UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

AL JAZEERA INTERNATIONAL (USA), LLC

Employer,

and

SCREEN ACTORS GUILD – AMERICAN
FEDERATION OF TELEVISION AND RADIO
ARTISTS (SAG-AFTRA)

Petitioner.

DECISION AND DIRECTION OF ELECTION

On August 20, 2018, Petitioner Screen Actors Guild – American Federation of Television and Radio Artists (the Petitioner) filed a petition to represent the following unit of content creation professionals:

Included: All full time and regular part time U.S. based employees of Al Jazeera English who create content for news, programming, and the investigative unit including Correspondents, Senior Correspondents, Video Journalists, Creative Producers, Hosts, Senior Hosts, Presenters, Reporters, Senior Reporters, Associate Producers, Assistant Producers, Producers, Interview Producers, Senior Interview Producers, Senior Producers, Planning Producers, Field Producers, Senior Planning Producers, Senior Planning Editors, Senior Commissioning Producers, Deputy News Editors, News Editors, Diplomatic Editors, Editors, Planning Editors, Camerapersons and Senior Camerapersons.

Excluded: All other employees, freelancers, contributors, contractors, interns, fellows, guards and supervisors as defined under the Act, as amended.

The Employer Al Jazeera International (USA), LLC (the Employer), contends that the petitioned-for unit is not appropriate for three reasons. First, the Employer asserts that

1 All dates herein are in 2018, unless specified otherwise.

2 The Employer’s name appears as amended at hearing.
producers, senior producers, field producers, and news editors are supervisors as defined in the National Labor Relations Act (the Act). Second, the Employer argues that on-air employees such as correspondents, senior correspondents, hosts, presenters, reporters, senior reporters, and off-air employees such as producers, senior producers, deputy news editors, camerapersons, and senior camerapersons, do not share a sufficient community of interest. Third, the Employer maintains that the petitioned-for unit which includes news department professionals assigned to the Employer’s bureaus in New York, Chicago, Miami, and Los Angeles is an inappropriate multi-location unit. The Employer avers that the appropriate unit is all non-supervisory, off-air, Al Jazeera English employees located at its 1200 New Hampshire Avenue, NW, Washington DC office.

Pursuant to a stipulation at the hearing, the parties agreed that any unit found appropriate by the Acting Regional Director shall include: video journalists, creative producers, associate producers, assistant producers, interview producers, senior interview producers, deputy news editors, diplomatic editors, editors, planning editors, camerapersons, senior camerapersons, planning producers and senior planning producers, picture editors, and senior picture editors. Additionally, the parties agreed at hearing to exclude all Al Jazeera Arabic employees, Al Jazeera Balkan employees, AJ+ employees, freelancers, contributors, contractors, interns, fellows, office clerical employees, managerial employees, guards, and supervisors as defined by the Act.

I have considered the evidence and arguments presented by the parties, and for the reasons described below, I conclude:

1. The Employer failed to establish that its producers, senior producers, field producers, and news editors are supervisors within the meaning of Section 2(11) of the Act.

2. On-air and off-air employees of Al Jazeera English share a sufficient community of interest.

3 Presenter is the British term for hosts. The record evidence supports the conclusion that presenters and hosts are the same classification.

4 Al Jazeera English and other internal branches of the Employer are discussed below.

5 The Employer’s objections to the petitioned-for unit impacts approximately 60 employees.

6 Picture editors and senior picture editors were not originally included in the petitioned-for unit.

7 The classifications that the parties agree should be included in any unit found appropriate by the Acting Regional Director are the classifications included in the Employer’s proffered appropriate unit. Therefore, the Employer maintained its argument that camerapersons and senior camerapersons located in the Employer’s bureaus should not be included in an appropriate unit found by the Acting Regional Director.
3. The petitioned-for multi-location unit, including news department employees assigned to the Employer's New York, Chicago, Miami, and Los Angeles offices, is appropriate.

In this Decision and Direction of Election, I first provide a brief overview of the Employer's general operations before describing the specific departments where the petitioned-for Al Jazeera English employees work. Within the department sections, I highlight the record evidence concerning the working conditions relating to the Board's recognized community of interest and multi-location factors. After describing the departments, I discuss the record evidence relevant to the supervisory status of producers, senior producers, field producers, and news editors. Last, by applying the relevant Board law to the facts, I ultimately explain why I reached the conclusions identified above.

I. FACTS

A. The Employer's Operations and the Petitioned-For Unit

The Employer is a global broadcasting company that generates and creates television, and other media, content through its internal branches such as Al Jazeera English (AJE), Al Jazeera Arabic, and AJ+. The Employer's main U.S. based office is located at 1200 New Hampshire Avenue, NW, Washington DC, but it operates satellite offices referred to as "bureaus" in: New York, New York; Chicago, Illinois; Miami, Florida; Los Angeles, California; and San Francisco, California. The Employer's headquarters is located in Doha, Qatar.

