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

THE SCIENCENTER DISCOVERY MUSEUM

Employer

and

Case 03-UC-252620

WORKERS UNITED

Petitioner

DECISION AND ORDER

The Employer operates a science museum in Ithaca, New York. On November 18, 2019, Workers United, the Petitioner, was certified as the collective-bargaining representative for “all full-time and regular part-time employees employed by the Employer.” The bargaining unit excluded “Traveling Exhibitions Manager, Director of Partnerships, office clerical employees, guards, and professional employees and supervisors as defined in the Act.” Prior to the election the parties could not agree to the inclusion or exclusion of Public and Media Relations Manager Kelly Barclay, Director of Foundation and Corporate Relations Allison Sribarra, Annual Fund and Membership Manager Josiah Jacobus-Parker, and Museum Greeter Gwen Gallagher and agreed to vote them subject to challenge. Their challenged ballots were not determinative.

On November 29, 2019, the Petitioner filed the petition in this matter, seeking to clarify the existing unit. The parties stipulated that the purpose of the petition was to seek a clarification as to whether the bargaining unit should also include the Public and Media Relations Manager
(Kelly Barclay), the Director of Foundation and Corporate Relations (Allison Sribarra), and the Annual Fund and Membership Manager (Josiah Jacobus-Parker).¹

All three contested positions are in the Advancement and Development Department and are supervised by the Sciencenter's Executive Director, Michelle Kortenaar. The employees in the contested positions attend weekly meetings together. The Advancement and Development team also includes the Advancement Coordinator and the Grants and Administrative Coordinator; positions that are undisputedly included in the existing bargaining unit.

The Employer asserts that including the Director of Foundation and Corporate Relations and the Annual Fund and Membership Manager in the unit would be inappropriate as these are supervisory positions. The Employer asserts that Jacobus-Parker and Sribarra each supervise one employee, that they contributed to the hiring of that employee in a meaningful way, they assign work to that employee, and they evaluate the performance of that employee. Furthermore, the Employer contends that including the Public and Media Relations Manager in the unit would be inappropriate because she does not share a community of interest with the rest of the bargaining unit. Specifically, it notes that Barclay works remotely from Florida, has unique job duties, sets her own work hours, is an exempt salaried employee, and has little interaction or interchange with the unit employees.

To the contrary, the Petitioner asserts that it is appropriate to include these job classifications. It asserts that the Director of Foundation and Corporate Relations and the Annual Fund and Membership Manager do not exercise any independent judgment in performing what the

¹ The petition also requested a resolution for the Museum Greeter position. However, during the hearing, the parties stipulated that the Museum Greeter position fell within the unit description, but that Gwen Gallagher would not have been eligible to vote and because of her individual circumstances would not be in the unit.
Employer asserts are supervisory tasks. Petitioner asserts that the Public and Media Relations Manager position belongs in the unit and that Barclay, the incumbent, shares a community of interest with the undisputed unit employees. To this end, the Petitioner contends that Barclay’s predecessor worked at the Employer’s facility in Ithaca and that Barclay maintains a desk in a shared office in the Employer’s facility, has interaction and communication with acknowledged unit employees, and that if she is not included in this unit, there is no appropriate unit in which she could be included.

As discussed in greater detail below, I have determined that all three positions belong in the bargaining unit.

I. Annual Fund and Membership Manager

The Employer is asserting that Josiah Jacobus-Parker, the Annual Fund and Membership Manager, supervises the Advancement Coordinator, and therefore, should be excluded from the existing unit. Section 2(11) of the Act defines a supervisor as any individual with the authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or to responsibly direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. To establish that individuals are supervisors, the asserting party must show: (1) that the purported supervisors have the authority to engage in any one of the twelve supervisory functions; (2) that their “exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;” and (3) that their authority is exercised “in the interest of the employer.” NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 710-13 (2001).

Based on the evidence in the record, it appears that the Employer is asserting that the Annual Fund and Membership Manager makes effective hiring recommendations and possesses the authority, assign, and responsibly direct the Advancement Coordinator, Lily Tomik. The record also contains evidence relating to the job description for the position, Jacobus-Parker’s role in the annual evaluation process, and reviewing employees’ time off requests.

