

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12**

MIAMI NEW TIMES, LLC

Employer

and

Case 12-RC-255122

**THE NEWSGUILD-COMMUNICATIONS
WORKERS OF AMERICA, AFL-CIO**

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

On January 24, 2020, The NewsGuild-Communications Workers of America, AFL-CIO (the Petitioner) filed a representation petition in the above case with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act, seeking to represent a unit of approximately 10 full-time and regular part-time news (editorial) department employees employed by Miami New Times, LLC (the Employer), excluding all other employees, guards and supervisors as defined by the Act.¹ A hearing was held on February 10 through 12, 2020. The issues before me are whether the editorial operations manager, news editor (Broward), food editor, arts and music editor, and associate web editor are supervisors within the meaning of Section 2(11) of the Act and/or managerial employees, as the Employer contends, or belong in

¹ The parties stipulated, and I find, based on the following stipulated facts, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. The Employer, a Delaware limited liability corporation, is engaged in the business of operating a weekly newspaper and online news media company. During the 12-month period ending January 21, 2020, in conducting its operations described above, the Employer has derived gross revenues in excess of \$200,000 and has purchased and received at its Miami, Florida facility goods valued in excess of \$50,000 directly from points outside of the State of Florida. The parties further stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

the petitioned-for unit, as the Petitioner contends; and whether the layout editor should be excluded from the unit because of a lack of community of interest with the employees in the unit, as the Employer contends, or included in the unit, as the Petitioner contends. It is undisputed that three staff writers and the clubs listings editor belong in the unit.

The parties were not permitted to file post-hearing briefs. They were given the opportunity make oral arguments and submit written positions at the hearing, and both parties availed themselves of those opportunities. I have carefully considered the parties' positions.

As explained below, based on the record and relevant Board law, I find that the petitioned-for unit, including the layout editor, is an appropriate unit, and that the Employer has failed to meet its burden of establishing that the editorial operations manager, news editor (Broward), food editor, arts and music editor, and/or associate web editor are supervisors within the meaning of Section 2(11) of the Act or managerial employees. Accordingly, I have concluded that an appropriate unit includes all full-time and regular part-time editorial department employees, including the editorial operations manager, news editor (Broward), food editor, arts and music editor, and associate editor, lay-out editor, clubs listings editor and staff writers employed by the Employer.

I. FACTS

A. The Employer's Organizational Structure and Office Layout

The Employer operates two online news media websites, www.miaminewtimes.com and www.browardpalmbeach.com, and publishes a weekly print newspaper, the Miami New Times, containing news and cultural stories from its facility in Miami, Florida. A selection of the online

content is included in the weekly print issue. Certain stories are published on both the Miami New Times and Broward Palm Beach New Times websites.²

The Employer is one of six publishing properties owned and operated by Voice Media Group (VMG). Christine Brennan is the Executive Director of VMG.³ She is responsible for overseeing the editorial operations of the six publishing properties, including the Employer. Her office is in Denver, Colorado and she visits the Employer's facility in Miami approximately twice a year.

The Employer's editorial department includes the Editor-in-Chief, editors, and staff writers. The editors group is comprised of the editorial operations manager, a food editor, a Miami news editor, a Broward news editor, an arts & music editor, an associate web editor, a layout editor and a clubs listings editor. There are three staff writers. All employees except the Broward news editor work partly from the Employer's Miami facility and partly from their respective homes. The Broward news editor usually works from her home, but also goes to the Miami office for weekly meetings. Most stories are created using a content management system called Foundation.

In the middle of the Miami office there are cubicles for the staff writers and the layout editor. Around that area, to the sides, are the individual offices of the associate web editor, news editor (Miami), Editor-in-Chief, editorial operations manager, and the arts and music editor, who shares his office with a freelance arts director.

² The areas served by the Employer include Miami-Dade, Broward, and Palm Beach Counties, Florida, all in southeast Florida, along the Atlantic Coast. Broward County, Florida is directly north of and contiguous to Miami-Dade County, and Palm Beach County is directly north of and contiguous to Broward County. The driving distance from Miami to Fort Lauderdale, the main city in Broward County, is approximately 27 miles, and the driving distance from Miami to West Palm Beach, the main city in Palm Beach County, is approximately 72 miles.

³ Other publications of VMG include Denver Westword, the Dallas Observer, the Houston Press, and Phoenix New Times.

B. Employees' Job Duties and Functional Integration

i. Editor-in-Chief

The editorial operations and the publishing of the Employer's publication is overseen by the interim Editor-in-Chief, Tom Finkel.⁴ Finkel has been in that position since September 2019. He previously worked at Miami New Times in various capacities from 1989 through 1997. Finkel oversees all of the Employer's editorial department employees and is responsible for the quality and performance of the publication. He reports directly to VMG Executive Director Christine Brennan.

Finkel works remotely from his home in New Jersey, and commutes to Miami a couple of times a month to meet with the staff. It appears that when Finkel visits Miami he works in the office on Tuesday through Thursday. Finkel holds a weekly meeting of the editors, followed by a weekly meeting with the staff news writers. During the editors meeting, all "vertical editors" (such as the arts and music editor and food editor), including the Broward editor and the editorial operations manager (akin to a copy editor), talk about office housekeeping matters, upcoming plans, and articles that have been worked on during the week. They also discuss web traffic and items that need improvement. Finkel has asked editorial operations manager Nadine DeMarco to share copy editing notes about usage and grammar with the rest staff and to discuss common errors she finds with the other editors during the editors meeting. The writers meeting is mostly run by the news editor (Miami) Jessica Lipscomb.⁵ In the writers meeting associate web editor

⁴ The parties stipulated, and I find, that the Editor-in-Chief is a supervisor within the meaning of Section 2(11) of the Act.

⁵ The parties stipulated, and I find, that the news editor-(Miami) is a supervisor within the meaning of Section 2(11) of the Act.

Jose Duran talks to the staff about web traffic, and then news editor (Miami) Lipscomb takes the lead and discusses story ideas.