The Employer has approximately 196 full-time employees, approximately 100 of whom are located at its Washington, D.C. office. The Petitioner is seeking to represent all content creation professionals located in the United States working for AJE. AJE is the Employer's broadcasting division responsible for creating media content for its multinational English-speaking audience. The record is unclear concerning how many of the Employer's approximately 196 full time employees work for AJE.

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8 The Petitioner is seeking the news department content creation professionals assigned to two New York bureaus: United Nations (UN) bureau and its AP bureau. The record is not clear regarding the meaning of AP.

9 AJ+ is the Employer's web content division.

10 The parties agree that there are no AJE content creation professionals located in the Employer's San Francisco bureau.

11 While not explicitly included in the record, the evidence indicates that AJE produces content for the Employer's English-speaking audience.
AJE employs content creation professionals in its Washington, D.C. office, as well as the bureau offices located in New York, Chicago, Miami, and Los Angeles. AJE is divided into news, programming, investigative, and creative departments, all of which have distinct assignments concerning content creation which I discuss in greater detail below.

Regardless of an AJE employee’s position, department, or location, several working conditions apply to all AJE employees. For example, all AJE employees share the same human resource departments responsible for labor relations including employee grievances, conflicts, and disputes. All AJE employees have the same fringe benefits and employee handbook. Moreover, all AJE content creation professionals are provided Employer-issued cell phones and have access to Employer laptops to create and edit content. Additionally, all AJE employees record their work time using the Employer’s E-timesheet system.

B. AJE News Department

i. Content Creation

AJE’s news department is responsible for creating daily news content for television. The news department includes many of the petitioned-for job classifications such as correspondents, senior correspondents, video journalists, reporters, senior reporters, associate producers, assistant producers, producers, senior producers, planning producers, senior planning producers, field producers, news editors, deputy news editors, camerapersons, and senior camerapersons. Several of these classifications work in Washington, D.C. and the bureaus. In fact, the record suggests that only news department employees such as correspondents, senior correspondents, producers, senior producers, field producers, camerapersons, and senior camerapersons, work in the bureaus at issue.

All news department employees have common supervision regardless of location. Salah Negm, AJE’s Director of News, is located at the Employer’s headquarters in Doha, Qatar, and has ultimate decision-making authority regarding the stories the news department covers, and how it covers those stories. Typically, Negm communicates his directions to either Owen Watson, AJE news Executive Producer located in Washington, D.C., or to producers and correspondents located in the Employer’s Washington, D.C. office or one of its bureaus. Watson reports directly to Negm and is responsible for directly supervising the news department employees to accomplish Negm’s directives.

Watson assigns and directs AJE’s “news teams” in creating content. A news team is typically composed of a producer (or senior or field producer), a correspondent (or senior

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12 According to the parties, the Employer employs approximately three AJE news department employees in Chicago, two or three in Los Angeles, three in Miami. The Employer employs about seven or eight employees between the UN bureau and the AP bureau in New York.

13 There is no evidence that programming department or investigative department employees work in the bureaus.
correspondent), and a cameraperson (or senior cameraperson). Both Rosiland Jordan, a correspondent based in Washington, D.C., and Robert Reynolds, a senior correspondent based in Los Angeles, described the typical news assignment starting with a directive from Watson or Negm to work on a story. Then, the news team members consult with one another to decide how to best proceed to cover the story, including whom to interview and what pictures and audio to obtain. After the news team collectively determines how to best cover a story, the team goes out in the public to record video. After the team reviews the recordings, the correspondent and producer will write a story and submit a script to Washington, D.C. or Doha for approval. After receiving script approval, the correspondent records a voice track with help from the other team members. After the team edits the voice track with video and audio recordings, the content is again sent to Washington, D.C. or Doha for final approval. If approved, the segment is broadcast.

The record demonstrates the close working relationship between correspondents, producers, and camerapersons. Jordan testified that a typical news team works on a compressed schedule and therefore must work near one another in offices or hotel rooms for 16 to 18 hours a day regularly. All the news team members have several common job duties such as cultivating sources, conducting interviews, and editing material. Correspondents differ from producers in that correspondents physically appear on the final product in picture or voice, and sometimes conduct live reports either in the field or in the Washington, D.C. office. All members of the news teams have journalistic education and training, and receive editorial training provided by the Employer. To produce content, all news department employees are issued cell phones, and use Employer-issued laptops. Additionally, news teams cooperate to produce content by utilizing video cameras, microphones, headphones, and editing software.

