

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

EPIC ACADEMY

Employer

and

Case 13-RC-257879

**CHICAGO TEACHERS UNION,
LOCAL 1, AFT, IFT, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (“Act”), a hearing on this petition was conducted before a hearing officer of the National Labor Relations Board (“Board”).¹ Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated to the undersigned its authority in this proceeding to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.²

I. ISSUES AND PARTIES’ POSITIONS

Petitioner seeks to represent a unit of professional and non-professional employees employed by the Employer at its facility in Chicago, Illinois (“Chicago facility”), including all teachers, dean of discipline, dean of graduation, director of social work services, paraprofessionals, administrative assistants, and security specialists. The parties have stipulated that the teachers and director of social work³ are professional employees pursuant to Section 2(12) of the Act and that the paraprofessionals, dean of discipline, dean of graduation, administrative assistants, and security specialists are non-professional employees. The parties

¹ Post-hearing, the Regional Director approved the parties’ stipulation to allow telephonic witness testimony and agreement to be bound by it.

² Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer’s rulings made at the hearing are free from prejudicial error and are affirmed.
- b. 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.
- c. Petitioner is a labor organization within the meaning of the Act.
- d. Petitioner seeks to represent certain employees of the Employer in the unit described in the instant petition, but the Employer declines to recognize Petitioner as the collective-bargaining representative of those employees.
- e. There is no collective-bargaining agreement covering any of the employees in the voting group sought in this petition and the parties do not contend there is any contract bar to this proceeding.
- f. 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.

³ The parties stipulated that the Employer does not employ any individuals in the classification of social worker.

also stipulated that the teachers and paraprofessionals are appropriately included in the petitioned-for unit, that a professional voting group should include teachers, and that a non-professional voting group should include paraprofessionals.

The only issue in dispute in this proceeding is whether the security specialists (SSs) who would be included in a nonprofessional voting group are guards as defined by Section 9(b)(3) of the Act.⁴ The Employer seeks to exclude the SSs from the unit as guards, claiming that they enforce rules to protect the safety of persons on the Employer's premises as well as to protect the property of the Employer. Petitioner argues that the SSs do not perform guard duties as defined by Section 9(b)(3) and should be included as nonprofessional employees in the petitioned-for unit.

II. DECISION

As explained below, based on the record and relevant Board law, I find that the Employer has met its burden of establishing that the SSs are guards within the meaning of Section 9(b)(3) and should not be included in the nonprofessional voting group of the petitioned-for unit. Accordingly, I direct an election in the following appropriate bargaining units:

VOTING GROUP – UNIT A (NONPROFESSIONAL UNIT)

Included: All full-time and regular part-time paraprofessionals employed by the Employer at its facility located at 8255 S. Houston Ave., Chicago, Illinois.

Excluded:⁵ All security specialists, principal, assistant principal, senior director of finance, director of development and programs, director of specialized services, accountant, director of student recruitment, director of operations, director of safety and culture, director of college and career pathways, lunch room staff, food service manager, custodians, building engineers, confidential employees, managerial employees, guards and supervisors as defined by the Act.

Others permitted to vote: The following classifications are neither included nor excluded from the appropriate collective-bargaining unit. They may vote in the election subject to challenge and their status can be determined subsequently as appropriate under Board law, including through agreement of the parties, the challenged-ballot procedure, or a unit clarification petition: dean of discipline, dean of graduation, and administrative assistants.

⁴ During the hearing the Employer presented an offer of proof arguing that the director of social work should be excluded from the unit as a managerial employee and statutory supervisor; the dean of graduation should be excluded as a managerial employee; the administrative assistant should be excluded as a confidential employee; and the SSs and dean of discipline should be excluded as guards under Section 9(b)(3); and that none of these employees share any community of interest with the teachers and paraprofessionals whom the Employer agrees are properly included in the unit. I accepted the Employer's offer of proof and evidence as to the issue of whether the SSs are guards within the meaning of the Act. Evidence regarding the other issues was not allowed, and the employees at issue are being allowed to vote subject to challenged-ballot procedure consistent with this Decision.

⁵ Besides the security specialists, the parties stipulated that any unit found appropriate should exclude these employees.