On Thursdays, Editor-in-Chief Finkel meets with associate web editor Duran and arts and music editor Zach Schlein to discuss the weekly activities calendar, “Night and Day.” The clubs listings editor, Olivia McAuley, who works as a freelance contributor to “Night and Day, attends this meeting in order to “pitch” her story ideas.

Finkel testified that he considers the editorial operations manager, associate web editor, arts & music editor, Broward news editor, and food editor to be managers, because they manage other people and/or manage the Employer’s product in a way that puts them between the creator of the product and the reader.

ii. Vertical, or section, editors

Vertical, or section, editors are responsible for the content within a subject area of the publication. In a print newspaper, they are referred to as section editors. In web-based news media, which now appears to be the Employer’s primary form of publication, these editors are referred to as vertical editors, and subject areas are referred to as verticals. It is the job of the vertical editors to determine which stories will resonate with readers and draw readers to the website and the newspaper. Currently, the Employer has two news verticals (Miami and Broward), a food and drink vertical, an arts vertical, and a music vertical. The food and news verticals have their own editors. The music and arts verticals are combined under one vertical editor. The Broward news editor is responsible for all verticals for the Broward website.

Editor-in-Chief Finkel suggests stories for every vertical. He is more involved with the news verticals than he is with the other verticals because news stories are likely to be more in-depth than stories for the other verticals.

The vertical editors discuss ideas with the writers to make sure both are thinking about the story the same way, what is known as the angle of the story. The vertical editors apply their analytical skills to determine if the structure of the story is logical and whether the reader will be able to follow the story. They make sure the story is accurate and meets journalistic standards, and finally they apply aesthetic standards and write a headline that is effective and will grab the reader's attention. The process of editing is always done before a story is published, but copy editing may occur after an article is published, especially in a breaking news situation. The vertical editors may post stories without authorization from the Editor-in-Chief, though the Editor-in-Chief may provide feedback after the publication of stories posted without his authorization.

Vertical editors may write their own pieces, but the preference is to have different writers contribute to the vertical to have a variety of voices and perspectives, and for the vertical editors to be good editors instead of writers. The vertical editors have a budget to contract freelance writers. Freelance writers must sign a contract prepared by VMG in-house counsel. The budget for freelancers is set by VMG Executive Director Brennan, in concert with interim Editor-in-Chief Finkel. The way the budget is used is carefully tracked. The vertical editors receive a weekly budget, and while they may exceed the weekly budget during a given week, their spending for the calendar quarter must be within budget. The food vertical also has a budget for food expenses. Any spending over the established budgets must be discussed in advance with Editor-in-Chief Finkel.

Vertical editors have posting goals or targets for the number of articles to be published. The posting goals are set by VMG corporate officials, but there is some flexibility if they are not

met, as long as web traffic goals are met. If an editor underperformed, Editor-in-Chief Finkel and VMG Executive Director Brennan, would handle the matter.

iii. News editor (Miami)⁶

News is the core business of the Employer, and the largest vertical on the Employer's websites. Three full-time staff writers report to and are assigned work by the Miami news editor, Jessica Lipscomb. The Miami news editor also has a weekly budget for freelance writers to supplement the work of the staff writers. Staff writers have a quota of four news posts a week, and a total of about 12 to 15 news articles a week appear in the vertical. The staff writers earn salaries ranging from \$1,576.93 to \$1,653.85 biweekly (approximately \$19.71 to \$20.67 per hour). Lipscomb holds a daily meeting with the staff writers to find out their schedules for the day, what they are working on, and what they are considering as stories. Although staff writers may present their ideas during meetings with the editors, they cannot choose their own stories to write. News editor Lipscomb assigns stories to be written by the staff writers.

The articles prepared by the staff writers need to be reviewed and approved by Lipscomb before being published. Lipscomb does not have total freedom to determine what gets published because she responds to Editor-in-Chief Finkel. In addition, certain types of articles, such as those involving accusations of sexual misconduct, which are considered sensitive and risky, must be reviewed by corporate lawyers before publication. Many of the stories that Miami news editor Lipscomb edits are candidates to get feature treatment.

The news editor budget covers for freelancers for general news and marijuana news. The staff writers primarily write general news stories. Editor-in-Chief Finkel considers marijuana

⁶ The parties stipulated, and I find, that the news editor (Miami) is a supervisor under Section 2(11) of the Act and is excluded from the unit on that basis.

coverage a priority because it is an under-covered industry that attracts readership to the Employer's publications.

iv. Food editor

The food editor, Laine Doss, determines the scope and substance of the food and drink content published by the Employer. She is a full-time salaried employee who works partly from home, and earns \$1,629.31 biweekly (approximately \$20.37 per hour). The food editor manages a budget to recruit freelancers to write restaurant reviews and other stories about food and beverages. As noted above, the food editor is also provided with a budget for food expenses. Freelancers may "pitch" their own ideas to the food editor, or she may select a specific idea she wants to be developed. She also selects the website articles from the vertical that will be published in the weekly print newspaper, except that a monthly piece from a regular freelance restaurant critic is always included in the print newspaper. The target is to post around 15 food and beverage articles per week on the website. There are usually only 12 to 13 food and beverage articles posted per week, but because those articles have met the Employer's website traffic goals, the food editor's performance has been considered satisfactory and she has not been reprimanded or otherwise disciplined. If she were to receive any type of reprimand it would be from Editor-in-Chief Finkel. The food editor does not consult with Finkel about ideas for food stories, but as referenced above, he may provide such ideas when the editors brainstorm about ideas for stories at the weekly meetings of editors held by Finkel. Otherwise, Editor-in-Chief Finkel would only consult with food editor Doss on stories that have a larger cultural news component to them or the story is expected to be featured.

Although the food editor decides what to pay freelancers, she must do so within set industry ranges, and in order to deviate from those ranges she must discuss the matter with Editor-in-Chief Finkel. For example, there is a \$300 rate per restaurant review.