I conclude that the competent evidence, as detailed below, demonstrates that the Annual Fund and Membership Manager position is non-supervisory and belongs in the existing unit.

A. Responsible Direction and Assignment

In *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006), the Board clarified the criteria for finding that an alleged supervisor “assigns” or “responsibly directs” the work of others and uses “independent judgment” in doing so. The Board held that the authority to assign refers to “the act of designating an employee to a place (such as a location, department, or wing), assigning an employee to a time (such as a shift or overtime period), or assigning significant overall duties as opposed to discrete tasks.” *Id.* at 689. The authority to make an assignment, by itself, does not confer supervisory status. The alleged supervisor must also use independent judgment when making such assignments. *Id.* at 692-93.
The Board has held that for the direction of others to be “responsible,” the person performing the oversight must be held accountable for the actions of others. “Thus, to establish accountability for purposes of responsible direction, it must be shown that the employer delegated to the putative supervisor the authority to direct work and the authority to take corrective action, if necessary….and a prospect of adverse consequences for the putative supervisor if he/she does not take these steps.” Id. at 692.

Finally, the Board has stated that to exercise independent judgment, the direction “must be independent [free from the control of others], it must involve a judgment [forming an opinion or evaluation by discerning and comparing data], and the judgment must involve a degree of discretion that rises above the ‘routine or clerical.’” Id. at 693.

Generally, the Annual Fund and Membership Manager position, held by Jacobus-Parker, serves as the first point of contact for donors. More specifically, he enters all the donations and donor-level memberships and sends thank you notes to those donors along with tax receipts. He pulls reports for departmental use on a regular basis. He oversees the member morning events, member lunches, and advisory board lunches. He coordinates the annual campaign and prepares the annual report with Kortenaar, Barclay, and an external contractor, and sends out that final report to the donors. He updates the wall calendar on the current mailing and membership programs and events. He also prints the posters onsite for the events and the monthly calendar.

Advancement Coordinator Lillian Tomik, the employee the Employer asserts that Jacobus-Parker supervises, is responsible for checking and tracking customer reviews in the comment boxes located around the museum. Her position is also responsible for all the non-donor membership in the museum. This includes collecting the registrations, entering them into the database, pulling the receipts from the system, and sending the members the welcome information.
She also runs the membership access program and determines whether individuals qualify for it. The Advancement Coordinator also replenishes the supply closet.

Though they share an office, Jacobus-Parker and Tomik work independently. Tomik is largely self-directed. Indeed, the on-the-job-training grant that Tomik was hired under indicates that she needs little to no supervision. Generally, Tomik’s work does not change from day to day. The record reveals no evidence that Jacobus-Parker has assigned Tomik to a specific place, to overtime, or that he has assigned her significant overall duties as opposed to discrete tasks.

Tomik and Jacobus-Parker occasionally work together on discrete projects. He initials and provides Tomik with requests for donations that come in, and she fulfills those and sends them out. A similar process is performed for agency passes. They work together on bulk mailings and collaborate on letter drafting. Such collaboration does not rise to the level of responsibly direction or assignment of work, and the Employer presented no evidence that Jacobus-Parker would be held accountable for Tomik’s performance. Based on the evidence provided, the Annual Fund and Membership Manager does not responsibly direct or assign work to the Advancement Coordinator. As such, these factors do not support a finding that the Annual Fund and Membership Manager position is supervisory.

**B. Hiring**

The Board defines the power to effectively recommend as meaning that the recommended action is taken without independent investigation by superiors. *ITT Lighting Fixtures*, 265 NLRB 1480, 1481 (1982); *Wesco Electrical Company*, 232 NLRB 479 (1977). Thus, to establish that an

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2 This office space also contains the desk for Public and Media Relations Manager Kelly Barclay.
3 The record reveals that Jacobus-Parker does not have the authority to authorize any overtime; rather, that is at the sole discretion of the Executive Director.
alleged supervisor possesses supervisory indicia based on the authority to effectively recommend hiring, the party asserting supervisory status must demonstrate that the management official made the decision to hire based solely on the recommendation from the alleged supervisor, without further inquiries or investigation. See Waverly-Cedar Falls Health Care, 297 NLRB 390, 392 (1989), enf'd. 933 F. 2d 626 (8th Cir. 1990). Mere participation in the hiring process, absent the authority to effectively recommend hire, is insufficient to establish 2(11) supervisory authority. 