VOTING GROUP – UNIT B (PROFESSIONAL UNIT)

Included: All full-time and regular part-time teachers employed by the Employer at its facility located at 8255 S. Houston Ave., Chicago, Illinois.

Excluded: All security specialists, principal, assistant principal, senior director of finance, director of development and programs, director of specialized services, accountant, director of student recruitment, director of operations, director of safety and culture, director of college and career pathways, lunch room staff, food service manager, custodians, building engineers, confidential employees, managerial employees, guards and supervisors as defined by the Act.

Others permitted to vote: The following classifications are neither included nor excluded from the appropriate collective-bargaining unit. They may vote in the election subject to challenge and their status can be determined subsequently as appropriate under Board law, including through agreement of the parties, the challenged-ballot procedure, or a unit clarification petition: director of social work.

III. STATEMENT OF FACTS

The Employer is a not-for-profit corporation engaged in business as a charter school. According to the Employer's website, which I take administrative notice of, it has provided educational services to low-income African American and Latino students in South Chicago since 2009. The Employer operates a three-story building of classrooms and administrative offices overseen by a principal, assistant principal and other school administrators.

The SSs at issue in this matter provide security services and report to the Director of Safety and Culture (DSC).⁶ There is another SS not included in the petitioned-for unit who is contracted by the Employer to provide the same security services; the only difference between the three petitioned-for SSs and the contracted SS is that that contracted SS carries a handgun.⁷ The record evidence demonstrates that the dean of discipline assists the DSC in overseeing security operations. Altogether, the Employer's security team consists of the DSC, the dean of discipline,⁸ and the four SSs. The Employer does not employ or contract for any other individuals to provide security services.

The SSs work the duration of each school day, from approximately 7:45 a.m. to 3:45 p.m., Monday through Friday, with a 30-minute lunch break. While they are assigned to the same posts each day, they rotate through all posts for lunch coverage and walk their assigned

⁶ While it appears to be the position of both parties that the DSC is a supervisor within the meaning of Section 2(11) of the Act, the record is silent as to the DSC's Section 2(11) authority. The Petitioner did not petition to represent that position and both parties agreed to exclude the position from any unit found to be appropriate. Because I am finding that the SSs are not properly included in the unit, the status of the DSC need not be addressed at this time.

⁷ The parties stipulated the contracted SS is excluded from the unit.

⁸ During the hearing, it appears that a witness referred to the dean of discipline as the dean of students.

floor about every hour to ensure there are not any disruptions in the classrooms. One SS is assigned to the first-floor information desk at the main entrance and monitors all individuals who enter and exit the building; one SS is assigned to the second floor hallway to monitor student and classroom activities and maintain order; and two SSs, including the contracted SS, are assigned to the third floor hallway to monitor student and classroom activities and maintain order. The teachers also assist in monitoring the hallways during passing periods. The three SSs in question do not carry any weapons on them while the contracted SS, as noted, carries a handgun.

The SSs monitor four accesses to the building: the front/main entrance, a locked back door, and two locked side doors. All doors are equipped with alarms. The SSs have keys to the building with key fobs to disable alarms on their own. While the principal, assistant principal, Director of Operations and other staff also have keys and/or key fobs, the record evidence shows that the SSs' have access to more areas within the facility than most other non-managerial staff.

At the front/main entrance, there is a metal detector and x-ray machine. The SS stationed there is principally responsible for screening all students and visitors who enter the building as well as their backpacks and other possessions.⁹ The SS uses a hand wand when necessary for additional screening. All visitors must sign in and out of a logbook maintained by the front desk SS. The SS, along with the DSC and dean of discipline, also monitors footage from surveillance cameras stationed throughout the interior and exterior of the building via a main monitor located at the front desk. Additional monitors are located in the offices of the principal and dean of discipline. While the record shows that sometimes in the morning the social work interns and/or Director of Social Work assist the front desk SS in monitoring students as they enter the building, the purpose for their presence appears to be related to non-safety reasons such as a student in need of late pass or having a crisis.