Other petitioned-for classifications create news content or assist in content creation. News editors and deputy news editors are generally responsible for ensuring that stories of interest are not missed, and therefore work with news teams to produce content for stories by communicating Doha’s directives. Planning producers and senior planning producers take a longer view of the news and look out a week, month, or year into the future to try to identify and plan for future news stories. AJE reporters gather information, interview sources, and write scripts, but do not appear on camera. Video journalists have less experience than correspondents and camerapersons, but operate video and audio equipment and sometimes voice stories or appear on camera.

Several of the petitioned-for news department classifications have interchange. For example, Ayana Brickhouse is generally employed as a deputy news editor but regularly fills in as a planning producer. Also, the witnesses identified as many as seven examples of individuals

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14 The record evidence supports the conclusion that the only difference between producers and senior producers, correspondents and senior correspondents, and camerapersons and senior camerapersons, is seniority. Therefore, as I refer to producers, correspondents, and camerapersons, I’m also referring to the more senior classification as well. Additionally, the only discernible difference between producer or senior producers from a field producer is the fact that field producers appear to work exclusively in the field. Otherwise, there is no apparent difference between the positions.
that have transitioned from off-air positions, like producer, to on-air positions, including correspondents.

The record contains some evidence concerning the differences in skills and working conditions between on-air and off-air employees. For instance, Jordan described what she considers the unique skill set of correspondents in being able to effectively connect with audiences. However, Reynolds testified that correspondents' skills are more a product of practice. As part of its hiring procedures, the Employer requires reels of a correspondent's prior work to determine whether to hire a correspondent. Applicants for off-air positions like producers, do not submit reels as part of their applications.

There is little information in the record regarding the wages and salaries of on-air and off-air employees. Beatrice Nyamekye, Senior Human Resource Officer, testified that all AJE employees are salaried employees, and that on-air employees are generally paid higher salaries than off-air employees, but offered no specifics regarding salaries or the differences in pay. The only clear compensation difference between on-air and off-air employees is the clothing stipend that on-air talent receives to maintain a certain level of professionalism.15

ii. Washington, D.C. and the Bureaus

As identified above, AJE news department employees are assigned to the Employer's Washington, D.C. location and the bureaus. All AJE employees assigned to Washington, D.C., regardless of department, work on the second floor. The primary work area in the Washington, D.C. office for all employees is the newsroom. The newsroom is an open concept room in which different departments produce content in different areas of the room. For instance, on one side of the room, Al Jazeera Arabic employees produce content while AJE employees produce content on the other side of the room. In the middle of the room are news and satellite desks where the executive producers and news editors often sit. Down the hall from the newsroom are common areas, including break rooms and bathrooms used by all the employees.

The actual space and use of the bureau offices is different than the Washington, D.C. office. First, bureaus do not have newsrooms. Most of the content produced in the bureaus is completed in the field. Nor do the bureau offices have signs identifying the Employer or a receptionist to greet the public. Reynolds testified that there is little reason to be in the bureau offices.

Two New York bureaus, and the Chicago, Miami, and Los Angeles bureaus, are staffed with some combination of assigned correspondent or senior correspondent, producer or senior

15 The Employer presented evidence that some petitioned-for classification are “exempt” employees ineligible for overtime pay while others are “non-exempt.” However, the Employer did not provide specifics regarding which classifications are exempt versus non-exempt, and why those classifications received those designations. In light of the lack of specific information regarding the exempt status of the different petitioned-for classifications, I do not rely on this distinction in this decision.
producer or field producer, and cameraperson or senior cameraperson. Reynolds testified that the bureau news teams create content in the exact same way as the Washington, D.C. news teams. There is no difference in the skills required to create content in the bureaus compared to Washington, D.C., nor is there evidence of any difference in salaries between the bureaus’ news teams and the Washington, D.C. news teams.

Despite the geographic separation of the news department employees in the bureaus from Washington, D.C., almost all the news department employees participate in AJE’s daily editorial morning call led by Watson and held in Washington, D.C. During the calls, the entire news department discusses the news agenda for the day. For instance, the news department may talk about the stories headquarters has put on the air and may want a follow up on. During the call, news department personnel from different locations communicate with each other about what is happening in their regions and how to best cover a story. All news department employees may share their thoughts and expertise during the editorial call to help each other create content. Watson will take feedback from the call to headquarters to generate assignments.

Several witnesses testified regarding the frequent employee interchange between Washington, D.C. and the bureaus. Petitioner Exhibit 1 is a correspondents’ schedule for the Washington, D.C. office from July through September. The schedule includes multiple correspondents from the bureaus assigned to staff the Washington, D.C. news desk while Washington, D.C. based correspondents are on vacation or covering stories in areas generally covered by the bureaus.