Training School at Vineland, 332 NLRB 1412, 1417 (2000); North General Hospital, 314 NLRB 14, 16 (1994).

Jacobus-Parker was involved in the hiring of the most recent Advancement Coordinator, Tomik. In this capacity he was responsible for eliminating applicants which did not meet the position’s minimum requirements. He then handled at least one phone interview, as well as a joint interview with Kortenaar. After the joint in-person interview, they discussed their impressions of the candidates and Jacobus-Parker gave his input on who he felt was the strongest candidate. He and Kortenaar concurred. Chris Fagan, VP of Administration, then made an offer to Lillian Tomik, who accepted. Based on the facts presented, the evidence has not established that Tomik was hired based solely on Jacobus-Parker’s recommendation. As noted previously, simply participating in the hiring process does not establish him as a supervisor. 

4 Tellingly, at the time of Jacobus-Parker’s hiring, he was interviewed by the then Advancement Coordinator Alexis Falise along with members of the senior staff. Falise also contributed to his training once he was hired. The Advancement Coordinator is an agreed upon bargaining unit position.

5 Apparently, the delay between offer and acceptance was long enough that another candidate reached out to Jacobus-Parker, who forwarded the email to Fagan for a response.

6 The record also establishes that Jacobus-Parker does not have the independent authority to discipline or promote the Advancement Coordinator. For example, Jacobus-Parker was mandated by his supervisor Kortenaar, apparently at the direction of Fagan, to speak to Falise, Tomik’s predecessor, about her attitude and tone during staff and department meetings. Kortenaar and Fagan, not Jacobus-Parker, perceived the need for a verbal warning and they did not consult with
C. **Secondary Indicia**

The Employer presented evidence regarding job descriptions, annual reviews, and time off requests. While secondary indicia can be a factor in establishing statutory supervisory status, it is well-established that where, as here, putative supervisors are not shown to possess any of the primary supervisory indicia, secondary indicia alone are insufficient to establish supervisory status. *Golden Crest Healthcare*, supra at 730 n. 10; *Ken-Crest Services*, 335 NLRB 777, 779 (2001). Regardless, the secondary indicia are analyzed below.

1. **Job Descriptions**

The Employer provided the job descriptions for the Advancement Coordinator and the Annual Fund and Membership Manager. These job descriptions indicate that the Advancement Coordinator’s manager is the Annual Fund and Membership Manager and conversely, that the Annual Fund and Membership Manager oversees the Advancement Coordinator. However, job descriptions, without more, do not establish actual supervisory authority. *Brusco Tug and Barge, Inc.*, 359 NLRB 486 (2012).

2. **Evaluations**

The Employer also relies on the Annual Fund and Membership Manager’s preparation of the Advancement Coordinator’s annual review. The Board in *Elmhurst Extended Care Facilities*, 329 NLRB 535, 536 (1999), noted that Section 2(11) does not include the authority to “evaluate” in its enumeration of supervisory functions. Thus, when an evaluation does not, by itself, affect the wages and/or job status of the employee being evaluated, the individual performing such an evaluation is not a supervisory employee. Additionally, it is clear from the record that the person preparing the evaluation was not given authority to act on Falise’s request for a promotion and that authority declined to promote her.
evaluation is not engaged in a statutory supervisory function. See Lucky Cab Co., 360 NLRB 271, 273 (2014); Ten Broeck Commons, 320 NLRB 806, 813 (1996).

In the instant case, the Annual Fund and Membership Manager writes the Advancement Coordinator’s annual review though he does not have final authority over its contents. Indeed, Jacobus-Parker’s numerical review of Advancement Coordinator Falise was reduced as he was told it was too high, and the narrative portion was edited. In addition, the record contains no evidence that the annual reviews affect employees’ job retention, wages, or result in discipline.

In addition to the standard annual review, Jacobus-Parker was also responsible for Tomik’s provisional employment appraisal. She passed this appraisal without question, but the Employer argues that, in theory this appraisal could have resulted in an extension of the provisional period or termination. This theory offered by the Employer is not supported by any evidence on the record and the record reveals no evidence that the provisional employee appraisal alone, with no review by an admitted supervisor or manager, would be the basis for extending a probationary period or terminating an employee. In fact, given the record evidence that his annual review of Tomik’s predecessor was reviewed and revised, any claim that his provisional review of a new hire would be given controlling weight on an employee’s fate has to be viewed skeptically. Thus, there is no basis for concluding that the completion of evaluations renders a Jacobus-Parker a supervisor.