The entire security team, including SSs, carry radios for communication purposes when they are on duty so that they can be reached at any time. The radios are used to contact and communicate between the security team and management when incidents occur, such as a fight between students, or an unauthorized entrance or exit from a locked door. The principal, assistant principal, Director of Operations and maintenance staff also carry radios.¹⁰ When these types of incidents occur, the SSs are expected to assist in getting the situation under control by calling for outside assistance, if necessary, investigating the situation, and writing an incident report. When a call for law enforcement has been made regarding student misconduct, the SSs are responsible for escorting students to a "holding" room and monitoring them while waiting for police support to arrive. SSs are also the point of contact for first responders who have been called to the school by providing them information and directing them to the administrative offices.

Per their job description, the overall responsibility of the SSs is to ensure a safe environment especially during unstructured school times including passing and lunch periods,

⁹ The record is silent as to whether school staff is required to undergo daily scanning procedures other than the general requirement that everyone who enters the building is supposed to walk through the metal detector.

¹⁰ The maintenance employees' radios are set to a different channel/frequency than the others who carry radios. Additionally, approximately three paraprofessionals who work with special needs students also carry radios for the limited purpose of scheduling and attending school meetings throughout the day.

and safe passage to and from school. In this regard, the SSs monitor student behavior, enforce school rules and relay information regarding security issues. Such school rules include the Student Code of Conduct (SCC) and the parent and student handbook which address acts of student misconduct that can form the basis for disciplinary action against a student.¹¹ Student misconduct addressed in the SCC includes incidents such as attendance and tardy violations, eating outside the lunchroom, skipping class, improper use of technology, smoking, excessive swearing, bullying, fighting, vandalism, and possession of drugs and weapons. Disciplinary action for student misconduct ranges from student demerits and detention, to parent conference and out-of-school suspension, to expulsion. While all staff are responsible for reporting misconduct to the security team, it is mostly SS and teachers who are involved in reporting student misconduct. SSs report misconduct by writing out an incident report¹² and submitting it to the DSC or dean of discipline for further investigation. Additionally, incidents involving property damage or theft are reported to the security team as well as the Director of Operations.

Teacher reports of student misconduct may include a request to have a student removed from the classroom. This is called a “referral.” In the case of a referral, the SSs assist in removing the student from the classroom. The SSs are trained by the Employer to use non-physical conflict resolution practices such as verbal redirection in handling unruly and misbehaving students as set forth in the Employer’s “Behavior and Management System” policy.¹³ However, there are times when the SSs’ intervention in referrals and other incidents must be physical, such as when breaking up a fight between students. The SSs are also responsible for gathering information from the teacher about the misconduct, including a referral report, which the SS submits to the DSC who decides appropriate disciplinary consequences in conjunction with school administrators.

The Employer maintains an emergency procedures policy providing for lockdown, shelter-in-place and evacuation procedures to protect students and staff at the school. Although there has not been an actual lockdown at the school in over six years, the lockdown procedure provides and the record evidence demonstrates that the security team, in conjunction with the principal and assistant principal, are responsible for announcing a lockdown and enforcing one by directing students and staff to designated secured areas. The security team also participates in scheduled lockdown drills held periodically at the school. There is no record evidence that any shelter-in-place or evacuation incidents have occurred at the school.

At dismissal time, the SSs assume exterior posts outside the school to ensure that students are dismissing orderly and safely without congregating. The school is located in a neighborhood known for gang activity and shootings. Many students return home by bus or train; thus, SSs are stationed near bus stops and the train station (located about one and one-half blocks from the school) to ensure the students’ safety in getting from school to their mode of transportation.

¹¹ The SCC is incorporated into the parent and student handbook.

¹² While there are three redacted incident reports contained in the record, it is impossible to tell who created them, or to whom they were directed and how they were further processed.

¹³ In this regard, the Employer uses a technique called the “peace circle” (formerly known as conflict resolution) which encourage students to gather regularly and talk things out in a calm proactive manner rather than in a reactive manner. While these peace circles with students are regularly facilitated by the DSC and dean of discipline, SSs also facilitate them on an as-needed basis.

The SSs are not required to have a background in law enforcement although, according to their job description, previous work experience in safety and security is desired. SSs are required to have a high school diploma, and like all employees, they are required to pass background and criminal history checks. The Employer does not provide any formal or external training to the SSs related to their security duties. However, they have participated in some professional development classes and workshops, known as “PDs,” organized by the DSC. The SSs wear t-shirts identifying them as “safety team”. They do not wear any other insignia such as identification badges. At least one of the SSs also works at the school as the assistant athletic director and boys’ baseball coach.