Food editor Doss also writes her own stories for the food vertical, which constitute about 30 percent of the food vertical stories. Her stories are edited by Editor-in-Chief Finkel before they are published unless a story must be published without his editing because it is time sensitive, in which case Doss informs Finkel.

v. Arts and music (culture) editor

The arts and music editor (sometimes referred to as the culture editor) chooses story ideas that merit coverage in the arts and music verticals. Zach Schlein has held this position since November 4, 2019. He is a full-time salaried employee earning \$1,769.23 biweekly (approximately \$22.12 per hour). He discusses the direction of these verticals with Editor-in-Chief Finkel. For example, before the 2020 Super Bowl in Miami, the Editor-in-Chief instructed Schlein to prepare lists of the best casinos and best strip clubs, and to get a writer to cover and react to the halftime show with Shakira and Jennifer Lopez. The arts and music editor must get approval from the Editor-in-Chief to use expletives in a story, even when he believes it would enhance the impact of the story.

The Employer has a quota of about 15 articles per week for the arts vertical and 15 articles per week for the music vertical. The arts and music editor arranges with freelancers to generate content for the two verticals and manages a budget to hire freelancers. His current budget for music, set by the Employer's corporate office, is \$450 per week. It had previously been \$550 or \$500 per week. The Employer pays freelancers a set rate of \$80 for musical concert reviews, and an average of about \$50 per story for other music stories and arts stories,

but there are considerations that may justify a slightly higher or lower fee, such as the freelancer's experience and whether the freelancer is a regular contributor to the Employer. The arts and music editor chooses freelancers largely based on who is available to prepare the piece in the time frame allotted. The Employer has built relationships with a number of freelancers over the years, so often the arts and music editor does not need to interact with them other than to select them to write an article and then edit the article after receiving the freelancer's draft article. He may facilitate a freelancer's interview of a musical artist by arranging for an interview through the musician's public relations representative.

After the arts and music editor receives a draft story from a freelancer, he edits it, inserts metadata that is designed to generate website traffic for the story, and schedules the story for publication. Some stories for the arts vertical are syndicated stories provided to the Employer. Occasionally, the arts and music editor writes articles himself. He also edits the work of clubs listings editor Olivia McAuley, in her capacity as a freelancer, with respect to the preparation of the weekly "Night and Day" calendar of events published in the print newspaper. Preparation of the "Night and Day" feature appears to be fairly routine in nature and recurs weekly. It appears that Editor-in-Chief Finkel assigned the "Night and Day" work to McAuley before arts and music editor Schein was hired by the Employer.

The arts and music editor has no authority to hire, recommend for hire, discipline or recommend discipline or termination of other employees, and cannot assign work, reward or promote employees.

vi. Broward news editor

Teri Berg, the Broward news editor, is a part-time employee who works from her home, except on Tuesdays when she participates in the editors and writers meetings at the Employer's Miami facility. Berg was hired on August 13, 2019. She earns \$20.00 per hour. The Broward

news editor title is somewhat misleading because the Broward news editor is responsible for all content aimed at the Broward audience across all verticals, including news, music and food. Content is shared between the Miami and Broward websites because much of the content is relevant to both audiences, and there is little content that is unique to Broward. The Broward news editor has a quota of about 10 total stories per week. She also has a freelancer budget, and any changes to that budget must be discussed with Editor-in-Chief Finkel.

On November 19, 2019, Finkel met with Berg and advised her, among other things, that she was billing more hours than were approved and he wanted her to concentrate on a handful of stories every week to make sure the Broward website had a broad range of stories. He followed up their meeting with an email dated December 2, 2019, in which he set forth a series of guidelines, including that she should aim to make weekly assignments to freelancers to prepare posts to be edited and published with a total weekly budget of \$365, including one or two news posts at \$75 each; one arts or music post at \$50; one or two food posts at \$50 to \$65 each; one concert post at \$50, and one things to do post at \$50. The Editor-in-Chief directed that budgeted funds that were not spent in a week could not be spent in future weeks; that until further notice, Berg: is not allowed to write any news posts; may write a weekly food post that contains “a longish news item or two, plus shorter items about the Broward food scene;” and is to focus on getting freelancers up to speed with writing and reporting requirements. Apparently within these guidelines, Berg does not need Finkel’s approval to publish stories for verticals on the Broward website, unless she writes the story or the story might be viewed as controversial.

vii. Associate web editor

The primary responsibility of the associate web editor, Jose Duran, is to manage the Employer’s social media accounts on Twitter, Facebook, and Instagram, in order to promote the

articles in the online and print publications. This takes about 70 percent of Duran's work time. His other major function, which takes about 30 percent of his work time is to include metadata in the Employer's web postings for the purpose of search engine optimization (SEO), the process of maximizing the number of visitors to a website by ensuring that the site appears high on the list of results returned by search engines such as Google. Most of the traffic to the Employer's website originates from organic search, a method for entering one or several search terms as a single string of text into a search engine. The VMG corporate office sets monthly web traffic goals for the online publication of Miami New Times, which Duran works to try to meet. In addition, Duran performs miscellaneous clerical functions for editorial department staff, such as gathering and distributing copies of copy notes or story ideas submitted for reference during the discussion of upcoming stories at weekly editorial department meetings.

Jose Duran has held the associate web editor position since June 6, 2008. He is employed full-time by the Employer at the salary of \$2,040 biweekly (\$25.50 per hour). In other publications his position is referred to as the social media editor. The associate web editor title dates back to when the Employer's primary publication was the print newspaper. In March 2019, Duran worked on rehauling the "look" of the Employer's social media accounts and discussed his ideas with VMG's corporate officials.

On occasion, associate web editor Duran writes articles for the Miami New Times arts and music vertical or food vertical. Any article he writes is reviewed and edited by the editor of that vertical. He also arranges with freelance photographers to cover events that could generate web traffic to the Miami and Broward websites. After he receives the photographs, he schedules and curates the publication of photographs on the Miami and Broward websites. His budget for freelance photographers is \$150 a week, and he hires about two photographers per week and

pays them from \$50 to \$100 depending on the time required to do the job and the photographer's level of expertise. During the weekly editors meeting held on Tuesdays he shares his photo ideas to receive feedback. Duran also creates and arranges twice yearly slide shows from a compilation slides posted in the previous six months. The slide shows are posted on the Employer's websites.