Reynolds was able to testify at the hearing because he has been on assignment in Washington, D.C. since July. Because of his prolonged assignment in Washington, D.C., Reynolds has been provided identification and access cards from the Employer to gain access to the Washington, D.C. office. While working in the Washington, D.C. office, Reynolds performs his work in or around the newsroom with other petitioned-for classifications, including Washington, D.C. based producers and news editors. Also while working in the Washington, D.C. office, Reynolds can and has switched shifts with correspondents from other offices. To effectively cover the capital-area news, Reynolds has been granted press credentials to cover different branches of government. In addition to correspondents, bureaus producers are also assigned to the Washington, D.C. office on occasion. Reynolds testified that the Los Angeles producer is also occasionally assigned to the Washington, D.C. office. Reverse employee interchange also occurs. For instance, Jordan testified that she completed a 10-month assignment to the Employer’s New York, UN bureau.

Even when there is no employee interchange, the Washington, D.C. and bureau-based news teams often communicate and interact with each other to provide information or strategies for how to best cover a story. For instance, Jordan testified about covering stories concerning immigration and the U.S. border from Washington, D.C. with the help of the Los Angeles news team. Nor is it uncommon for news department personnel working in the field to work with

16 Some bureaus use contractors to perform cameraperson work.

17 Los Angeles news teams do not participate in the call because of the time zone difference.
members from different bureaus to create content. For example, Reynolds described how he recently worked with a Washington, D.C.-based cameraperson and a Chicago-based producer in a town in Pennsylvania to cover President Trump’s withdrawal from the Paris Accord.

C. AJE Programming Department

Kavitha Chekuru, producer for the show AJE Fault Lines, is the primary source for record evidence concerning AJE’s programming department. The programming department is responsible for generating and producing in-depth talk programs, discussions, and documentaries, such as Fault Lines, UpFront, and The Stream. Some talk shows are produced daily and others, like Fault Lines, are produced on average once per month. Talk and discussion shows are anchored by a host or senior host. Hosts are different from news department correspondents in that they can be more personable and emotional during their segments and go into greater depth concerning a topic. Senior host are more experienced with a verified work record.

All of the programming employees are located at the Employer’s Washington, D.C. office and generally work in or around the newsroom using the same equipment as the news department to create content. There are no programming department employees located in the bureaus.

According to Chekuru, programming content for Fault Lines is developed in a similar manner as news content. For instance, like news teams, the programming department utilizes collaboration and functional integration between producers, hosts, and camerapersons to develop content. For Fault Lines, content development typically begins with producers exchanging ideas about possible topics to cover and to recommend to executive management. Chekuru creates an estimated production budget for a story, and if the budget is approved, producers go into the field with a cameraperson, and sometimes host, to collect film and audio footage. Then, the team reviews the footage while producers, senior producers, and hosts create a script. Once the team has created an edited product, the producers send that product to Doha for approval and broadcast.

The similarity in content production between the news department and programming department likely explains Chekuru’s career development from a news department deputy news editor to a news department planning producer, then to a programming department producer.

Currently, the programming department is supervised by Diarmuid Jeffreys, head of investigative programming. In the past, the programming department had an executive producer who supervised the entire programming department.18

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18 The record is unclear if Diarmuid Jeffreys is also the head of the investigative department.
D. AJE Investigative and Creative Departments

The record contains little information about the investigative and creative departments. Investigative department employees work in or around the Employer’s Washington, D.C. newsroom and have many of the same general working conditions as other AJE employees.

Regarding the Employer’s creative department, Chekuru testified that she often works with creative producers to create graphics for shows or on-line promotional material. Again, creative department employees share many of the same working conditions as other AJE employees.19

E. Evidence of Supervisory Indicia of Producers, Senior Producers, Field Producers, and News Editors

The Employer argues that all AJE producers, senior producers, field producers, and news editors are Section 2(11) supervisors because they assign work to other AJE employees. In support of its contention, the Employer relies exclusively on the job descriptions for each position and Nyamekye’s testimony that it is her general understanding that the job descriptions accurately describe each position’s actual duties.

Regarding senior producers, the Employer relies on the portion of the job description that states that a senior producer “supervises...on a project basis, producers, assistant producers, editors, camera people and researchers.” Also, the Employer relies on the portion of the description stating that senior producers deputize for the executive producer. Nyamekye testified that she does not have first-hand knowledge of the senior producers’ daily work and interactions with other employees. Contrary to the job description, Chekuru testified that senior producers do not assign stories or tasks to employees, and that the only person in the programming department who does assign tasks is the executive producer or acting manager.

For producers, the Employer relies on the portion of the job description mentioning that producers are tasked with “managing graphics production...” The Employer also emphasizes that the job description reflects that producers “[d]ecide on the editorial lines of the day and direct the team to achieve it,” and “manage and motivate team.” However, the Employer’s job description indicates that producers are not responsible for supervising employees. Chekuru, who is a producer, testified that she does not assign tasks to other team members. Instead, she works in a collaborative fashion with all other team members. Both Jordan and Reynolds testified that they have never received an assignment or directive from a producer or senior producer.