IV. BOARD LAW

Section 9(b)(3) of the Act prohibits the Board from finding a unit appropriate for the purpose of collective bargaining if it includes, together with other employees, guards that enforce rules against employees and others designed to protect the employer’s property or for the protection and safety of those on the employer’s premises. This section also prohibits the Board from certifying a union as the collective bargaining representative of employees in a bargaining unit of guards if the union admits non-guards to its membership. The Petitioner represents and admits non-guards into its membership. Thus, the only issue is whether the Employer’s SSs are guards under Section 9(b)(3).

In determining whether employees are guards the Board looks at factors “typically associated with traditional police and plant security functions, such as the enforcement of rules directed at other employees; the possession of authority to compel compliance with those rules; training in security procedures; weapons training and possession; participation in security rounds or patrols; the monitor and control of access to the employer’s premises; and wearing guard-type uniforms or displaying other indicia of guard status.” *Boeing Co.*, 328 NLRB 128, 130 (1999). The Board has found that employees are statutory guards where they, for instance, wear a distinctive uniform and identification badge, carry a two-way radio to stay in constant communication with one another, and regularly enforce rules against patrons and staff in order to protect the employer’s facility. *Madison Square Garden*, 333 NLRB 643, 645 (2001). The definition of guards is not limited to employees who protect just against conduct of fellow employees, but rather references rules enforced “against employees *and other persons.*” (emphasis added). See, *American District Telegraph Co.*, 160 NLRB 1130, 1136 (1960). Under longstanding Board law, individuals employed for security purposes to protect the safety of persons on the employer’s premises and to keep unauthorized persons off the property are guards within the meaning of Section 9(b)(3). *A.W. Schlesinger Geriatric Center, Inc.*, 267 NLRB 1363, 1364 (1983).

Although the Board uses the phrase “traditional police and plant security functions,” employees need not wear uniforms, carry weapons, or receive special training to be considered guards. Nor does indicia of guard status such as the use of a guard/security related job title alone confer guard status. *Ford Motor Co.*, 116 NLRB 1995, 1997 (1956). Rather, the Board has found employees to be guards if they have a significant, versus minor or incidental, role in monitoring and controlling access to the employer’s premises or property, even if they do not have authority to independently enforce the rules. *Rhode Island Hospital*, 313 NLRB 343, 347 (1993) (security officers, traffic control guards, and security dispatchers were statutory guards

where they protected the employer's property and the safety of persons on the property by regularly checking the premises and were administratively placed within the security department). In *Wackenhut Corporation*, 196 NLRB 278, 278-279 (1972), the Board found employees to be guards even where they "do not themselves have the power of police to ultimately determine and compel compliance by violators," as long as they possess and exercise responsibility to observe and report infractions. See also, *Wright Memorial Hospital*, 255 NLRB 1319, 1320 (1980) (ambulance department employees were guards where they made regular hospital rounds searching for fire, theft, vandalism, unauthorized personnel, and to make sure doors were locked, but could only report detected infractions to the department head); *Crossroads Community Correctional Center*, 308 NLRB 558, 561 (1992) (employee employed as a correctional counselor was a guard because in monitoring entrance to the employer's work release facility, and searching visitors and residents for contraband, the employee enforced against employees, residents, and other persons rules to protect the safety of persons on the employer's premises and keep unauthorized persons off the premises). Thus, employees are guards if they are "directly responsible for being alert to *any* incident, situation, or problem which needs responsive action and for reporting such incidents to the proper authorities." *Rhode Island Hospital*, above at 347.

V. APPLICATION OF BOARD LAW TO THIS CASE

At the outset, I note that the SSs wear distinctive t-shirts that identify them as part of the security team and distinguish them from non-security employees. They also carry radios to stay in constant communication with one another and their superiors to report on any incidents of student misconduct or suspicious activities in and around the school. Although the SSs in question do not carry weapons or are required to undergo extensive training as guards, this does not prevent them from being found to be statutory guards. See, *Allen Services Company Inc.*, 314 NLRB 1060, 1062 (1994).