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7 Performance reviews require a litany of steps. First, the employee writes a self-evaluation. Then Jacobus-Parker writes the review. He then sends it to his supervisor and the VP of Administration. The document is then reviewed by Fagan and the Executive Director, who are responsible for determining if changes need to be made. Then it is sent back to Jacobus-Parker to go through the review with the reviewee. Finally, Jacobus-Parker and the reviewee complete the final two portions of the review together.
D. Time Off Requests

The Employer seemingly asserts that the Advancement Coordinator's time off requests are approved by the Annual Fund and Membership Manager. The record evidence failed to reveal any instances in which a time off request was denied. Rather, the Advancement Coordinator and Annual Fund and Membership Manager request days off that do not conflict with the needs of the Employer. The record contains no evidence that the Annual Fund and Membership Manager has any authority to approve or deny a request. Given the absence of any evidence that Jacobus-Parker exercises independent judgment in whatever role he plays in reviewing Tomik's time-off requests, there is no basis for relying on this factor to find supervisory status. See Screen Guard, 311 NLRB 109, 110 (1993).

II. Director of Foundation and Corporate Relations

The Employer asserts that the Director of Foundation and Corporate Relations, Allison Sribarra, supervises the Grants and Administrative Coordinator in the same manner that Jacobus-Parker allegedly supervises Tomik and relies on the same primary and secondary indicia to support its claim. It did not present evidence or claim that Sribarra exercised any additional supervisory authority not exercised by Jacobus-Parker. As a note, much of the evidence presented regarding this position, detailed below, constitutes hearsay and can be given no weight, and the competent evidence is insufficient to support a finding that this position is supervisory.

A. Hiring

The Director of Foundation and Corporate Relations position was created in 2018. Allison Sribarra, previously employed at the Sciencenter in grants administration, was promoted to fill it. Another new position, Grants and Administrative Coordinator, was also created at this time. The record does not reveal who culled the applications to determine who warranted an interview, but
it does establish that Sribarra and Kortenaar interviewed the candidates together, consistent with the Employer’s practice to have two people in every interview. The culmination of this interview process was that Sribarra and Kortenaar agreed that Ryan Opila was the best candidate and he was hired for the Grants and Administrative Coordinator position. Again, mere participation in the hiring process, absent the authority to effectively recommend hire, is insufficient to establish supervisory authority. Training School at Vineland, 332 NLRB 1412, 1417 (2000); North General Hospital, 314 NLRB 14, 16 (1994). This is particularly true here, where the record reveals that undisputed unit employees have participated in prior interviews. Thus, the record is insufficient to conclude the Sribarra effectively recommends that job candidates be hired.

B. Responsible Direction/Assignment of Work

The Grants and Administrative Coordinator, Sribarra’s putative subordinate, only spends half of his time doing grant work; fifteen percent of his time is spent coordinating with the board of trustees and the remaining thirty-five percent is spent working for the executive director and some of her staff. Thus, only half of Opila’s time is spent working with Sribarra. Other than a general statement that Opila reports to Sribarra fifty percent of the time, the record is devoid of any examples of what such reporting entails. There was no evidence presented regarding the specifics of what work, if any, the Director of Foundation and Corporate Relations assigns to the Grants and Administrative Coordinator other than Opila’s job description which says that he is to work closely with her to close grant accounts. Conclusory evidence of this nature is insufficient to establish supervisory status. Community Education Centers, Inc., 360 NLRB at 90; Volair Contractors, 341 NLRB at 675. As such, there is no basis on this record to conclude that the Director of Foundation and Corporate Relations responsibly directs or assigns work.
C. Secondary Indicia

The Employer again relies again on Sribarra’s job description and her completion of annual reviews to support its position that she is supervisor. Again, while secondary indicia can be relied on to establish supervisory status, secondary indicia alone are insufficient when the alleged supervisor is not shown to possess any of the primary supervisory indicia. Golden Crest Healthcare, supra at 730 n. 10; Ken-Crest Services, 335 NLRB 777, 779 (2001). Regardless, the secondary indicia are analyzed below.