19 Based on the parties stipulated unit inclusions which includes creative and investigative producers, and the Employer’s silence on the issue of including AJE employees working in the investigative and creative departments, I infer there are no investigative and creative department personnel working in the bureaus, and none who are considered on-air employees.
As for field producers, the Employer cites language in the job description, noting that field producers, "[o]versee and manage the field teams and the production schedule." Again, the description indicates that field producers are not responsible for supervising other employees. Jordan testified that field producers perform the same tasks as a typical Washington, D.C. based producer and that producers do not assign tasks.

Finally, the Employer introduced the job description for news editor and again relies on language such as "[c]ommission stories and assign tasks to the news teams," and "decide on mobilizing teams for breaking news, plant the needed logistics and safety arrangements." However, there is no record evidence that field producers have the actual authority to assign tasks to news teams or have ever done so.

II. ANALYSIS

Based on the record evidence set forth above and applicable Board law, I find that the Employer failed to establish that producers, senior producers, field producers, and news editors are supervisors within the meaning of Section 2(11) of the Act. Additionally, I find that on-air and off-air employees share a sufficient community of interest to be included in the petitioned-for unit. Finally, I find that the petitioned-for, multi-location, unit is an appropriate unit. Each of these issues is discussed in turn below.

A. Supervisory Status of Producers, Senior Producers, Field Producers, and News Editors

The Employer argues that its producers, senior producers, field producers, and news editors are Section 2(11) supervisors because they have the authority to assign work to employees.

Section 2(11) of the Act defines a "supervisor" as:

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

The Act's definition sets forth a three-part test for determining supervisory status. Under Section 2(11), individuals are deemed supervisors if: 1) they have authority to engage in any one of the above Section 2(11) indicia; 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. See NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 712-713 (2001)(citing NLRB v. Health Care & Retirement Corp. of America, 511 U.S. 571, 573-574 (1994)).
Additionally, supervisory status may be established if the individual has the authority to effectively recommend one of the indicia. See, e.g., *Children’s Farm Home*, 324 NLRB 61, 65 (1997). The Board has held that an effective recommendation requires the absence of an independent investigation by superiors and not simply that the recommendation be followed. *Ibid.*

The burden of proving supervisory status rests on the party asserting that such status exists. See, e.g., *Kentucky River Community Care, Inc.*, 532 U.S. at 711; *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006). This burden is substantial. Because the Act excludes supervisors from its protection, the Board has been careful to avoid construing the statutory language too broadly. *Avante at Wilson, Inc.*, 348 NLRB 1056, 1058 (2006)(citing *Oakwood Healthcare, Inc.*, 348 NLRB at 686). The Board thus requires supervisory status be established by a preponderance of the evidence. *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1047 (2003). Lack of evidence is construed against the party with the burden. *Id.* at 1048.

To meet this standard, the party bearing the burden must establish that an individual “actually possesses” a supervisory authority; mere inferences or conclusory statements of such are insufficient. See, e.g., *Golden Crest*, 348 NLRB 727, 731 (2006). Moreover, where evidence is in conflict or otherwise inconclusive for a particular 2(11) indicia, the Board will decline to find supervisory status for that indicia. See, e.g., *Dole Fresh Vegetables, Inc.*, 339 NLRB 785, 793 (2003). Accordingly, job titles, job descriptions, or similar documents are not given controlling weight and will be rejected as mere paper, absent independent evidence of the possessions of the described authority. *Golden Crest*, 348 NLRB at 731 (citing *Training School at Vineland*, 332 NLRB 1412, 1416 (2000)).

In *Oakwood Healthcare, Inc.*, 348 NLRB 686, 689 (2006), the Board defined “assign” to mean:

[T]he act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee. That is, the place, time, and work of an employee are part of his/her terms and conditions of employment.

In that case, the Board emphasized that an individual must assign significant overall duties rather than merely issue an ad hoc order to perform discrete tasks, especially when the task is within a larger assignment. *Id.* Also in *Oakwood Healthcare Inc.*, the Board interpreted the term “responsibly direct” to mean an individual’s decision to decide “what job shall be undertaken next or who shall do it.” 348 NLRB at 691. An individual who has this authority is a supervisor, provided that the direction is both “responsible” and carried out with independent judgment. *Id.* at 691-692. For direction to be responsible, “the person directing and performing the oversight of the employee must be 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 performed by the employee are not performed properly.” *Id.* at 692. Therefore, an individual is not a supervisor solely for her ability to direct an employee’s work; there must be accountability as well.
Additionally, to be carried out with independent judgment, the judgment cannot be dictated or controlled by detailed instructions. *Id.* at 693.