As part of the security team, the SSs regularly perform duties solely for safety and security purposes. Their primary duties include monitoring the front entrance and screening all students and visitors on a daily basis; monitoring surveillance cameras throughout the facility and ensuring that all doors within the facility are locked and secured and that unauthorized individuals do not enter the facility; monitoring students within the facility during each school day; and monitoring students outside of the facility to ensure their orderly dismissal from school and safe travel home. Regarding the daily screening process at the school entrance, the front desk SS is in charge of the metal detector and x-ray machine and screens all students and visitors entering the school and their possessions; he/she uses a hand wand for further screening purposes if necessary. In performing these screening activities, the SS might discover SCC infractions such as a student's possession of contraband. In monitoring students and classroom activities within the school, the SSs stationed on the second and third floors of the school are positioned there for the overall purpose of detecting safety and security violations, including SCC infractions, and maintaining order. This includes, for example, breaking up fights involving students. While the SSs are trained by the Employer to use non-physical conflict resolution practices, there are times when their intervention must be physical. Regarding the surveillance cameras and doors, the SSs have keys to secure all exterior locked doors and are regularly charged with controlling the ingress and egress of all individuals at the school. Because of the

SSs' control of ingress and egress and observation of persons entering and leaving the Employer's premises, the SSs are far more likely to report security incidents than other non-security employees of the Employer who work in other job classifications. In dismissing students at the end of the day, the SSs are stationed at exterior posts outside of the school to ensure that the students are dismissed in an orderly manner and make their way safely to their mode of transportation to return home. In this regard, the SSs perform grounds patrols from the school to the train station.

There are no other security personnel guarding the Employer's facilities. The above described duties performed by the SSs demonstrate that they are explicitly charged with making rounds inside and outside the school to specifically to check for security issues such as unlocked doors, unauthorized people, unruly students, contraband, etc. Their role in monitoring and controlling access to the Employer's premises and property, even if they do not have authority to independently enforce the rules, confers guard status upon them based on their responsibility for being alert to any incident, situation, or problem and for reporting such incidents to the proper authorities. See, *Rhode Island Hospital*, above at 347. In view of their duties, the SSs serve as essential links in the Employer's effort to protect its students, employees, and visitors, and the property of those persons.

All staff are required to report incidents of student misconduct as well as property damage and theft to the security team. However, it is mostly SSs and teachers who are involved in reporting incidents of student misconduct against the SCC. In this regard, the SSs are specifically charged with enforcing the Employer's rules against students. The SSs regularly document incidents of student misconduct and infractions of the SCC by completing written incident reports which are submitted to the DSC or dean of discipline. If the incident/infraction necessitates calling for law enforcement at the school, as in the case of a fight involving students or a student found in possession of contraband, it is the SSs who may call for law enforcement, assist in getting the situation under control and are responsible for escorting students to a "holding" room and monitoring them while waiting for police support to arrive.¹⁴ The SSs are required to write an incident report over any such matter, which is submitted to the dean of discipline and DSC for further investigation. The SSs may also be involved in further investigating the situation. Teachers involve SSs in all incidents involving a student referral, or removal, from a classroom. In this regard, it is the SSs who assist in physically removing the student from the classroom. They also gather misconduct information from the teacher, including a referral report, which they submit to the DSC who decides the appropriate disciplinary consequences for the student. Although the SSs do not possess authority to take independent action concerning student acts of misconduct and the dean of discipline and DSC are largely responsible for further investigation and all disciplinary consequences once reported by the SSs, the Board has long held that guard status is not dependent on the ability to take independent action. Rather, "it is sufficient that they possess and exercise responsibility to observe and report infractions." *Supreme Sugar Company, Inc.*, 258 NLRB 243, 245 (1981) (other citations omitted). That these SSs possess and exercise responsibility to observe and report infractions is an essential step in the procedure for enforcement of the Employer's rules. See, *A.W. Schlesinger Geriatric Center, Inc.*, above at 1364. The SSs' reporting duties with

¹⁴ I note that the SSs are also the point of contact for first responders summoned to the school in directing them to school administrators.

regard to reporting student misconduct and enforcing the SCC are undoubtedly for security purposes and in performing such duties they enforce rules to protect the Employer's property and for the protection and safety of those on the Employer's premises within the meaning of Section 9(b)(3).

