The Employer, Bentley University (Bentley) operates a private non-profit college in Waltham, Massachusetts. Since 2013, the Petitioner, Bentley University Public Safety Association (Union), has represented a bargaining unit comprised of police officers, security officers, and dispatchers employed by the Bentley University Police Department (Department). In this matter, the Union seeks a self-determination election in which a group of nine sergeants employed in the Department would be permitted to vote as to whether or not they wish to be included in the existing bargaining unit.2

The Employer asserts that the petition should be dismissed on the ground that the six patrol sergeants are statutory supervisors, based on their authority to direct and assign work, issue or recommend discipline, and adjust grievances. The Employer further asserts that the two detective sergeants and one administrative sergeant (all three of whom sometimes act as patrol sergeants) are also managerial employees. The Employer asserts that all nine sergeants are confidential employees. Finally, the Employer asserts that the sergeants do not share a sufficient community of interest with the employees in the existing unit to warrant inclusion.

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1 The petition in this case was filed under Section 9(c) of the Act. The parties were provided opportunity to present evidence on the issues raised by the petition at a hearing held before a hearing officer of the National Labor Relations Board (the Board). I have the authority to hear and decide this matter on behalf of the Board under Section 3(b) of the Act. I find that the hearing officer's rulings are free from prejudicial error and are affirmed; 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; that the Petitioner is a labor organization within the meaning of the Act; and that a question affecting commerce exists concerning the representation of certain employees of the Employer.

2 At the hearing, the Union stated that it wished to proceed to an election if a separate unit was found appropriate. The Employer has argued that the Union may not lawfully represent two separate units. As I have directed the petitioned-for self-determination election, further exploration of this issue is not warranted here.
I find that combining the sergeants with the existing unit is appropriate. I further find that the Employer has not met its burden of demonstrating the supervisory, managerial, or confidential status of the sergeants, and I shall direct the self-determination election petitioned for by the Union.

Public Safety Department Operations

As the Executive Director of Public Safety and Chief of Police at Bentley, Ernest Leffler (Chief Leffler) is the commander for security services at the college. Captain Francis Bourgeois (Captain Bourgeois) reports directly to Chief Leffler and is responsible for the overall operation of the patrol section of the Department, which includes police officers, security officers, dispatchers, and detectives. Administrative Lieutenant William Williams (Lieutenant Williams) also reports directly to Chief Leffler and is responsible for overseeing the administrative sections of the department, including the administrative sergeant and two other individuals in administrative roles.³

The Department employs nine sergeants, who are the subjects of this petition. Six patrol sergeants handle some staffing and scheduling issues and inspect officers and dispatchers at roll call to see that they are properly equipped. They also perform typical police officer work, including motor vehicle stops and building checks. The administrative sergeant sometimes functions as a patrol sergeant but is also responsible for the maintenance of the Department’s vehicles, posting overtime opportunities, posting event detail opportunities, and procurement of equipment, including uniforms. The detective sergeants also sometimes function as patrol sergeants. In addition, one detective sergeant follows up on incident reports, serves as court liaison, coordinates the community policing program, and serves as lead Rape Aggression Defense System instructor. The other detective sergeant is a defensive tactic coordinator, firearms instructor, and training coordinator.

The Public Safety Department is also comprised of approximately thirteen police officers, six dispatchers, and five security officers.⁴ They are represented by the Union and are covered by a collective-bargaining agreement. That is, they comprise the unit to which the Union proposes to add the sergeants.

³ The parties have stipulated, and I find, that Captain Bourgeois and Lieutenant Williams are statutory supervisors who should be excluded from any unit found appropriate.

⁴ A police officer is a sworn police officer by statute with all the powers of a police officer in a city or town; a security officer is non-sworn, has no powers of arrest, and does not carry a firearm. A security officer is likely to perform tasks such as providing courtesy transports for students or locking buildings. A police officer will respond to “criminal incidents” including larceny, theft, vandalism, malicious destruction, disorderly conduct, and drug dealing. Dispatchers handle calls and walk-in requests for service, including general emergency calls for assistance.
The Department operates seven days a week in three shifts. The day shift works from 7:00 a.m. to 3:00 p.m.; the evening shift works from 3:00 p.m. to 11:00 p.m.; and the night shift works from 11:00 p.m. to 7:00 a.m. Chief Leffler and Captain Bourgeois generally work from 8:30 a.m. to 5:00 p.m. on weekdays. The patrol sergeants, police officers, security officers, and dispatchers work a “4-day on and 2-day off” cycle. Each shift is staffed by one or two sergeants, one or two dispatchers, one or two security officers, and approximately three police officers. A patrol sergeant is usually the most senior member of the Department on campus.\footnote{However, the managers are generally accessible by phone and it is undisputed that the sergeant is expected to notify them if an emergency arises. Sergeant Russell testified that “every single day” the Captain tells him to call if he needs anything. Sergeant Russell also testified that the Captain watched a football celebration live from his laptop at home and was repeatedly in contact with Sergeant Russell throughout the evening.}