In the instant case, the Employer offered insufficient evidence that producers, senior producers, field producers, or news editors either assign or responsibly direct employees' work as these concepts have been interpreted by the Board in *Oakwood Healthcare Inc.* As stated above, the Employer relies exclusively on a few conclusory statements from job description for contested position and Nyamekye's general testimony that it is merely her understanding that the job descriptions accurately reflect the duties of producers, senior producers, field producers, and news editors. However, Nyamekye admits that she has no direct knowledge of the daily interaction that individuals in the disputed classifications have with employees, or whether individuals in the disputed classifications actually exercise authority to assign or responsibly direct employees as identified in *Oakwood Healthcare Inc.*

In direct rebuttal of the Employer's job descriptions, the Petitioner, through its witnesses, offered numerous and detailed descriptions of how individuals in each of the disputed classifications interact with employees, and directly testified that these positions do not assign, or responsibly direct work as described by the Board. The record evidence supports a conclusion that all assignments, regardless of the department, emanate from the Employer's headquarters or from a departments' executive producer. There is evidence that ideas for stories originate from news teams in a collaborative fashion, but that the ultimate decisions regarding assignment and direction rest with management located in the Employer's headquarters, or its executive management. There is no evidence that any of the disputed positions use independent judgement to assign tasks to other employees or have accountability for the performance of other employees.

The Employer's reliance on job descriptions falls well short of its high burden to establish 2(11) indicia. When the party bearing the burden of proof fails to prove that an individual possesses one of the Section 2(11) powers, secondary indicia alone is insufficient to establish supervisory status. *See, e.g. Ken-Crest Services,* 335 NLRB 777, 779 (2001).

Therefore, I find that Employer has failed to provide sufficient evidence establishing that producers, senior producers, field producers, or news editors are supervisors within the meaning of Section 2(11) of the Act.20

**B. Community of Interest Between On-Air and Off-Air Employees**

The Employer contends that the petitioned-for unit is inappropriate because its on-air classifications such as hosts, correspondents, and senior correspondents, do not share a sufficient community of interest with off-air employees such as producers and camerapersons.

To proceed to an election, the unit set forth in the petition must be appropriate. The unit need only be an appropriate unit and not the most appropriate unit. *See, Dezcon, Inc.*, 295 NLRB

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20 Other than what is described herein, the Employer offered no evidence or argument concerning other Section 2(11) indicia.
In defining an appropriate unit for collective bargaining, the Board examines whether the employees in the unit share a “community of interest” distinct from other employees who arguably could be included in the unit. The Boeing Co., 338 NLRB 152, 153 (2001). The fact that two or more groups of petitioned-for employees engage in different processes does not by itself render a combined unit inappropriate if there is a sufficient community of interest among all these employees. Berea Publishing Co., 140 NLRB 516, 518 (1963).

When analyzing whether a community of interest exists between groups of employees, the Board considers such factors as whether the employees sought are organized into a separate department; possess distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. United Operations, Inc., 338 NLRB 123, 123 (2002).

The Board has previously examined the appropriateness of combining on-air talent with other employees. For example, in Panhandle Telecasting Co., 308 NLRB 667 (1992), the Board found that a petitioned-for unit combining reporters/anchors with production employees was appropriate because reporters work side by side with employees the parties stipulated into the unit, that reporters receive comparable pay and fringe benefits as employees in the unit, and that reporters share common equipment and interchange with other employees to demonstrate a sufficient functional relationship. Id. In Panhandle Telecasting Co., the Board agreed that it is possible for petitioned-for distinct units of on-air or off-air employees to be appropriate, but that “[n]othing in the case law says that it is inappropriate to include on-air employees in a broader unit where, as here, they share a community of interest with the other employees.” Id. at 668.

As the Board found in Panhandle Telecasting Co., I too find that on-air and off-air employees in the present case share a sufficient community of interest to be included in the same petitioned-for unit.

The Employer seeks to exclude all its on-air talent on the basis that on-air employees have a skill set distinct from other petitioned-for classifications, such as producers, camerapersons, and deputy news editors. While the record does contain some evidence regarding the skills effective correspondents possess to reach target audiences, the record also contains testimony from Reynolds describing the talents of on-air employees as one of practice rather than unique skill. In fact, the record reveals that on-air employees and other employees receive the same editorial training. Moreover, all the members of a news team, including camerapersons, have journalistic training and education. Regardless of the specialization of the skills required to be an on-air employee, nearly all the other community of interest factors weigh heavily in finding a sufficient community of interest between on-air and off-air employees.

The Employer does not contest the petitioned-for unit on the basis that included classifications work in separate departments. In fact, the Employer’s proffered alternative unit includes positions from separate units based in Washington, D.C.
The degree of functional integration between on-air and off-air employees is significant. As described by multiple witnesses from multiple departments, correspondents and hosts work side by side with producers and camerapersons for long hours. These teams collectively generate and pitch ideas to management, enter the field together to collect footage, edit footage using Employer-provided equipment, and finalize content for managerial approval. According to the Petitioner's witnesses, all the petitioned-for classifications work collectively in, around, or remotely through the Washington, D.C. newsroom starting each day with the highly collaborative morning editorial meeting.