The associate web editor also educates the other vertical editors on ways to optimize the metadata and constructs URLs. Editor-in-Chief Finkel is ultimately responsible for the performance of the Miami and Broward websites.

Clubs listings editor Olivia McAuley's desk is right outside Duran's office. Duran has provided guidance to McAuley with respect to her duties since she was hired, apparently on his own initiative. Clubs listings is a compilation of the schedule of performers in the area. The information entered in clubs listings is provided through a digital feed. McAuley has been employed by the Employer as its clubs listings editor since September 4, 2019, and she is paid \$14.00 per hour in that capacity. As noted above, it is undisputed that the clubs listings editor and staff writers belong in the unit. The clubs listings editor works about six hours per week in that capacity, in addition to her work as a freelancer writing for the "Night and Day" calendar that lists 15 different events taking place in the Miami area during the week, such as festivals, art shows, and classes, together with some minimal information about each event. McAuley splits the writing of "Night and Day" with another freelancer. One of them writes seven of the events, and the other writes eight of the events. As noted above, arts and music editor Schlein edits "Night and Day."

In about 2016, the VMG Director of Web Content left the company, and VMG determined not to replace that person because the company was transitioning from print based to

web based and the entire staffs of the publications were to fully absorb the web duties. On July 5, 2016, Duran was assigned certain duties by VMG corporate management, including hiring, training and helping to manage the web/social media editors, arranging coverage for vacations and absences of social media editors or covering for them himself, and taking a leadership role in “seeding” (social media communications that trigger interest in the community about posted stories) and other web best practices. During the period from July 2016 to early 2018, Duran received a pay raise, and he was paid about 20 percent of his salary by VMG corporate and the remainder by Miami New Times. Duran performed some of these corporate duties, including preparing a best practices manual related to seeding. The manual developed by Duran was distributed to all VMG web editors on August 1, 2016.

On or about October 3, 2016, Duran interviewed three candidates for a social media editor position at the Phoenix New Times, one of the publishing properties operated by VMG. He also helped prepare guidelines to start incorporating Instagram into social media strategy which he distributed to employees at all VMG publications. On January 11, 2017, Duran sent emails to VMG’s corporate officials about the quality of the slide shows posted on the Phoenix New Times website. Then, in the beginning of 2018, the Editor-in-Chief of Miami New Times informed Duran that VMG was not pleased with the lack of time Duran was devoting to corporate duties. At that point VMG corporate stopped paying a portion of Duran’s salary, and his entire salary has been paid by Miami New Times since January 2018.

Since January 2018, Duran has occasionally helped to train social media editors who work at other VMG companies, but for the most part his only work responsibility has been to Miami News Times. In July 2018, Duran reached out to VMG corporate officials to suggest that the VMG publications prepare mid year slide shows to MG prepare mid-year slide shows in

order to boost website traffic. The mid-year slide shows recap the most successful slide shows that have been published during the year. Duran's idea was approved, and he sent an email to editors at other VMG publications about the idea.

In December 2018, by email, VMG's Executive Associate Editor, Andy Van Voorde, asked Duran for his opinion about hiring test results from two candidates for the social media editor position of the Phoenix New Times. Duran replied that a candidate named Bri came out slightly ahead for him, based on the test results, and Phoenix New Times Editor-in-Chief Stuart Warner then decided to make a job offer to Bri. The record does not reflect other details of that hiring process, or all of the factors considered by Warner and Van Voorde in making the decision. Neither Warner nor Van Voorde was called to testify. There is no evidence that Duran was otherwise involved in this hiring process, or that he had any role in determining the hiring criteria, creating the test, recruiting the candidates, or interviewing them.

In April 2019, VMG officials asked Duran to look at the social media accounts of the Phoenix New Times and figure out if enough content was being posted on those accounts. Subsequently, Duran was instructed to train the Phoenix web editor on best practices for posting on social media. In May 2019, he answered an inquiry from the editor of the VMG publication Denver Westword about the best practice when placing a link in a story.

Although Duran continues to be viewed as an expert in the area of social media editing, he has not worked as a VMG corporate employee since January 2018, and has not been involved in the management of social media editors at VMG publications, or in arranging for vacations and absences of other social media editors since January 2018. There is no other evidence of involvement by Duran in the hiring process.

viii. Editorial operations manager

According to VMG Executive Director Brennan, the editorial operations manager is responsible for managing the process of getting the weekly printed newspaper out to press, timing the submissions of articles scheduled to post to permit review of the articles (copy flow), and copy editing, the final stage before publishing an article. The editorial operation manager reports to Editor-in-Chief Finkel. Copy editing is the process of reading the stories and checking and correcting them as needed to ensure accuracy by fact checking and making sure the stories are free of errors, omissions and inconsistencies, and to improve readability (clarity), including with respect to grammar, punctuation, and word choice. Nadine DeMarco has held the editorial operations manager (copy editor) position since 2005. She works full time and is paid a salary of \$1,980.00 biweekly (\$24.75 per hour).

DeMarco uses a copy-editing program called InCopy. Sometimes she does the copy editing of an article before it is published on the web page, and sometimes copy editing is not done until after an article has been published by one of the vertical editors. Vertical editors have the authority to publish an article on the web page before it is copy edited. In that event, DeMarco “back edits” the story. If she determines that the published story has factual errors, she makes and posts the required corrections and notes on the story that it has been corrected.

With respect to the weekly print newspaper, editorial operations manager DeMarco is responsible for overseeing the workflow. The print newspaper is composed of the best articles or coverage of the week as selected by the vertical editors. DeMarco maintains a run sheet in a computer application that contains every article that is going to be in the weekly newspaper, listed by name and author. This application shows how much space the articles will take, and then production can create a dummy of the editorial content with the dummy of the ads to be

included in the newspaper. It is DeMarco's job to make sure that headlines are complete, photos have captions, and that articles, photos and ads are in the right places before the newspaper goes to print. To this end, she works together with Layout Editor Jaimee Cobb, who has the same goal from a layout standpoint, making sure all items fit on the page properly, and that every page is filled. For example, if the advertising department sells a quarter page ad after a story has been placed in a full-page layout, DeMarco and Cobb work together on the changes needed to fit the ad and the story on the same page. Although Cobb cannot change the content of a story because she is not a journalist, sometimes she is able to compress or expand the size of the story to make all items fit on the page. If the content of an article must be edited to make it fit on the page, DeMarco may consult with the section editor who wrote the article concerning the edits, or she may do the necessary editing herself.