**The Patrol Sergeants’ Role in Assigning Work and Responsible Direction**

The Employer’s campus is divided into “sectors.” During roll call at the beginning of a shift, the patrol sergeant identifies the sector and vehicle to which each police officer is assigned. According to Chief Leffler’s testimony, all officers are equally skilled and can cover any sector and no specific officer is always assigned to one particular sector, although a sergeant may order an officer to patrol a specific area for a “particular purpose.” Patrol Sergeant Denis Russell (Sergeant Russell), the sole patrol sergeant to testify at the hearing, testified that officers generally decide amongst themselves who will take which sector based on a rotating system. Likewise, Sergeant Russell testified that each officer has a favorite car and the sergeant need not suggest that an officer take one car rather than another.

If an issue, such as a sighting of a suspicious person, arises during the course of a shift, it may be added to the “hot sheet,” a log which all officers are able to carry and access. Sergeant Russell testified that he asks the Captain, who oversees the hot sheet, whether he should add any given incident. The hot sheet is reviewed during roll call.

When an unexpected event arises during a shift, the Department is generally notified by a call to the dispatch center. Chief Leffler testified that the dispatcher radios an officer to respond and that the sergeant usually responds as well. Sergeant Russell testified that he has never overruled the decision of a dispatcher to send a specific officer to a call, as dispatchers automatically assign calls based on sectors. If the emergency is large in nature, the sergeant will follow notification protocols to contact the Chief, the Lieutenant, or the Captain. If a crowd gets unruly, the sergeant can invoke the assistance of the residence life staff on campus or direct the dispatcher to notify the local police departments for a mutual aid response. When a suspect in the Boston Marathon Bombing was believed to be heading in the direction of the Employer’s campus, the sergeant on duty and a lieutenant deployed officers to block the entrances to the campus. While there has never been an active shooter on the Employer’s campus, policy dictates that a patrol officer can take action immediately rather than contacting the sergeant. Policy further dictates that the sergeant should “assume command” if possible or, alternatively, designate an officer to take charge. In the event of a fight call, all officers should respond until the sergeant releases them.
A police officer will memorialize an unusual occurrence in an incident report. The incident report is then reviewed by a patrol sergeant, who must make sure the report is complete, correct, and accurate. Chief Leffler testified that sergeants are held accountable for making sure the reports are accurate before they are submitted; however, there is no evidence that a patrol sergeant has ever been disciplined due to an incomplete report submitted by an officer.

Scheduling and staffing of police officers, security officers, and dispatchers is dictated largely by a bid process included in the collective-bargaining agreement covering those employees. When a shift is unexpectedly short-staffed, perhaps because someone has called in sick, the patrol sergeant is responsible for filling the vacancy. Sergeant Russell testified that he would first offer the work to other employees on a volunteer basis. Absent a volunteer, he would check the database to see which employee currently on duty had worked the fewest hours; that person would be ordered to stay for four hours. Likewise, the employee on the incoming shift who had worked the fewest hours would be ordered to come in four hours early to complete the eight-hour shift.

Details are also offered on a voluntary basis. Available details are posted to a board and interested officers can sign up. When too many or too few officers sign up, the Administrative Sergeant assigns the work to whoever has worked the fewest hours.

Officers and dispatchers request vacation time by filling out a card which is given to whichever patrol sergeant is working that day. The patrol sergeant checks to see if there is sufficient coverage for the requested shift. If so, the patrol sergeant passes the approved request to the Administrative Sergeant who puts it on the electronic schedule and posts an overtime opportunity if necessary. If a patrol sergeant realizes that a shift will be difficult to cover because multiple employees have requested time off, he explains the situation. Sometimes the employee arranges coverage for the shift. Other times, the employee takes a personal day as permitted by the collective-bargaining agreement. Chief Leffler testified that the patrol sergeants have the right to deny vacation time; Sergeant Russell testified that he does not do so and there is no evidence that any other sergeant has done so.