This high degree of functional integration and cooperation between on-air and off-air employees explains the somewhat common occurrence of interchange between classifications and career development from producer to correspondent. The record contains approximately seven examples in which producers or other off-air employees have transitioned to on-air employees. Chekuru described her career progression from a news department planning producer to deputy news editor, then to a producer for the show Fault Lines.

For both the news and programming departments, on-air and off-air employees have common supervision. For instance, all news department employees, regardless of job classification, are directly supervised by Watson. As can best be discerned from the record evidence, all programming department employees answer to Jeffreys.

All the Employer's on-air and off-air employees have a common human resource department, e-mail system, employee handbook, time recording system, Employer-issued cell phones and common fringe benefits. All employees who work in the Washington, D.C. office, whether assigned to that office permanently or temporarily, use the Employer's Washington, D.C. newsroom, bathrooms, kitchen areas, and equipment.

The Employer introduced evidence that some petitioned-for unit employees are exempt employees ineligible for overtime while others are non-exempt. However, the Employer did not identify the exact classifications that are exempt versus non-exempt, or the reasons classifications are exempt or non-exempt. The record contains scant information regarding on-air and off-air wages and salaries except a general statement that on-air employees are paid more than other employees. However, the Employer did not identify the pay differences between the groups or averages of each petitioned-for classification. However, Nyamekye did testify that all petitioned-for employees are salaried employees.

Given the scant evidence supporting the Employer's contention that on-air and off-air employees are distinct units, and the substantial evidence of common working conditions, supervision, and functional integration, I find that the record supports the conclusion that the petitioned-for on-air and off-air employees share a sufficient community of interest.

C. The Petitioned-For Multi-Location Unit

The Petitioner argues that its petitioned-for multi-location unit is an Employer-wide unit entitled to a presumption of appropriateness. The Employer does not clearly rebut Petitioner's claim of an Employer-wide unit; rather the Employer argues that its proposed single-location
unit is entitled to a presumption of appropriateness and that the burden is on the Petitioner to rebut the single-location presumption. Regardless of which party is correct, either presumption can be rebutted by an examination of several multi-location factors recognized by the Board including conditions of employment, central control over labor relations, local autonomy, interchange of employees, similarity of skills, supervision, and geographic separation. See, e.g. Hilander Foods, 348 NLRB 1200 (2006); Greenhorne & O'Mara, Inc., 326 NLRB 514 (1998); and Alamo Rent-A-Car, 330 NLRB 897 (2000). Thus, having considered the above-mentioned factors, I find that the petitioned-for multi-location unit is appropriate.

The Petitioner seeks a unit which includes, among other classifications, the news department employees located at the Employer’s Washington, D.C. office and its bureaus. More specifically, Petitioner seeks to include the news department employees located in the Employer’s AP and UN New York bureaus, Chicago bureau, Los Angeles bureau, and Miami bureau.

The record reveals that the news department employees, regardless of location in bureaus or Washington, D.C., share the following working conditions: common handbooks and fringe benefits, common human resources with control over labor relations, company issued equipment such as cell phone, laptops, and cameras. The evidence indicates that news department employees have the same skills regardless of location, and there is no evidence that news department employees in bureaus have different pay than those in Washington, D.C. Both Jordan and Reynolds testified regarding the same process in which news teams, regardless of location, create content.

Moreover, all news department employees have common supervision. Watson is the direct supervisor for all news department employees regardless of location and there are no distinct bureau supervisors.

The only record evidence supporting separation of the Washington, D.C. and bureau news department employees is the geographic separation between the offices. However, the geographic distance between the offices is nullified by the substantial employee interchange between the Washington, D.C. and bureau correspondents and senior correspondents, and the functional integration between the offices. The Petitioner’s Exhibit 1 is the correspondents schedule for the Washington, D.C. office from July through September. The schedule includes correspondents and senior correspondents from the New York, Miami, and Los Angeles bureaus. Reynolds, a Los Angeles-based senior correspondent, was able to testify at the hearing because he is currently assigned to the Washington, D.C. office to staff the Employer’s news desk. While

22 While the record evidence supports a determination that AJE is a distinct branch within the Employer, I do not find that the petitioned-for unit is an employer-wide unit because AJE is not the employer. The Employer is Al Jazeera International (USA), LLC, which includes employees in AJE as well as other branches, such as, Al Jazeera Arabic and AJ+. The Petitioner is not seeking to represent employees employed by the Employer in any branch other than AJE.