There is no evidence that DeMarco has prepared any policies on behalf of the Employer. Also, there is no evidence that she had any involvement in the hiring of employees. She has no authority to discipline, suspend, or discharge, reward or promote employees. She has never evaluated the job performance of an employee, and there is no evidence that she assigns work to any employee, or is responsible to direct the work of any employee.

ix. Layout editor

Jamiee Cobb, the layout editor, is responsible for arranging articles, headlines, artwork, photographs, ads, and other elements into page templates for the Employer's weekly print issue using a program called *Indesign*. Cobb is a part-time employee who works on Mondays, Thursdays and Fridays, a total of 20 hours per week, and earns \$18.00 per hour. She testified that Editor-in-Chief Finkel and news editor (Miami) Lipscomb are her supervisors. Cobb's desk

is in the editorial department, in a cubicle in the middle of the department, where the staff writers also work in cubicles. The vertical editors have offices around the cubicles.

Cobb works with vertical editors to obtain photographs for the print newspaper, often obtaining them from associate web editor Duran. As noted above, Cobb works closely with editorial operations manager DeMarco to resolve space conflicts with the layout. She makes sure that every page has sufficient room and appropriate design for all of the items, and that each page is filled. Cobb lays out the pages for the vertical editors to review for mistakes. Cobb's work is also reviewed by the associate web editor and the news editor (Miami) for further review before the newspaper is printed.

Cobb sends Editor-in-Chief Finkel proofs of the weekly newspaper in pdf format at the end of the day on Fridays. If Finkel has comments about the final product, he will reach out to Cobb, DeMarco and any vertical editor involved. Additionally, Cobb works with a freelance art director who reports directly to Finkel. The art director works with the Editor-in-Chief in order to compose the concept and the execution of the cover and any special layouts for the weekly print issue, and sends the cover images to associate web editor Duran, who uploads some of the pictures to the Employer's social media pages.

Cobb checks with all of the editorial staff for any changes to be made, and also makes sure there are no last minute changes from staff writers or others before the final version of the newspaper is given to the Employer's production manager for printing on Mondays.

II. ANALYSIS

A. There is insufficient evidence to establish that the vertical editors or the editorial operations manager are supervisors within the meaning of the Act.

The Act expressly excludes supervisors from its protection. Section 2(11) of the Act defines a supervisor as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly 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.

The three requirements to establish supervisory status are that the putative supervisor possesses one or more of the 12 enumerated supervisory functions stated in Section 2(11) of the Act; the putative supervisor uses independent, rather than routine or clerical, judgment in exercising that authority, and the putative supervisor holds that authority in the interest of the Employer. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 712-713 (2001) (citing *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-74 (1994)).

Supervisory status may be shown if the alleged supervisor has the authority either to perform a supervisory function or to effectively recommend the same. The statutory definition of a supervisor is read in the disjunctive. Possession of any one of the enumerated powers, if accompanied by independent judgment and exercised in the interest of the employer, is sufficient to confer supervisory status. *Kentucky River*, 532 U.S. at 713. Supervisory status may likewise be established if the individual in question has the authority to effectively recommend one of the powers, but effective recommendation requires the absence of an independent investigation by superiors and not simply that the recommendation be followed. *Children's Farm Home*, 324 NLRB 61, 65 (1997).

If such authority is used sporadically, the putative supervisor will not be deemed a statutory supervisor. *Coral Harbor Rehabilitation and Nursing Center*, 366 NLRB No. 75, slip op. at 17 (2018). The supervisor has to at least act or effectively recommend such action “without control of others and form an opinion or evaluation by discerning and comparing data.” *Oakwood Healthcare*, 348 NLRB 686, 692-693 (2006). Judgment is not independent when the

putative supervisor follows detailed instructions (e.g., policies, rules, collective-bargaining agreement requirements). *Id.* at 693. To be independent “the judgment must involve a degree of discretion that rises above the ‘routine or clerical.’” *Id.* at 693, citing *J.C. Brock Corp.*, 314 NLRB 157, 158 (1994) [quoting *Bowne of Houston*, 280 NLRB 1222, 1223 (1986), finding that “the exercise of some ‘supervisory authority’ in a routine, clerical, perfunctory, or sporadic manner does not confer supervisory status”]. If a choice is obvious, the judgment is not independent. *Oakwood Healthcare*, 348 NLRB at 693.

The party asserting supervisory status has the burden of providing supervisory authority and must establish it by a preponderance of the evidence. *Kentucky River*, 532 U.S. at 711; *Oakwood Healthcare, Inc.*, 348 NLRB at 687. The Board requires supervisory status be established by a preponderance of the evidence, and the lack of evidence is construed against the party asserting supervisory status. *Dean and DeLuca New York, Inc.*, 338 NLRB 1046, 1047-1048 (2003). In addition, purely conclusory evidence is insufficient to establish supervisory status. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006); *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004). Similarly, supervisory status is not demonstrated when evidence is in conflict or inconclusive. *Entergy Mississippi, Inc.* 367 NLRB No. 109, slip op. at 2-3 (2019).

i. Assignment of work and responsible direction of employees

The definition of assignment of work requires the individual in question to designate an employee to a place (e.g., location, department) or time (shift or overtime), or giving significant overall tasks to an employee. *Entergy Mississippi, Inc.*, 357 NLRB 2150, 2153 (2011); *Oakwood Healthcare*, 348 NLRB at 689. “Responsibility for making work assignments in a routine fashion does not make one a supervisor, nor does the assumption of some supervisory authority for a temporary period create supervisory status.” *Coral Harbor*, 366 NLRB No. 75, slip op. at 17-19

(2018). The responsible direction of work requires that the person directing and performing the oversight of the employee is held accountable to direct the work and exercise corrective action over other employees. *Oakwood Healthcare*, 348 NLRB at 690-691.