The Patrol Sergeants’ Role in Discipline

The Department’s disciplinary policy includes verbal warnings, written warnings, suspension, and dismissal. According to the Employer’s written rules, patrol sergeants have the authority to issue verbal or written warnings without any consultation with a superior. Chief Leffler testified that he would generally follow the recommendation of a patrol sergeant for a level of discipline beyond a written warning, although the decision would rest with someone above the sergeants in the chain of command. However, Chief Leffler was unable to recount an instance in which a sergeant effectively recommended that an employee be suspended or terminated. He also noted that a written warning would most likely be elevated to a level above a sergeant.
In practice, no discipline more severe than a verbal warning has been issued to anyone in the Department in the last five years. There was no evidence presented at the hearing that any sergeant has ever issued a verbal or written warning. Sergeant Russell testified that in approximately eight years as a sergeant, he has never issued a verbal or written reprimand. Chief Leffler testified that sergeants have written up reports when an officer has done damage to a Department vehicle, but that he does not consider this to constitute discipline. Chief Leffler also testified that a verbal warning is recorded in a factual memorandum to the Captain, and that in a recent incident the Captain chose to speak to the involved officer in an informal counseling session rather than record a formal verbal reprimand.

Prior to the start of a shift, sergeants are responsible for inspecting members of the Department at roll call to ensure that all employees are properly equipped and in uniform. Chief Leffler testified that if an employee was consistently out of uniform, a sergeant could write up the facts of the situation so that the Chief, the Captain, and the Lieutenant could determine whether disciplinary action was warranted.

For several years, patrol sergeants have not submitted performance appraisals of the people under their command. They do, however, have informal conversations with members of management to confirm that the officers are doing well.

*The Patrol Sergeants' Role in Adjusting Grievances*

It is undisputed that the parties’ collective-bargaining agreement, which covers the existing unit of dispatchers, police officers, and security officers, includes a grievance procedure which begins when the Union and the aggrieved employee “take up the matter with the immediate supervisor of the Employee.” It is also undisputed that the sergeants are nominally the “immediate supervisors” of the unit members.

However, Sergeant Russell testified that he has never received a written grievance; has never sat in on a grievance meeting; has never been asked for a recommendation regarding a grievance; and is only familiar with the grievance process in that he is aware that such a process exists. Sergeant Russell did testify that he has occasionally been approached by a unit member regarding placement on the overtime or detail list, and that he has resolved the issue by referring to the appropriate policy.

*The Detective Sergeants' Additional Responsibilities*

The two detective sergeants have distinct roles in addition to periodically acting as patrol sergeants.

Detective Sergeant Jessica Roche (Detective Sergeant Roche) is the daytime detective. She is responsible for investigating sexual assault reports, including against statutory
employees. In the event that Detective Sergeant Roche’s investigation reveals potentially problematic evidence against an employee, she provides the information to the Employer’s Office of Human Resources, which determines if any level of discipline is warranted. If a victim chooses to pursue a criminal complaint, Detective Sergeant Roche acts as the Court liaison. Additionally, she serves as the Crime Prevention Program Coordinator and evaluates and implements crime prevention programs on campus. Chief Leffler testified that “we assign officers to various social functions to try to improve the police/community relations on campus.” Detective Sergeant Roche also is an instructor in the Employer’s Rape Aggression Defense System program.

Upon being asked to describe a sensitive investigation conducted by Detective Sergeant Roche in recent years, Chief Leffler testified that an adjunct faculty member is currently suspected of living in his office and consuming alcohol there. Detective Sergeant Roche began to surveil the office. Any discipline resulting from her fact-finding is expected to be handled by the Office of Human Resources. Chief Leffler further testified that he might direct Detective Sergeant Roche to investigate internal strife between the rank and file Department employees, but that that has not happened for eight to ten years.

Detective Sergeant Leonard Imbracsio (Detective Sergeant Imbracsio) is the nighttime detective. In January 2019, he was given the title of “Training Sergeant” and will now be responsible for oversight of all Department training. He will take over the work currently performed by the Administrative Sergeant regarding maintenance of certain training records which the Department is required to provide to the State Police. He is a firearms instructor who has coordinated Active Shooter Training. He is also the designated contact between the Department and the New England State Police Intelligence Network and as such is responsible for borrowing any necessary special equipment, including night vision devices and special surveillance vehicles.

The Administrative Sergeant’s Additional Responsibilities.

In addition to periodically acting as a Patrol Sergeant, Administrative Sergeant David Wade is responsible for staffing overtime and event details. In conjunction with the Lieutenant and the Captain, he determines the number of detail officers that are required at a particular event, such as a construction project or a football game. This decision is governed partially by a

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6 A Patrol Officer, Erin Kelley, is also certified as a sexual assault investigator. According to Chief Leffler’s testimony, Officer Kelley would likely be assigned to do the preliminary interview and investigation of a sexual assault case if she was available. The case would later be referred to Detective Sergeant Roche for follow-up.

