

UNITED STATES
NATIONAL LABOR RELATIONS BOARD

HEARST MAGAZINE MEDIA, INC.

Employer,

and

WRITERS GUILD OF AMERICA EAST, INC.,

Petitioner.

Case No. 02-RC-252592

**EMPLOYER HEARST MAGAZINE MEDIA, INC.'S SUPPLEMENTAL BRIEF
IN SUPPORT OF ITS REQUEST FOR BOARD REVIEW OF THE REGIONAL
DIRECTOR'S DECISION TO DEFER LITIGATION REGARDING
86 PUTATIVE MEMBERS OF THE PROPOSED BARGAINING UNIT**

Employer Hearst Magazine Media, Inc. (“Hearst”) submits this supplemental brief to bring to the Board’s attention highly relevant developments, which reinforce the need to litigate individuals’ supervisory status at the pre-election representation hearing in this case.

ARGUMENT

When the Regional Director decided to truncate the representation hearing and defer litigation of 92 employees’ eligibility, he carved out exceptions for six individuals and allowed the parties to litigate their supervisory status now. *See* RFR¹ at 6, 8. Around the same time as the Regional Director’s decision, the Board issued a final rule that generally requires supervisory status to be litigated at a pre-election hearing. 2019 Rulemaking, 84 Fed. Reg. 69,524 (Dec. 18, 2019). It relied on grounds of fairness, transparency, efficiency, and the interest in avoiding uncertainty that could lead to unfair labor practices. *Id.* at 69,525, 69,539. For the same reasons, the parties should be allowed to litigate supervisory status before the election in this case.

As of this week, the evidentiary record confirms that these disputed supervisors are indeed supervisors. The parties have recently begun to litigate the supervisory status of the six individuals whom the Regional Director elected to examine in the hearing. The evidence has been overwhelming. The strength of the evidence supports Hearst’s arguments that deferring status questions until after the election will likely result in unfair labor practice charges, a disputed election result, inefficiency, and an unfair election.

This evidence puts the lie to the Union’s contention that it has conceded only the “obvious supervisors” and that the disputed supervisors are more likely to actually be employees. Opp’n Br. at 5 & n.1. The Union’s contention was not credible on its face: *it claims that it conceded the supervisory status of Executive Editors and Design Directors because those “are*

¹ Abbreviations are defined in Hearst’s Request for Board Review, filed Dec. 20, 2019 (“RFR”).

clear supervisory positions,” id. at 5 n.1, but the Union continues to dispute the supervisory status of two Executive Editors and a Design Director. The Union also continues to dispute the supervisory status of people with positions like chief of research, creative director, deputy editor, and supervising producer. These positions are *even higher in the pecking order than the individuals whose status has been litigated thus far*, so there is every reason to expect the evidence to be even stronger on their supervisory status than on the supervisors detailed below.

At the time of filing this brief, the hearing transcript contains evidence on three disputed supervisors (out of the six whose status the Regional Director has permitted to be litigated). As to each, the evidence conclusively establishes their supervisory status:

1. Rachel Lieberman, Supervising Video Producer. — Rachel Lieberman has three direct reports at *Seventeen*. Representation Hearing Transcript (“Tr.”) 2110:5-7. Two already worked for *Seventeen* when Lieberman joined, and the other—Deanna Govea—was hired by Lieberman. Tr. 2110:5-14. Indeed, when Lieberman hired Govea, Lieberman’s supervisor was on maternity leave, so Lieberman “handled the whole process”—selecting candidates, conducting interviews, extending an offer, and negotiating salary and title. *Id.* at 2110:12-25.

Lieberman’s supervisor, Kristin Koch, testified that Lieberman assigns and directs the work of the three employees who report to her. Lieberman develops the concepts for videos and directs the employees at video shoots. Tr. 2114:25-2117:12. She reviews the work of her direct reports, and Koch holds Lieberman—not her team members—responsible for the quality and content of the videos. Tr. 2118:24-2119:7. Lieberman also has complete authority in scheduling the work hours of her team, based on a video production schedule that she develops. Tr. 2120:7-22. She is responsible for handling time off requests, vacation, and sick leave. Tr. 2121:1-11. She determines whether her reports will travel. Tr. 2121:12-21.

Lieberman is responsible for conducting performance reviews and has administered reprimands. Tr. 2121:22-2122: 19. When one of her direct reports suffered a concussion at a photo shoot, Lieberman was solely responsible for working with him to determine accommodations to his work hours and schedule. Tr. 2124:4-2125:13.

2. Bridget Clegg, Art Production Manager. — Bridget Clegg has one direct report, Kayla Ramsey. Tr. 2157:2-10. Clegg, who is responsible for the overall appearance and art direction of the *Best Products* website, routinely assigns work to Ramsey, who shoots and edits photos for the website. Tr. 2157:11-2158:4. Clegg also sets Ramsey’s deadlines. Tr. 2158:2-3. Clegg wrote and delivered Ramsey’s 2019 performance review. Tr. 2169:8-2170:6; Employer Ex. 40. When Ramsey sought a promotion and a raise, it was Clegg who interacted with her regarding that request, ultimately deciding not to promote Ramsey but nonetheless changing Ramsey’s title. Tr. 2161:8-21, 2163:23-2164:10, 2174:18-23.

Clegg’s supervisor, Christine Anderson, described an occasion when Clegg had to address instances Ramsey’s “combative” conduct. Tr. 2171:15-19. Anderson recommended that Clegg impose discipline on Ramsey. Tr. 2172:2-4. But Clegg, in her discretion, elected not to impose any discipline, and Anderson “accepted that decision, because she [Ramsey] reports to Bridget.” Tr. 2172:6-14.

3. Julie Kosin, Senior Culture Editor. — Katie Connor, the Digital Director for *Elle*, testified that Julie Kosin regularly assigns work to several junior members of the *Elle* digital staff. Tr. 2243:15-24. Kosin is the Senior Culture Editor, responsible for *Elle*’s digital coverage of television, movies, and other culture. *Id.*; Tr. 2241:3-7. Kosin largely selects the topics that *Elle.com* will cover and typically assigns four to five stories per day—up to as many as ten per day—to other employees. Tr. 2244:6-2245:13. She reviews and edits their work and, apart from

long feature-length pieces, has sole discretion to decide when an article is ready for publication.

Tr. 2246:1-17. Connor holds Kosin, not the other staff, responsible for the quality of culture articles published digitally by *Elle*. Tr. 2246:1-4.

CONCLUSION

There is no basis to think these examples are unrepresentative of the disputed supervisors. The evidence thus far supports Hearst’s concerns about deferring litigation of supervisor issues. The strength of these individuals’ supervisory status is yet another reason the Board should grant review and order pre-election litigation of the other 86 disputed employees’ supervisory status.

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CERTIFICATE OF SERVICE

I, Mark Batten, an attorney, hereby certify that on January 17, 2020, I caused true and complete copies of the Employer's Supplemental Brief in Support of its Request for Review to be served by the methods indicated below, upon the following persons at the following addresses:

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