1. Job Description

The current job description for the Director of Foundation and Corporate Relations does not cite any responsibility for managing or supervising the Grants and Administrative Coordinator. The Employer contends that this July 25, 2017 job description is out of date and notes that the Grants and Administrative Coordinator job description identifies that the employee reports to the Director of Foundation and Corporate Relations. However, as discussed previously, job descriptions, without more, do not establish actual supervisory authority. Brusco Tug and Barge, Inc., 359 NLRB 486 (2012). This is especially true when the putative supervisor’s job description is silent about responsibility for supervising or managing the putative subordinate.

2. Annual Review

Despite only working with the Director of Foundation and Corporate Relations half of the time, Sribarra is still responsible for writing the initial draft of the Administrative Coordinator’s annual review. This review, however, is subject to edits and inclusions from the senior staff which work with him the other half of the time. For example, Kortenaar provided input to Opila’s original appraisal, stating that there were issues with prioritization that could be improved. Moreover, there

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8 There was no discussion about her completing provisional reviews.
is no evidence that this annual review is tethered to wage and benefit improvements or could result in adverse consequences. See Lucky Cab Co., 360 NLRB at 273; Ten Broeck Commons, 320 NLRB at 813. In this particular case, the absence of evidence linking the evaluation to an employment consequence, accompanied by evidence indicating that others contribute and an admitted supervisor reviews and supplements it before it is given to the employee, compel a conclusion that Sribarra's participation in the annual review process for a single employee is insufficient to establish supervisory status.

Therefore, I conclude that Sribarra is not a supervisor within the meaning of Section 2(11) of the Act and she is properly included in the unit.

III. Public and Media Relations Manager

As noted previously, the parties' stipulated election agreement required that Kelly Barclay, the Public and Media Relations Manager, would vote to subject to challenge. The election agreement, however, did not reveal the basis on which the challenge would be made. The Employer argued in this proceeding that she should be excluded because she does not share a community of interest with the employees in the unit. This proceeding is effectively the means of resolving her challenged ballot and the analysis to be used in these circumstances is identical to what would be utilized if her challenged vote had been determinative.

When resolving challenged ballots in cases involving stipulated bargaining units, the Board uses the three-prong test set forth in Caesar's Tahoe, 337 NLRB 1096 (2002). If the parties' intent "is expressed in clear and unambiguous terms in the stipulation, the Board simply enforces the agreement." Id. at 1097. If the stipulation is ambiguous, the Board attempts to discern the parties' intent through normal means of contract interpretation, including a review of extrinsic evidence.
Finally, if it cannot discern their intent, the Board resorts to a normal community-of-interest test to resolve the issue of whether the employee should be included or excluded. *Id* at 1097.

The stipulated unit in this case is clear and unambiguous; it includes all full-time and regular part-time employees. Barclay is undisputedly a full-time employee and therefore, explicitly falls within the definition of included employees. Therefore, she would be excluded only if she fell within one of the listed exclusions. The positions of Traveling Exhibitions Manager and Director of Partnerships are specifically excluded. Barclay does not occupy either position. The remaining exclusions are office clerical employees, professional employees, guards and supervisors. Barclay, therefore, could only be excluded if she falls into one of those four categories. No party contends that she is an office clerical employee, professional employee or guard, and unlike Jacobus-Parker and Sribarra, the Employer is not asserting that she is a supervisor.

In many respects this case is the mirror image of *Halsted Communication*, 347 NLRB 225 (2006), in which the Board noted that the stipulated unit narrowly included specific technician titles and, among things, excluded “all other employees.” The Board applied what it saw as the clear terms of the stipulation to exclude another technician title based on the reference to “all other employees” in the exclusions. In this case, the stipulation uses the broadest form of inclusion language possible and then very specific exclusions. Thus, for the same reason that the stipulated unit in *Halsted* mandated the exclusion of the specific technician title, it requires the inclusion of the Public and Media Relations Manager in this case. Therefore, pursuant to the clear terms of the stipulated bargaining unit, her position is included.  