7 Governing rules state this this position should be filled by a “supervisor level officer” who will make recommendations to the Chief for “program modifications, eliminations, or the addition of new programs.”

8 When the Employer decided to convert Detective Sergeant Imbracsio to a training sergeant, it offered unit members the opportunity to perform the detective duties on a one-year trial basis.
policy stipulating the number of officers that may be assigned to a particular event and partially by a Memorandum of Understanding with the Union relating to staffing levels based on the size and the nature of the event. However, if an event does not come to the attention of the Department before it commences, a patrol sergeant may assign an officer to monitor the event.

The Administrative Sergeant is also responsible for fleet maintenance and the procurement of uniforms and equipment, although no evidence suggests that he has independent authority to enter into contracts or pledge the Employer’s credit. He currently maintains certain training records; however, this aspect of his job is in the process of being transferred to Detective Sergeant Imbracisio, as discussed above.

Secondary Indicia

The patrol sergeants are referred to as “shift supervisors;” their job description states that “the primary purpose of this position is to supervise, plan, assign and direct activities of personnel of equal of lesser rank.” The job description for an administrative sergeant states that the administrative sergeant “may be assigned as a shift patrol supervisor” and “is responsible for managing various administrative functions.” The job description for detective sergeants states that a detective sergeant “is responsible for the supervision, guidance, and development of police officers, security officers, dispatchers, and student workers under his/her command.”

ANALYSIS

Supervisory Status

Pursuant to Section 2(11) of the Act, the term “supervisor” means 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 recommend such action, where the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in Section 2(11) of the Act. Rather, possession of any one of them is sufficient to confer supervisory status, Chicago Metallic Corp.9

The burden of proving supervisory status rests on the party alleging that such status exists, NLRB v. Kentucky River Community Care.10 The status of a supervisor under the Act is determined by an individual’s duties, not by his title or job classification, New Fern Restorium Co.11 The Board will refrain from construing supervisory status too broadly, because the

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inevitable consequence of such a construction is to remove individuals from the protection of the Act, Quadrex Environmental Co.\textsuperscript{12}

The Employer argues that the patrol sergeants are statutory supervisors because they assign work, responsibly direct other employees, discipline employees, and adjust grievances.\textsuperscript{13}

- \textit{The Patrol Sergeants' Role in Assigning Work and Responsible Direction}

In \textit{Oakwood Healthcare, Inc.},\textsuperscript{14} the Board refined its analysis of the terms "assign," "responsibly direct," and "independent judgment" in assessing supervisory status. The Board announced that it construes the term "assign" to refer to "the 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."\textsuperscript{15}

With respect to "responsible direction," the Board explained in \textit{Oakwood} that, if a person has "men under him" and if that person decides what job shall be undertaken next or who shall do it, that person is a supervisor, provided that the direction is both "responsible" and carried out with independent judgment. For direction to be "responsible," the person directing the oversight of the employee must be accountable for the performance of the task by the other. To establish accountability, it must be shown that the employer delegated to the putative supervisors authority to direct the work and take corrective action, if necessary. It also must be shown that there is a prospect of adverse consequences for the putative supervisors if they do not take these steps.\textsuperscript{16}

Finally, the Board held in \textit{Oakwood} that to establish that an individual possesses supervisory authority with respect to any of the statutory functions, the individual must also exercise independent judgment in exercising that authority, which depends on the degree of accountability.

\textsuperscript{12} 308 NLRB 101, 102 (1992).

\textsuperscript{13} The Employer also argues that that an Administrative Law Judge and the Board have previously held that the sergeants in the proposed unit were supervisors under the Act in \textit{Bentley University}, 361 NLRB No. 125 (2014). My decision will not be governed by that case because the duties of sergeants in 2019 may differ greatly from the duties of sergeants in 2013 when the events underlying that case occurred. Moreover, the Board never made a specific determination regarding the supervisory status of the sergeant involved in that matter; at issue was a \textit{Weingarten} violation which occurred when a lieutenant forbade a steward to speak during the investigatory interview of a unit member and the complaint allegation was made without an evidentiary hearing on the supervisory status of the sergeants. The issue of whether the sergeants were statutory supervisors was never the Board and as noted above, no finding was made.

\textsuperscript{14} 348 NLRB 686 (2006).

\textsuperscript{15} Id. at 689.