In light of the above, it is concluded that the SSs are employed as guards within the meaning of Section 9(b)(3) of the Act. They constitute an essential part of the Employer's security procedures for protecting its facility, students, staff and visitors. In carrying out the Employer's security procedures, they regularly perform security functions which requires them to enforce rules against others in order to protect the Employer's facility as well its students, staff and visitors while at the facility. As Petitioner represents employees not considered to be statutory guards it is not qualified under Section 9(b)(3) to represent the employees sought by the petition.

VI. CONCLUSION¹⁵

Based on the entire record in this matter and in accordance with the discussion above, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time teachers and paraprofessionals.

Excluded: All security specialists, principal, assistant principal, senior director of finance, director of development and programs, director of specialized services, accountant, director of student recruitment, director of operations, director of safety and culture, director of college and career pathways, lunch room staff, food service manager, custodians, building engineers, confidential employees, managerial employees, guards and supervisors as defined by the Act.

The unit set out above includes professional and nonprofessional employees. However, the Board is prohibited by Section 9(b)(1) of the Act from including professional employees in a unit with nonprofessional employees unless a majority of the professional employees vote for inclusion in such a unit. Accordingly, the desires of the professional employees must be ascertained as to inclusion in a unit with nonprofessional employees.

¹⁵ Although the Employer never raised such issues during the hearing, it states in its Statement of Position contained in the Board Exhibits in this matter: "...Region 13's Current R Case Rules (1) violate the First Amendment to the United States Constitution by compelling speech in the requirement that employers post a notice of the petition; (2) fail to meet the requirements of the Administrative Procedures Act ("APA"); (3) are arbitrary and capricious in violation of the APA; (4) violate the APA by the National Labor Relations Board ("Board") not considering offsetting costs to the New R Case Rules; (5) require mandatory disclosure of employees' personal information which disregard substantial privacy concerns and place an unreasonable burden on employers to produce expanded employee information in a short timeframe; (6) violate Section 3(b) and 9(b) and (c) of the National Labor Relations Act ("Act") by deferring voter eligibility issues until after an election; (7) violate Section 8(c) of the Act by inhibiting robust debate in labor disputes; and (8) impermissibly transform all election into the expedited elections called for by Section 8(b)(7)(C) of the Act." I find that the validity of the Board's election rules do not go to any question concerning representation and are not proper for litigation in a pre-election hearing context.

Therefore, I shall direct separate elections in the following voting groups:

VOTING GROUP – UNIT A (NONPROFESSIONAL UNIT)

All full-time and regular part-time paraprofessionals employed by the Employer at its facility located at 8255 S. Houston Ave., Chicago, Illinois; but excluding all security specialists, principal, assistant principal, senior director of finance, director of development and programs, director of specialized services, accountant, director of student recruitment, director of operations, director of safety and culture, director of college and career pathways, lunch room staff, food service manager, custodians, building engineers, confidential employees, managerial employees, guards and supervisors as defined by the Act.

Others permitted to vote: The following classifications are neither included nor excluded from the appropriate collective-bargaining unit. They may vote in the election subject to challenge and their status can be determined subsequently as appropriate under Board law, including through agreement of the parties, the challenged-ballot procedure, or a unit clarification petition: dean of discipline, dean of graduation, and administrative assistants.

VOTING GROUP – UNIT B (PROFESSIONAL UNIT)

All full-time and regular part-time teachers employed by the Employer at its facility located at 8255 S. Houston Ave., Chicago, Illinois; but excluding all security specialists, principal, assistant principal, senior director of finance, director of development and programs, director of specialized services, accountant, director of student recruitment, director of operations, director of safety and culture, director of college and career pathways, lunch room staff, food service manager, custodians, building engineers, confidential employees, managerial employees, guards and supervisors as defined by the Act.

Others permitted to vote: The following classifications are neither included nor excluded from the appropriate collective-bargaining unit. They may vote in the election subject to challenge and their status can be determined subsequently as appropriate under Board law, including through agreement of the parties, the challenged-ballot procedure, or a unit clarification petition: director of social work.

The nonprofessional employees (Voting Group A) will be polled to determine whether they wish to be represented by the Petitioner. The professional employees (Voting Group B) will be asked the following two questions on their ballot:

1. Do you desire to be included with nonprofessional employees in a single unit for the purposes of collective bargaining?
2. Do you desire to be represented for the purposes of collective bargaining by Chicago Teachers Union, Local 1, AFT, IFT, AFL-CIO?