23 As discussed above, the record suggests that only news department employees work in the bureaus at issue.
Reynolds is assigned to Washington, D.C., he works in the newsroom in close proximity and collaboration with news editors and producers and has full access to the Employer’s Washington, D.C. office. He has obtained several press credentials to be able to cover Washington, D.C. specific stories. While in Washington, D.C., Reynolds can and does switch shifts with other correspondents from other bureaus and Washington, D.C. Also, it’s not uncommon for Washington, D.C.-based correspondents to be temporarily assigned to the bureaus. Jordan testified that she worked at the Employer’s United Nations New York bureau for approximately 10 months. Moreover, it’s not uncommon for combinations of news teams to be assembled from different offices to cover stories in the field. For instance, Reynolds’ assignment in Pennsylvania in which he worked with a Chicago-based producer and a Washington, D.C.-based cameraman.

Even when correspondents are working from their assigned offices, they participate in daily editorial meetings with all the other news department employees. During these meetings, all the news department employees exchange news developments of a national and local scope and communicate and collaborate with each other for strategies and ideas concerning how to best cover stories.

Because of the common working conditions, labor relations, skill sets, and supervision between news department personnel in Washington, D.C. and the bureaus, and the high degree of employee interchange and functional integration between the separate offices, I find that the petitioned-for multi-location unit is appropriate.

III. CONCLUSION

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

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer, Al Jazeera International (USA) LLC, a corporation with its principal office and place of business in Washington, District of Columbia, has been engaged in the business of news-gathering and program production activities. In conducting its operations during the 12-month period ending July 31, 2018, the Employer has performed services valued in excess of $50,000 in points outside the District of Columbia.

3. During the 12-month period ending July 31, 2018, the Employer has conducted its business operations described above in paragraph 2 in Washington, D.C., and the Board asserts plenary jurisdiction over enterprises in Washington, D.C.

4. In conducting its business operations described above in paragraph 2 during the 12-month period ending July 31, 2018, the Employer purchased and received goods valued in excess of $5,000 directly from points outside of the Washington, D.C.
5. The Employer is an employer as defined in Section 2(2) of the Act and 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.

6. The Petitioner is a labor organization as defined in Section 2(5) of the Act.

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

8. I find the following employees of the Employer constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act:

   All full-time and regular part-time U.S.-based employees of Al Jazeera English who create content for the news, programming, and investigative unit including correspondents, senior correspondents, video journalists, creative producers, hosts, senior hosts, presenters, reporters, senior reporters, associate producers, assistant producers, producers, interview producers, senior interview producers, senior producers, senior commissioning producers, field producers, planning producers, senior planning producers, planning editors, senior planning editors, deputy news editors, news editors, diplomatic editors, editors, camerapersons, senior camerapersons, picture editors, and senior picture editors; but excluding all other employees, freelancers, contributors, contractors, interns, fellows, guards and supervisors as defined in the Act.24

IV. 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 they wish to

24 The record contains evidence that certain AJE employees consider themselves as either senior commissioning producer or senior planning editor. The Employer contends that senior commissioning producer and senior planning editor do not exist within the Employer’s recognized classifications. At hearing, the Employer argued and provided some evidence that the employees alleged to hold these disputed classifications are in fact a senior correspondent and senior producer, respectively. Because I find that senior correspondents and senior producers are included in the appropriate unit, the employees holding the disputed classifications are eligible to vote whether the disputed classifications are included or not. Additionally, because the record evidence does not conclusively establish that senior commissioning producer and senior planning editor classifications do not exist, and evidence suggests that employees identify with those classifications, I have included senior commissioning producer and senior planning editor in the unit.
be represented for purposes of collective bargaining by Screen Actors Guild-America Federation of Television and Radio Artists (SAG-AFTRA).

A. Election Details

I have determined that a mail ballot election will be held based on the record evidence concerning the geographic distance among the several offices and the evidence that many of the petitioned-for news department and programming employees are frequently in locations other than their assigned offices.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit from the office of the National Labor Relations Board, Region 05 Washington Resident Office, on October 9, 2018, at 3:00 p.m. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by October 16, 2018, should communicate immediately with the National Labor Relations Board by either calling the Region 05 Washington Resident Office at (202) 208-3000.

All ballots will be commingled and counted at the Region 05 Washington Resident Office on October 31, 2018, at 3:00 p.m. In order to be valid and counted, the returned ballots must be received in the Region 05 Washington Resident Office prior to the counting of the ballots.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending September 14, 2018, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an 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 that 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.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names,
work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be received by the Regional Director and the parties by Tuesday, October 2, 2018. The list must be accompanied by a certificate of service showing service on all parties. The Region will no longer serve the voter list.

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-April-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency’s website at www.nlrb.gov. Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board’s Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the
posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

V. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board’s Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board’s Rules and Regulations.

A request for review may be E-Filed through the Agency’s website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board’s granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: September 28, 2018

Nancy Wilson, Acting Regional Director
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