\textsuperscript{16} Id. at 689-692.
discretion with which the function is exercised. "[T]o exercise independent judgment, an
individual must at a minimum act, or effectively recommend action, free of the control of others
and form an opinion or evaluation by discerning and comparing data."17 "[A] judgment is not
independent if it is dictated or controlled by detailed instructions, whether set forth in company
policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-
bargaining agreement."18 The Board also stated that the degree of discretion exercised must rise
above the "routine or clerical."19

The sergeants at issue here clearly do not assign employees to a time, as scheduling and
staffing of police officers, security officers, and dispatchers is dictated by a bid process included
in the collective-bargaining agreement covering those employees. When a patrol sergeant
becomes responsible for filling an unexpected vacancy, the sergeant does not use his own
judgment but rather follows an established procedure of requesting a volunteer and then, absent a
volunteer, ordering the person who had worked the fewest hours to cover the shift. It is well-
established that an individual’s role in scheduling employees does not necessarily establish that
the individual is a statutory supervisor. The Board has often found this to be a clerical function in
the absence of evidence that the scheduling requires independent judgment, Dean and DeLuca-
New York, Inc.;20 Boston Medical Center Corp.;21 Sav-On Drugs, Inc.22 Further, the Board has
held that seeking off-duty volunteers to help out when the facility is shorthanded falls short of
supervisory authority to assign, Golden Crest Healthcare Center;23 Heritage Hall, E.P.I Corp.;24
Youville Healthcare Center, Inc.25

The Employer contends that the sergeants assign officers to a place by allocating a sector of
the campus to each officer during roll call. Sergeant Russell testified that he does not actually
do so because the officers automatically rotate the assignments amongst themselves. However,
even if a sergeant were to allocate the sectors without the officers’ input, it is undisputed that
each officer is equally able perform the duties required by each sector. Thus, the Employer has
failed to establish that it requires independent judgment to make these assignments, in the

\begin{footnotesize}
\begin{enumerate}
\item Id. at 693.
\item Id.
\item Id.
\item 338 NLRB 1046, 1048 fn. 15 (2003).
\item 330 NLRB 152, 203 fn. 153 (1999).
\item 243 NLRB 859, 861 (1979).
\item 348 NLRB 727 (2006).
\item 333 NLRB 458, 459 (2001).
\item 326 NLRB 495, 496 (1998).
\end{enumerate}
\end{footnotesize}
absence of any evidence that the sergeants consider the relative skills or characteristics of the officers in sending them to one post versus another, *Network Dynamics Cabling, Inc.*\(^{26}\) (no independent judgment proved absent evidence that putative supervisor assessed the relative skills of employees in shifting them from one task or crew to another).

With respect to assigning overall duties to an employee, or determining what job shall be undertaken next and who shall perform it, the Department relies heavily on protocol. The dispatcher, not a sergeant, radios an officer to respond to an incident; the dispatcher makes this decision based on the location of the officer relative to the incident. Sergeant Russell testified that he has never overruled the decision of a dispatcher to send a specific officer to a call. If the emergency is large in nature, the sergeant will notify the Chief, the Lieutenant, or the Captain. In the event of a fight call, all officers respond. The Employer has failed to establish that any of these directions require independent judgment, *Croft Metals, Inc.*\(^{27}\) (Board will not conclude that the degree of discretion involved rises above the routine or clerical where the employer adduced almost no evidence regarding the factors weighed or balanced by the lead person in making production decisions and directing employees).

Further, in order to establish supervisory status on the basis of responsible direction, *Oakwood Healthcare* requires the Employer to demonstrate that the sergeants are held accountable for the performance of the security officers on their shifts. There is no record evidence that the sergeants have ever actually faced or been told they would face any material consequences to their own terms and conditions of employment, based on the performance of their subordinates. The only evidence concerning this factor is Chief Leffler’s testimony that sergeants “are held accountable to approve [the officers’] reports” in some unspecified way. The record does not suggest any particular consequence for the sergeants, adverse or positive, and is far too vague to establish the requisite accountability, *Golden Crest Healthcare Center*\(^{28}\) (employer presented no evidence that any charge nurse has experienced any material consequences to her terms and conditions of employment, either positive or negative, as a result of her performance in directing CNAs, nor any evidence that a charge nurse was ever informed that any such material consequences might result from her performance in directing CNAs); *Alstyle Apparel*\(^{29}\) (respondent must present evidence of “actual accountability” to prove responsible direction).

**The Patrol Sergeants’ Role in Discipline**

\(^{26}\) 351 NLRB 1423, 1425 (2007).

\(^{27}\) 348 NLRB 717, 721 (2006).

\(^{28}\) 348 NLRB 727, 731 (2006).