The Employer asserts that the editorial operations manager, news editor (Broward), food editor, arts and music editor and associated web editor are supervisory employees under Section 2(11) of the Act, but there is no evidence that these editors hire or assign work to any statutory employees. The record is devoid of evidence or any contention that freelancers are statutory employees under the Act. The status of the freelancers has not been clarified in the record or the parties' oral arguments. There is scant information in the record about the freelancers, such as how many are used, or the number of hours they dedicate to the Employer's stories. To the extent that there is any evidence about the freelancers, it appears that they are independent contractors, and as such, a finding of supervisory status cannot be made based on the alleged hiring, assignment, or direction of these freelancers. *The Washington Post*, 254 NLRB 168, 183 (1981), *Suburban Newspaper Group-Moorestown News, Inc.*, 195 NLRB 438 (1972).

Furthermore, the editors' responsibility to engage freelancers to write stories for the Employer is structured by VMG corporate management and editors' discretion is very limited.. There is insufficient evidence to show that the editors exercise independent judgment when selecting freelancers. Rather, the evidence tends to show that such judgments are routine in nature, mainly taking into consideration availability and familiarity. The budgets for freelancers' payments for each vertical are determined by corporate officials, and the editors must follow corporate guidelines and/or industry standards within fairly strict budget limits when deciding the amount to pay each freelancer. It appears that any variation from such standards, particularly if a freelancer is going to get paid an amount out of the ordinary, must be discussed with the

Employer's Editor-in-Chief and approved by the Editor-in-Chief and/or VMG corporate management. These facts are similar to those involving the purchases of freelance work by editors found not to be supervisors or managerial employees in *The Washington Post Company*, 254 NLRB 168, 208-210 (1981). Even assuming that the freelancers were statutory employees, the Employer presented no evidence that the editors are subject to adverse actions if the freelancers fail to adequately perform their jobs.

The evidence concerning the interactions between arts and music editor Schein and clubs listings editor McAuley in her capacity as a freelancer writing a portion of the "Night and Day" feature, is similarly insufficient to establish supervisory status. Preparation of "Night and Day" appears to be routine in nature and recurs weekly. The assignment of that work to McAuley was made by Editor-in-Chief Finkel before the hiring of arts and music editor Schein. Schein simply edits McAuley's submission.

The evidence concerning the relationship between editorial operations manager DeMarco and layout editor Cobb appears to be collaborative, rather than one in which DeMarco supervises Cobb. Thus, each performs her own aspect of the work necessary to layout the print newspaper, and they must work together to get the job done.

The interactions between associate web editor Duran and clubs listings editor McAuley do not establish supervisory status. To the extent that Duran provides guidance to McAuley or others, it appears that he is merely sharing knowledge on his own initiative and not because the Employer has made this part of his job duties. There is insufficient evidence to show that Duran either assigns work to others or responsibly directs the work of others, at least since early 2018, when his brief tenure as a VMG co-manager was terminated. Rather, it appears that Duran volunteers ideas and information within his area of expertise on his own volition, or upon

request, but does not assign or direct any employee's work. For these reasons the record lacks evidence that Duran assigns work or is responsible for the direction of work of other employees.

There is no evidence that editorial operations manager DeMarco is held accountable for the performance of other editors, including layout editor Cobb. Rather, she simply performs copy editing, in the nature of a quality inspection of the final product.

In summary, the Employer has not met its burden of establishing that any of the editors whose supervisory status is in dispute have authority, in the interest of the Employer, to assign or responsibly direct work in a manner that is not merely routine or clerical nature, but requires the use of independent judgment.

ii. Hiring, transfer, suspension, lay off, recall, promotion, discharge, reward or discipline of other employees, or adjustment of their grievances

The record is devoid of evidence that the editors have the authority to discipline or effectively recommend the discipline of employees. Merely reporting incidents or referring problems to a supervisor does not establish authority to discipline. See *Lucky Cab Co.*, 360 NLRB 2271, 272 (2014); *Coral Harbor*, 366 NLRB No. 75 slip op. at 20 (2018).

The Board has held that “mere participation in the hiring process, absent the authority to effectively recommend hire, is insufficient to establish...supervisory authority,” even when the purported supervisor participated in the interview and assists in evaluating candidates for hire. See *North General Hospital*, 314 NLRB 14 (1994). Although associate web editor Duran was given corporate hiring authority in July 2016, and interviewed candidates for a position at the Phoenix New Times in October 2016, as noted above he was effectively terminated from the corporate position in January 2018, because his work time was consumed by his duties at Miami New Times, and he was removed from the VMG payroll at that point. Although Duran was later asked for his opinion about the test results submitted by two candidates for a subsequent social

editor position at the Phoenix New Times in December 2018, he was not otherwise involved in that hiring process, and there is insufficient evidence to establish that by providing his opinion he effectively recommended the hiring of the successful candidate. Moreover, Duran has not had any other involvement in the hiring process, nor has he been informed that he has any authority regarding hiring since his corporate responsibilities ended in January 2018. The evidence as a whole shows that since January 2018, Duran has not had any managerial or supervisory authority over other employees at the Miami New Times or at VMG's other publications, and his work has been essentially limited to social media editing, search engine optimization, and writing occasional articles for Miami New Times, and sporadically providing training or information about social media to social editors or managers of other VMG publications.

There is no evidence that any of the other editors has had any involvement in the hiring process or authority to hire. There is no evidence that any of the editors possesses authority to transfer, suspend, lay off, recall, promote, discharge, reward or discipline other employees, or to adjust their grievances.

