coordinator job description requires some college coursework and the organizers' job description does not have an educational requirement, the record demonstrates that some of the organizers also have bachelor and Master Degrees. Importantly, like the uncontested employees, Villano is salaried, receives the same benefits and is subject to the same rules and policies. In terms of supervision, three organizers have one supervisor, two organizers and the Public Housing Coordinator have another supervisor, and the PRPB Coordinator has yet another supervisor. Despite this structure, Villano's supervisor, Keeley, works with the

organizers and serves as a resource to them for information on campaign advocacy. The Employer's suggestion that its operations are departmentally separate seems strained, especially in such a small operation. Finally, the fact that Villano has an office is not persuasive in establishing some distinction between Villano and the organizers. In fact, Keeley sits in the open area with the organizers, instead of an office.

Moreover, a finding in favor of the Employer's proposed unit would effectively preclude Villano from union representation because a petition for a residual unit would be dismissed, as the Board will not certify a bargaining representative in a unit comprised of only one employee. *Roman Catholic Orphan Asylum*, 229 NLRB 251 (1977).

In consideration of Board precedent in this area and the record herein as a whole, I find that the Employer has not rebutted the presumption that the petitioned-for wall-to-wall unit is appropriate. Again, I note that as a plantwide unit, this unit is appropriate under Section 9(b) of the Act. Although there are some distinctions in the classifications, the Employer has not demonstrated that Villano's interests are so disparate from those of the other employees that he cannot be represented in the same unit. To the contrary, Villano shares a strong community of interest through daily, regular contact with the organizers, the same benefits, similar skills and knowledge of the campaign work, policy and funding.

Finally, the Employer cites the Board's decision in, *DTG Operations, Inc.*, 357 NLRB No. 174 (2011), for the proposition that "where all members of a proposed "wall-to-wall" unit do not share a community of interest, a smaller unit of employees that do share a community of interest is appropriate." Factually, in *DTG*, the union petitioned

for two classifications and the employer proposed a wall-to-wall unit. The Regional Director found that the smallest appropriate unit was a wall-to-wall. On appeal, the Board held that employer failed to demonstrate that the additional employees it sought to include shared an overwhelming community of interest with the two classifications encompassed by the petitioned-for unit and remanded the case to the Regional Director to hold an election in the smaller unit.

The instant case is factually distinguishable because here, the Employer proposes a smaller unit, not additional employees. Further, as set forth above, the correct legal standard is that the Employer must rebut the presumption by demonstrating disparate interests. The “overwhelming community of interest” standard clarified by the Board in, *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011) is wholly inapposite.

Accordingly, I therefore find that the following constitutes a Unit that is appropriate for the purposes of collective bargaining:

Included: All full-time and regular part-time employees, including organizers, public housing coordinators and policy research and participatory budget coordinators, employed at the Employer’s facilities at located at: 115 East 106th Street, 3rd Fl. New York, NY; 28 N. Broadway Ave. 2nd Fl. Yonkers, NY; 18 Lander Street, Newburgh, NY; and, 29 North Hamilton St., Suite L06, Poughkeepsie, NY. 890 Garrison Avenue, Bronx, NY.

Excluded: All other employees, guards, professional employees, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board’s Rules and

regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date of the Decision, including employees who did not work during the period because they were ill, on vacation or temporarily laid-off. Also eligible are employees engaged in an economic strike, which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated eligibility period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently

replaced.⁴ Those eligible shall vote on whether or not they desire to be represented for collective bargaining purposes by the Communication Workers of America, AFL-CIO.⁵

Date at New York, New York
This 11th day of January 2013



David E. Leach III
Acting Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10278

⁴ In order to assure 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 that may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, three copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on or before **January 18, 2013**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

⁵ 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, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by no later than **January 25, 2013**.