\(^{29}\) 351 NLRB 1287 (2007).
The Employer contends, based upon its written policies, that sergeants may independently issue verbal or written warnings to the current members of the bargaining unit. However, there is no indication that a sergeant has done so in at least the past five years. Rather, Chief Leffler testified that if a sergeant were to see an employee out of uniform, the sergeant would write up the facts of the situation and the Chief, Captain, or Lieutenant would determine if discipline was warranted. Similarly, in a recent incident, the Captain chose to speak to an officer who had been disrespectful to a sergeant informally rather than record a formal verbal reprimand.

It is well-established that policy alone is not sufficient to establish supervisory status under the Act. The Board has held that job descriptions will be rejected as mere paper authority absent independent evidence that an individual asserted to be a supervisor actually possesses the described authority, *Training School at Vineland.* 30

- *The Patrol Sergeants' Role in Adjusting Grievances*

It is undisputed that the parties’ collective-bargaining agreement, which covers the existing unit, includes a grievance procedure which begins when the Union and the aggrieved employee “take up the matter with the immediate supervisor of the Employee.” It is also undisputed that the sergeants are nominally the “immediate supervisors” of the unit members.

However, no testimony suggested that any sergeant has ever been involved in the formal grievance process. Sergeant Russell testified that he has informally resolved problems with the overtime and detail lists by referring to the policies, but the Board has held that resolution of minor issues is not sufficient to constitute an adjustment of grievances for purposes of establishing supervisory status, *Community Education Centers Inc.* 31

- *Secondary Indicia and Conclusion*

Accordingly, I conclude that the patrol sergeants are not statutory supervisors.

In concluding that the Employer has failed to meet its burden of establishing the sergeants’ supervisory status, I acknowledge that the sergeants possess limited secondary indicia of supervisory status. Most notably, the sergeants’ job descriptions refer to them as “supervisors.” The Board has long held, however, that secondary indicia are insufficient by themselves to establish supervisory status when there is no evidence presented that an individual

30 332 NLRB 1412, 1416 (2000).

31 360 NLRB No. 17, slip op. at 15 (2014).
possesses any one of the several primary Section 2(11) indicia. *Golden Crest Healthcare Center;*\textsuperscript{32} *Ken-Crest Services.*\textsuperscript{33}

**The Detective Sergeants and Administrative Sergeant as Managerial Employees**

The Board has held that employees will be excluded from the unit as managerial employees only if they formulate and effectuate management policies by expressing and making operative decisions of their employer or have discretion in the performance of their jobs independent of the employer’s established policy. *NLRB v. Bell Aerospace Co.;*\textsuperscript{34} *Reading Eagle Co.;*\textsuperscript{35} *Ohio River Co.*\textsuperscript{36}

The Employer contends that Detective Sergeant Roche formulates and effectuates management policies based on her role as Crime Prevention Program Coordinator. Although the Employer’s governing rules, which were entered into evidence, state that a person in this position makes recommendations to the Chief for “program modifications, eliminations, or the addition of new programs,” no witness gave testimony about the duties of the Crime Prevention Program Coordinator in practice. In the absence of any evidence that Detective Sergeant Roche has ever implemented any policy without approval by a higher authority, I find that she is not a managerial employee.

The Employer contends that Detective Sergeant Imbracsio formulates and effectuates management policies based on his future role under which he will be responsible for the overall coordination of training and maintenance of certain training records which the Department is required to provide to the State Police. It is true that employees who have overall responsibility for the development of a training course for foremen have been found to be managerial employees, *Miller Electric Co.*\textsuperscript{37} In *Miller Electric Co.*, though, the employee was responsible for passing judgment on the appropriateness of the various provisions contained in the training manual and what source materials would be used and to what extent in order to instruct the foremen. Here, there was no testimony, job description, or other evidence to suggest that Detective Sergeant Imbracsio is expected to have such sweeping authority. At least in part, he will be performing administrative duties to remain in compliance with State Police regulations

\textsuperscript{32} 348 NLRB at 730 fn. 10 (2006).

\textsuperscript{33} 335 NLRB 777, 779 (2001).

\textsuperscript{34} 416 U.S. 267 (1974).

\textsuperscript{35} 306 NLRB 871 (1992).

\textsuperscript{36} 303 NLRB 696, 714 (1991).

\textsuperscript{37} 301 NLRB 294 (1991).
over which he himself has no control. An employee is not a managerial employee where there is no evidence that he assisted in formulating and developing the policies on which he instructs employees, *Fairfax Family Fund, Inc.*\(^{38}\) In the absence of any evidence that Detective Sergeant Imbracsio has ever formulated a policy of any kind, I find that he is not a managerial employee.