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9 There is no inconsistency between parties’ agreement that she could vote subject to challenge and my determination that the clear and unambiguous terms in the stipulation provide for her inclusion. The stipulation did not set forth the basis of the parties’ disagreement about her inclusion. If the parties could not agree on whether she was a full-time or regular part-time employee, as apparently was the case with Gwen Gallagher, the museum greeter, there would
Even if the terms of the stipulated election agreement did not provide for Barclay’s inclusion in the appropriate bargaining unit, I conclude, applying normal community of interest factors, that she should be included.

Barclay was hired to be the Public and Media Relations Manager in August 2018. In this position she is responsible for projecting the Employer’s public image through a variety of media and traditional advertising. Her position is in the Advancement and Development Department and, at the time of the hearing, she reported to Kortenaar. Two undisputed unit employees also work in this department and by virtue of my earlier conclusion that Jacobus-Parker and Sribarra are not supervisors within the meaning of the Act, the number of unit employees in that department climbs to four. She is paid a bi-weekly salary and the Employer has classified her as an exempt employee. Her salary equates to a $25.05 hourly wage, and although that is significantly more than many bargaining unit employees, it is actually more than four dollars an hour less than what the Exhibit Fabricator earns and only one dollar per hour more than what the Facility Manager earns; both positions are in the bargaining unit. She is eligible for the same benefits and covered by the same policies as all other full-time employees, including those in the bargaining unit. The Employer requires a bachelor’s degree for the Public and Media Relations Manager, but the record reveals that other positions in the unit have an identical requirement.10

10 Even though a bachelor’s degree is required for this and other positions in the unit, the Employer and Petitioner are not asserting that any of the employees holding these jobs are professional employees within the meaning of the Act, or identified professional status as a basis for excluding any of the employees at issue in this proceeding.
Barclays’ work schedule essentially conforms to the schedules worked by other museum employees, but dating back to when she worked in Ithaca, the Employer has allowed her some flexibility to accommodate her unique medical needs. Therefore, whatever variance exists between her hours and those of undisputed unit employee is the result of the Employer’s accommodation of her medical needs, is not inherent in the position, and would not necessarily be true of future employees in the position.

When she was originally hired in 2018, Barclay worked at the Employer’s Ithaca location and shared office space with other Advancement and Development Department employees. In April 2019, she arranged with the Employer to relocate to Burnt Hills, NY, which is about three hours northeast of Ithaca, and perform most of her duties remotely. This fall she relocated again to Florida, although the record suggests that she will juggle her time between Florida and Burnt Hills. Even though she works remotely, Barclay returns to Ithaca for special events and when needed, although the record does not reveal how frequently this occurs. When she returns to Ithaca, she uses the same shared office space she utilized when she was stationed there full-time.

Even though she works remotely, the record reveals that she has regular contact and collaborates with other museum employees to identify events and activities that warrant publicizing. She also participates in regularly scheduled staff meetings by teleconference. The record also reveals that once she began working remotely bargaining unit employees in the Advancement and Development and Education Departments assumed responsibility for performing the tasks associated with her position that can only be done by someone on site in Ithaca.

The Board weighs several community of interest factors to determine whether employees should be included in or excluded from a bargaining unit. These factors include the employees’
skills and functions, the similarity or differences in supervision, the employer's organizational structure, similarities and differences in wages and hours, integration of operations and contact and interchange. *Caesar's Tahoe*, supra at 1100.

In evaluating these factors, I note that except for a small number of excluded categories, some of which are mandated by statute, the stipulated unit is wall-to-wall and includes employees from multiple departments with disparate job functions, differences in supervision, and significant differences in compensation and qualifications for their positions.

Examining the Employer's organization, the Public and Media Relations Manager position is in the same department with, what was prior to this proceeding, two undisputed bargaining positions and, as a result of this decision, now four. All employees in this department reported to and were supervised by Kortenaar at the time of this hearing. The record reveals that even though Barclay works remotely, she participates in department meetings, has frequent, maybe even daily, contact with other employees and is highly dependent on these contacts to obtain the information she needs to perform her job. Although her function is unique, not all the skills needed to perform it are, as evidenced by the assumption of tasks she used to perform when based in Ithaca by current bargaining unit employees.