The Board has long held that mere editing does not make an editor a supervisor within the meaning of the Act. *Scranton Tribune*, 294 NLRB 692, 692-693 (1989), and cases cited therein. In addition, the Board held:

Thus, without more, an editor's authority to check, correct, rewrite, or even kill stories and to determine the content and layout of part of the paper does not compel a supervisory finding or demonstrate managerial status. Such duties merely require the exercise of "news judgment" within the editor's professional journalistic experience as opposed to any supervisory or managerial authority.

Id, citing *The Washington Post Co.*, 254 NLRB 168, 208-210 (1981); see also *Bakersfield Californian*, 316 NLRB 1211, 1218-1224 (1995). For the above reasons I conclude that the Employer has not met its burden of establishing that the editorial operations manager,

news editor (Broward), food editor, arts and music editor, or associate web editor are supervisors within the meaning of Section 2(11) of the Act.

B. There is insufficient evidence to show that editors are managerial employees.

Managerial employees are those employees in the highest levels of an employer's hierarchy, charged with taking or recommending discretionary actions that effectively control or implement their employer's policy. *NLRB v. Yeshiva University*, 444 US 672, 682 (1980). More specifically, Board law defines managerial employees as those employees who formulate, determine, and effectuate an employer's high-level policies by expressing, and making operative, the decisions of their employer, or "who have discretion in the performance of their jobs independent of their employer's established policy". *The Republican Co.*, 361 NLRB 93, 95-96 (2014), (quoting *General Dynamics Corp.*, 213 NLRB 851, 857 (1974)). Although not managerial employees are not defined in the Act, the Board excludes them from bargaining units because Congress regarded managerial employees "as so clearly outside the Act that no specific exclusionary provision was thought necessary." *Bell Aerospace*, 219 NLRB 267, 283 (1975).

Although the Board has no firm criteria for determining managerial status, an employee will not ordinarily be excluded as managerial unless he represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy.

The Republican Co., 361 NLRB at 96. The party asserting managerial status bears the burden of proof. *Id.*

The fact that employees train or instruct other employees does not make them managerial employees. See e.g. *Roofing, Metal & Heating Associates*, 304 NLRB 155, 161 (1991). The Employer submitted evidence that in 2016, associate web editor Duran prepared a seeding guideline for use by all VMG web editors, and provided guidance on how to incorporate Instagram into social media strategy. The seeding guidelines were created when Duran was

performing corporate duties, in addition to his regular duties for the Employer. These corporate duties were compensated separately, and there is no evidence that Duran developed any policies or guidelines for other employees after early 2018, when the Employer stopped assigning him corporate duties.

The vertical editors are responsible for the content of their respective subject area verticals or sections of the Employer's online and print publications: news, food, music, and arts. In conjunction with the Editor-in-Chief, the vertical editors figure out what stories resonate with readers and will draw traffic to the Employer's website. They generally publish the stories they work on without further advance approval from Finkel, except that if the story is potentially controversial, it needs to be cleared by the Editor-in-Chief and/or corporate officials or counsel. However, unlike the editorial page editor in *The Republican Co.*, 361 NLRB 93 (2014), the stories published by the vertical editors in this case do not express the opinion of the newspaper and there is no evidence that any of the editors whose status is at issue herein formulate, determine or effectuate the Employer's editorial or policy positions.

To the contrary, the editors' selection of topics is circumscribed by their particular assigned verticals, and there is no evidence that they make decisions without regard to the Employer's policies, or that their articles discuss topics outside of the Employer's institutional positions. In fact, vertical editors have little or no discretion to act independently of the Employer's established guidelines and policies. In addition, the editors' budgets are for relatively small amounts of money, and are set by corporate management with fairly strict limits that provide little opportunity for the exercise of discretion, and none for high-level decision making.

There is insufficient evidence to show that the editorial operations manager, the news editor (Broward), the food editor, arts and music editor, and/or the associate web editor control or implement managerial policies. Accordingly, I find that the Employer has failed to establish that any of these editors are managerial employees, and I find that they are included in the unit of editorial department employees and are eligible to vote.

C. The layout editor shares a community of interest with the other editors and is included in an appropriate unit of news department employees.

The Employer asserts that layout editor does not share a community of interest with the staff writers or clubs listings editor, whereas the Petitioner seeks to represent a unit of all of the Employer's news department, or to use the Employer's nomenclature, editorial department, employees. In *PCC Structural, Inc.*, supra, 365 NLRB No. 160, the Board announced its "return[] to the traditional community-of-interest standard that [it] has applied throughout most of its history." Id., slip op. at 7. The Board's inquiry necessarily begins with the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. *Boeing Co.*, 337 NLRB 152, 153 (2001). Moreover, as the Board reaffirmed in *PCC Structural*, a proposed unit need only be *an* appropriate unit, and need not be the *most* appropriate unit. 365 NLRB No. 160, slip op. at 12.

The Board traditionally applies a multi-factor test to determine whether the employees in the petitioned-for group share a community of interest sufficiently distinct from the employees sought to be excluded. (citations omitted). These factors include:

whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

*PCC Structural*s, 365 NLRB No. 160, slip op. at 5, citing *United Operations, Inc.*, 338 NLRB 123, 123 (2002).

The Petitioner seeks to include all full time and regular part-time news department employees employed by the Employer in the unit. The layout editor is part of the Employer's editorial department, which includes the vertical editors, editorial operations manager, associate web editor, clubs listings editor and staff writers. All of these employees are commonly supervised by the Editor-in-Chief and/or the news editor (Miami). The Employer contends that the layout editor does not share a community of interest with the staff writers because she does not write or edit stories like the other department employees. However, all editorial department employees, including the layout editor, work in the same office area. The layout-editor is in the middle of the editorial department office with the staff writers, and has a cubicle just like the staff writers' cubicles. The other editors have offices around these cubicles.

There is a high degree of functional integration between the layout editor and the other editorial department employees in connection with the production of the print newspaper. It appears that the layout editor spends a substantial portion of her work time dealing directly with other editorial department employees. Thus, the editorial operations manager and the layout editor collaborate on layout weekly in order to complete the newspaper. The layout process also involves interaction between the layout editor and the associate web editor for the purpose of obtaining photos to include in the print newspaper, the review of the layout created by the layout editor by the vertical editors and the Editor-in-Chief, and, if necessary, further adjustments to layout by the layout editor based on any required changes required, including last minute changes made by staff writers.