Finally, the Employer contends that Administrative Sergeant Wade is a managerial employee as well, but has presented no specific example of management policies formulated or effectuated by Administrative Sergeant Wade. As discussed above, the training responsibilities which will soon be transferred to Detective Sergeant Imbracsio are administrative in nature. Administrative Sergeant Wade is responsible for fleet maintenance and the procurement of uniforms and equipment, but no evidence suggests that he has independent authority to enter into contracts or pledge the Employer’s credit. That being the case, I find that Administrative Sergeant Wade is not a managerial employee.

**The Sergeants as Confidential Employees**

A confidential employee is one who assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations, *NLRB v. Rural Electric Corp.*\(^{39}\) *B.F. Goodrich Co.*\(^{40}\) The Board contemplates that a confidential employee is involved in a "close working relationship with an individual who decides and effectuates management labor policy and is entrusted with decisions and information regarding this policy before it is made known to those affected by it," *Intermountain Electric Assn.*\(^{41}\) In addition, the Board has developed the alternative test that employees who have regular access to confidential information concerning the anticipated changes that may result from collective bargaining negotiations may be confidential employees, *Crest Mark Packing Co.*\(^{42}\)

The Employer contends that all sergeants are confidential employees because they may conduct confidential investigations of other employees and prepare confidential reports about their findings. No testimony suggests that any of the sergeants other than the detective sergeants perform this work. The information gathered by a detective sergeant, while potentially sensitive (such as whether a professor is homeless and drinking alcohol in his office), has no bearing on labor relations policies within the Department. Furthermore, Chief Leffler testified that while he might direct a detective sergeant to investigate internal strife between the rank and file

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\(^{38}\) 195 NLRB 306, 308 (1972).


\(^{40}\) 115 NLRB 722, 724 (1956).

\(^{41}\) 277 NLRB 1 (1985).

\(^{42}\) 283 NLRB 999 (1987).
Department employees, this has not occurred for eight to ten years. No evidence revealed at the hearing suggested that any sergeant has ever conducted an internal affairs investigation within the Department.

Accordingly, I find that the sergeants are not confidential employees and shall include them in any unit found otherwise appropriate.

**Inclusion in the Existing Unit**

A self-determination election is a proper method by which a union may add unrepresented employees to an existing unit, *Globe Machine & Stamping*43, *Armour & Co.*44 Such an election may be appropriate regardless of whether the employees in question may be found to be a separate appropriate unit, *Great Lakes Pipe Line Co.*45 The appropriateness of a self-determination election, sometimes referred to as an “Armour-Globe” election, depends on the extent to which the employees to be included share a community of interest with unit employees and on whether the employees to be added constitute an identifiable, distinct segment so as to constitute an appropriate voting group. *Warner-Lambert Co.*46; *Unisys Corporation*47

The current collective-bargaining unit to which the Union would like to add the sergeants includes police officers, dispatchers, and security officers. The sergeants and the existing unit members perform their duties under identical working conditions on the Employer’s campus. There is significant overlap in their skills and duties. Sergeants, like officers, respond to emergencies, make motor vehicle stops, and perform building checks. Because one of the Department’s two certified sexual assault investigators is a unit member and the other is a sergeant, their job duties necessarily overlap. When the Employer decided to convert Detective Sergeant Imbracsio to a training sergeant, it offered unit members the opportunity to perform the detective duties on a one-year trial basis:

The sergeants and the current unit employees are part of the same chain of command within the Department, in which the Captain, the Lieutenant, and ultimately the Chief are responsible for management and supervision. The sergeants and the current unit employees also work the same schedules and interact on a consistent basis, checking in with one another at roll

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43 3 NLRB 294 (1937).
44 40 NLRB 1333 (1942).
45 92 NLRB 583, 584 (1950).
47 354 NLRB 825, 829 (2009).
call at the beginning of a shift and responding to an incident together should a problem arise somewhere on campus.

I find that the sergeants share a community of interest with the other officers and dispatchers in the existing bargaining unit sufficient to warrant their inclusion in that unit.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I shall direct an election in the following voting group for this purpose:

All full-time and regular part-time public safety officers holding the rank of sergeant employed by the Employer at its Waltham, Massachusetts location, but excluding all other employees and supervisors as defined in the Act

If a majority of the valid ballots in the election are cast for the Petitioner, the employees will be deemed to have indicated their desire to be included in the existing unit of public safety officers currently represented by the Petitioner, and it may bargain for those employees as part of that unit. I find that the following employees would then 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 police officers, detectives, dispatchers, security officers, and sergeants employed by the Employer at its Waltham, Massachusetts location, but excluding all other employees and supervisors as defined in the Act.

If a majority of the valid ballots are cast against representation, the employees will be deemed to have indicated their desire to remain unrepresented, and I will issue a certification of results of election to that effect.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Bentley University Public Safety Association.