If a majority of the professional employees (Voting Group B) vote “Yes” to the first question, indicating their desire to be included in a unit with non-professional employees, they will be so included. Their votes on the second question then will be counted together with the votes of the nonprofessional employees (Voting Group A) to determine whether the employees in the overall unit wish to be represented by the Petitioner. If, on the other hand, a majority of the professional employees vote against inclusion, they will not be included with the nonprofessional employees. Their votes on the second question will be separately counted to determine whether they wish to be represented by the Petitioner in a separate unit.

Thus, the unit determination is based, in part, upon the results of the election among the professional employees. However, I make the following findings in regard to the appropriate unit:

If a majority of the professional employees vote for inclusion in the unit with nonprofessional employees, I find the following single unit will 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 teachers and paraprofessionals employed by the Employer at its facility located at 8255 S. Houston Ave., Chicago, Illinois; but excluding all security specialists, principal, assistant principal, senior director of finance, director of development and programs, director of specialized services, accountant, director of student recruitment, director of operations, director of safety and culture, director of college and career pathways, lunch room staff, food service manager, custodians, building engineers, confidential employees, managerial employees, guards and supervisors as defined by the Act..

If a majority of the professional employees do not vote for inclusion in the unit with nonprofessional employees, I find the following two groups of employees will constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

UNIT A (NONPROFESSIONAL UNIT):

All full-time and regular part-time paraprofessionals employed by the Employer at its facility located at 8255 S. Houston Ave., Chicago, Illinois; but excluding all security specialists, principal, assistant principal, senior director of finance, director of development and programs, director of specialized services, accountant, director of student recruitment, director of operations,

director of safety and culture, director of college and career pathways, lunch room staff, food service manager, custodians, building engineers, confidential employees, managerial employees, guards and supervisors as defined by the Act.

UNIT B (PROFESSIONAL UNIT):

All full-time and regular part-time teachers employed by the Employer at its facility located at 8255 S. Houston Ave., Chicago, Illinois; but excluding all security specialists, principal, assistant principal, senior director of finance, director of development and programs, director of specialized services, accountant, director of student recruitment, director of operations, director of safety and culture, director of college and career pathways, lunch room staff, food service manager, custodians, building engineers, confidential employees, managerial employees, guards and supervisors as defined by the Act.

Those eligible shall vote whether they wish to be represented for the purposes of collective bargaining by Chicago Teachers Union, Local 1, AFT, IFT, AFL-CIO.

Those eligible shall vote as set forth in the attached Direction of Election.

VII. 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 Chicago Teachers Union, Local 1, AFT, IFT, AFL-CIO.

A. Election Details

I direct that the election be conducted by mail ballot. Since pursuant to the Board's Rules and Regulations, Section 102.66(g)(1), the type of election is not a litigable issue, my rationale for directing a mail ballot election is set forth in a separate letter directing the mail ballot election.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit at 5:00 p.m. on **Friday, May 29, 2020**, from the National Labor Relations Board, Region 13, 219 S. Dearborn Street, Suite 808, Chicago, IL 60604. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote by mail and do not receive a ballot in the mail by **Friday, June 5, 2020**, should communicate immediately with the National Labor Relations Board by either calling the Region 13 Office at (312) 353-7570 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Ballots will be due on **Wednesday, June 24, 2020**. All ballots will be commingled and counted on **Wednesday, July 1, 2020** at 3:00 p.m. In order to be valid and counted, the returned ballots must be received in the Regional Office prior to the counting of the ballots.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **April 30, 2020**, 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.

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classification whose eligibility remains unresolved as specified above and in the Notice of Election.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

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

To be timely filed and served, the list must be *received* by the regional director and the parties by **May 20, 2020**. 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.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

The list shall be filed electronically with the Region and, if feasible, served electronically on the other parties named in this decision. The list can be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.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 non-posting of notices if it is responsible for the non-posting, and likewise shall be estopped from objecting to the non-distribution of notices if it is responsible for the non-distribution.

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.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-

Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

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

Dated at Chicago, Illinois this 18th day of May 2020.

/s/ Peter Sung Ohr

Peter Sung Ohr, Regional Director
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