Her position, although not professional, requires a bachelor's degree, but that requirement does not distinguish her from all other bargaining unit employees. The Education Program Coordinator and the Volunteer Manager positions, undisputedly in the bargaining unit, require a bachelor's degrees as do the Director of Foundation and Corporate Relations and Annual Fund and Membership Manager positions, which, as a result of my determination that the incumbents are not supervisors as defined in the Act, are also in the bargaining unit.
Barclay receives a salary and is classified as exempt, but the Board has held that this distinction is an insufficient basis alone for excluding employees if they otherwise share a community of interest with other bargaining unit members. *K.G. Knitting*, 320 NLRB 374 (1995). In addition, the Director of Foundation and Corporate Relations and Annual Fund and Membership Manager positions are also classified as salaried, exempt employees and as noted before, are by virtue of this decision, in the bargaining unit. Although the Employer opposed the inclusion of these positions in the unit, it did so solely because it believed the incumbents were supervisors. It never asserted that those positions did not belong in the bargaining unit because of their salaried, exempt status or that the employees who held them otherwise did not share a community with other bargaining unit positions. In addition, although she is salaried, Barclay’s hourly wage equivalent is comparable to what the highest paid employees in the bargaining unit receive and as noted before her benefits are identical to what the Employer provides for every full-time employee.

The Employer also relies heavily on Barclay’s status as a remote employee and the flexibility it affords her to adjust her daily schedule as reasons for excluding her from the bargaining unit. As an initial matter, I note that this decision determines whether the position of Public and Media Relations Manager is appropriately included in the bargaining unit regardless of who occupies it. The remote work location and scheduling flexibility are unique to her and afforded by the Employer due to her individual circumstances and not inherent in the position itself. As noted previously, there is no basis for concluding that any future employee in this position would be accommodated in this fashion. In addition, as previously discussed, despite her remote status, she has regular and frequent contact with employees in Ithaca and relies heavily on these contacts to perform her job.
In summary, Barclay’s status as salaried exempt employee, who is permitted to work remotely and adjust her schedule to accommodate her medical circumstances, does not offset the common interest she has with other unit employees as result of being assigned to the same department and sharing common supervision with some unit employees; being eligible for the same benefits and covered by the same employment policies; possessing at least some similar skills; having the same level of education as some unit employees; being compensated within the range of what other bargaining unit employees are paid; and having regular contact with other unit employees and reliant on her collaboration with them to perform her job. This is especially true given the disparity that exists in skill levels, functions, educational attainment and compensation among employees who are already in the unit. Therefore, I find that in addition to the clear language of the stipulated bargaining unit, Barclay’s common interest with employees in this very broad and inclusive bargaining unit, warrant her inclusion.

Finally, if Barclay is not included in this unit, she may be disenfranchised and deprived of the right to be represented for purposes of collective bargaining because it is not apparent, and the Employer does not claim, that there is another grouping of unrepresented employees in which it would be more appropriate to include her.

CONCLUSIONS AND FINDINGS

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

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

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. Based on the foregoing discussion, I find that the Public and Media Relations Manager, Director of Foundation and Corporate Relations, Annual Fund and Membership Manager, and Museum Greeter positions are properly included in the bargaining unit of the Employer's employees represented by the Petitioner.

ORDER

IT IS HEREBY ORDERED that the Petitioner's petition to clarify the bargaining unit represented by Workers United at The Sciencenter Discovery Museum to include the Public and Media Relations Manager, Director of Foundation and Corporate Relations, Annual Fund and Membership Manager, and Museum Greeter is granted.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1015 Half Street, S.E., Washington, DC 20570-0001. This request must be received by the Board in Washington, DC by 5 p.m. EDT February 24, 2020. The request may be filed electronically through the Agency's web site, www.nlrb.gov, but may not be filed by facsimile.

11 To file the request for review electronically, go to www.nlrb.gov and select the E-Gov tab. Then click on the E-Filing link on the menu. When the E-File page opens, go to the heading Board/Office of the Executive Secretary and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial
Dated at Buffalo, New York this 10th day of February 2020.

Paul J. Murphy
Regional Director
National Labor Relations Board - Region 3
Niagara Center Building – Suite 630
130 S. Elmwood Avenue
Buffalo, New York 14202

_correspondence on this matter and is also located under “E-Gov” on the Board’s web site, www.nlrb.gov._