A. Election Details

The election will be held on Thursday, March 7, 2019 from 2:30 p.m. to 3:30 p.m. at the Roll Call Room at Callahan Police Station, Employer’s premises, 175 Forest Street, Waltham, MA 02452.
B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending February 9, 2019, 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(1) 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 February 25, 2019. 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.

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.
Bentley University  
Case 01-RC-23470

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: February 21, 2019

Paul J. Murphy  
Acting Regional Director  
National Labor Relations Board  
Region 01  
10 Causeway, 6th Floor  
Boston, MA 02222
NOTICE OF ELECTION

PURPOSE OF ELECTION: This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

SECRET BALLOT: The election will be by SECRET ballot under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling place. Violations of these rules should be reported immediately to an NLRB agent. Your attention is called to Section 12 of the National Labor Relations Act which provides: ANY PERSON WHO SHALL WILLFULLY RESIST, PREVENT, IMPEDE, OR INTERFERE WITH ANY MEMBER OF THE BOARD OR ANY OF ITS AGENTS OR AGENCIES IN THE PERFORMANCE OF DUTIES PURSUANT TO THIS ACT SHALL BE PUNISHED BY A FINE OF NOT MORE THAN $5,000 OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BOTH.

ELIGIBILITY RULES: Employees eligible to vote are those described under the VOTING UNIT on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off, and also include employees in the military service of the United States who appear in person at the polls. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are not eligible to vote.

SPECIAL ASSISTANCE: Any employee or other participant in this election who has a handicap or needs special assistance such as a sign language interpreter to participate in this election should notify an NLRB Office as soon as possible and request the necessary assistance.

PROCESS OF VOTING: Upon arrival at the voting place, voters should proceed to the Board agent and identify themselves by stating their name. The Board agent will hand a ballot to each eligible voter. Voters will enter the voting booth and mark their ballot in secret. DO NOT SIGN YOUR BALLOT. Fold the ballot before leaving the voting booth, then personally deposit it in a ballot box under the supervision of the Board agent and leave the polling area.

CHALLENGE OF VOTERS: If your eligibility to vote is challenged, you will be allowed to vote a challenged ballot. Although you may believe you are eligible to vote, the polling area is not the place to resolve the issue. Give the Board agent your name and any other information you are asked to provide. After you receive a ballot, go to the voting booth, mark your ballot and fold it so as to keep the mark secret. DO NOT SIGN YOUR BALLOT. Return to the Board agent who will ask you to place your ballot in a challenge envelope, seal the envelope, place it in the ballot box, and leave the polling area. Your eligibility will be resolved later, if necessary.

AUTHORIZED OBSERVERS: Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the voting place and at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.
NOTICE OF ELECTION

VOTING UNIT

EMPLOYEES ELIGIBLE TO VOTE:
All full-time and regular part-time public safety officers holding the rank of sergeant employed by the Employer at its Waltham, Massachusetts location during the payroll period ending February 9, 2019.

EMPLOYEES NOT ELIGIBLE TO VOTE:
All other employees and supervisors as defined in the Act.

If a majority of valid ballots are cast for BENTLEY UNIVERSITY PUBLIC SAFETY ASSOCIATION, they will be taken to have indicated the employees' desire to be included in the existing full-time and regular part-time police officers, detectives, dispatchers, security officers, and sergeants' unit currently represented by BENTLEY UNIVERSITY PUBLIC SAFETY ASSOCIATION. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

DATE, TIME AND PLACE OF ELECTION

| Thursday, March 7, 2019 | 2:30 PM to 3:30 PM | Roll Call Room at Callahan Police Station, Employer's Premises 175 Forest Street, Waltham, MA 02452 |

EMPLOYEES ARE FREE TO VOTE AT ANY TIME THE POLLS ARE OPEN.

UNIVERS STATES OF AMERICA
National Labor Relations Board
01-RC-234790

OFFICIAL SECRET BALLOT
For certain employees of BENTLEY UNIVERSITY

Do you wish to be represented for purposes of collective bargaining by BENTLEY UNIVERSITY PUBLIC SAFETY ASSOCIATION?

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

| YES | NO |

DO NOT SIGN THIS BALLOT. Fold and drop in the ballot box.

The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.
RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union
- Choose representatives to bargain with your employer on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities
- In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.

If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:

- Threatening loss of jobs or benefits by an Employer or a Union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or the mail ballots are dispatched in a mail ballot election
- Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a Union or an Employer to influence their votes

The National Labor Relations Board protects your right to a free choice.

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law.

Anyone with a question about the election may contact the NLRB Office at (617)565-6700 or visit the NLRB website www.nlrb.gov for assistance.

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.