In addition, if the layout editor was excluded from the unit, she would be the only excluded editorial department employee, and there is no evidence of other employees of the Employer with which the layout editor shares a stronger community of interest.

Based on the above factors, and the evidence as a whole, I find that the layout editor shares a community of interest with the other editorial department employees, and that the petitioned-for unit is an appropriate unit.

III. CONCLUSIONS AND FINDINGS

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.

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

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

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. I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

All full-time and regular part-time editorial department employees employed by Miami New Times, LLC at or out of its location in Miami, Florida in the job classifications of editorial operations manager, news editor (Broward), food editor, arts and music editor, associate web editor, layout editor, clubs listings editor and staff writer; excluding all other employees, Editor-in-Chief, news editor (Miami), managers, guards and supervisors as defined in the Act.

IV. DIRECTION OF ELECTION

Although the parties agreed on a manual election at the time of the hearing in this matter, that preceded the Covid-19 pandemic. In view of the Covid-19 outbreak and especially because of the surge in confirmed Covid-19 cases throughout the State of Florida, and particularly in Miami, where the Employer's premises is located, in the last several weeks, I am directing a mail ballot election.

Miami has the highest concentration of confirmed Covid-19 cases and deaths in the State of Florida, which has become one of the centers of the surge in Covid-19 cases in the past few weeks. On July 12, 2020, Florida recorded 15,300 new Covid-19 cases, the highest number of new cases in one day in any state of the United States since Covid-19 reached pandemic proportions in the United States in mid-March 2020, and the State of Florida recorded 69,700 new Covid-19 cases in the week ending on July 12.⁷ According to the website of the Florida Department of Health, Division of Disease Control and Health Protection, of the 291,629 confirmed Covid-19 cases and 4,904 confirmed Covid-19 deaths in Florida as of July 14, 2020, 69,803 cases and 1,175 Covid-19 deaths have occurred in Miami-Dade County.⁸

In addition, effective on July 9, 2020, an amendment to Miami-Dade County Emergency Order 26-20 placed a number of restrictions on social interaction in the County as a result of the rapid expansion of the pandemic, including a prohibition on indoor dining in restaurants and cafeterias, limitations of four persons per table for outdoor dining at restaurants, closing of banquet halls and ballrooms.

⁷ <https://www.nbcmiami.com/news/local/florida-shatters-daily-record-with-over-15000-new-covid-19-cases/2261128/>

⁸ <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429>

A manual election would bring together approximately 10 unit employees as voters in a single room, together with a Board agent, and would bring together the parties' election observers, party representatives, and the Board agent during a pre-election meeting at the polling place, and again for the ballot count. This would create a significant risk of the spread of Covid-19 among the participants, perhaps through an asymptomatic person, in view of the current conditions in the Miami area.

The determination of the method of election is within the discretion of the Regional Director, so long as consideration is given to the relevant factors, and it is not an issue that is subject to litigation at a representation hearing. See *Halliburton Services*, 265 NLRB 1154 (1982); *Manchester Knitted Fashions*, 108 NLRB 1366 (1954); see also, NLRB Casehandling Manual (Part Two), Representation Proceedings, Sections 11228, 11301.2, and 11301.4. The Board has held that the mechanics of an election, such as date, time, and place are left to the discretion of the Regional Director. See *Ceva Logistics U.S., Inc.*, 357 NLRB 628 (2011). In addition, the Board has found that Regional Directors have the discretion to determine whether an election will be conducted manually or by mail ballot. See *Nouveau Elevator Industries*, 326 NLRB 470, 471 (1998).

Specific to instances where mail or mixed manual-mail ballot elections are being contemplated, the Board has stated:

[w]hen deciding whether to conduct a mail ballot election or a mixed manual-mail ballot election, the Regional Director should take into consideration at least the following situations that normally suggest the propriety of using mail ballots: (1) where eligible voters are 'scattered' because of their job duties over a wide geographic area; (2) where eligible voters are 'scattered' in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and (3) where there is a strike, a lockout or picketing in progress.

San Diego Gas & Electric, 325 NLRB 1143, 1145 (1998). A Regional Director's exercise of the

broad discretion afforded by the Board in selecting the appropriate mechanics for an election will not be overturned “unless a clear abuse of discretion is shown.” *Nouveau Elevator Industries*, 326 NLRB 470, 471 (1998), citing *San Diego Gas & Electric*, 325 NLRB at 1144, fn. 4.

Although the Board expects Regional Directors to exercise their discretion within the guidelines outlined above, it recognizes that deviation from those guidelines may occur in “extraordinary circumstances.” *San Diego Gas & Electric*, 325 NLRB at 1145.

I find that current risk of infection with Covid-19 that would result from a manual election in the Miami area constitutes extraordinary circumstances that warrant the direction of a mail ballot election, which is a much safer method of conducting an election in these circumstances.

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 The NewsGuild-Communications Workers of America, AFL-CIO.

A. Election Details

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective bargaining unit. At 9:30 a.m. on July 23, 2020, ballots will be mailed to voters by National Labor Relations Board, Region 12, from the Region 12 office at 201 E. Kennedy Blvd., Suite 530, Tampa, Florida 33602-5824. Voters must sign the outside of the envelope in which the ballot is returned. Any ballots received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and do not receive a ballot in the mail by July 31, 2020, should communicate immediately with the National Labor Relations

Board by either calling the Region 12 office at (813) 228-2338 or (813) 228-2661 or our national toll free line at 1-844-762-NLRB (1-844-762-6572).

All ballots will be comingled and counted at the Region 12 office, 201 E. Kennedy Blvd., Suite 530, Tampa, Florida on August 13, 2020, at 10:00 a.m. In order to be valid and counted, the returned ballots must be received in the Region 12 office in Tampa prior to the counting of the ballots. Due to the above-described extraordinary circumstances of the Covid-19 pandemic, I further direct that the ballot count will take place remotely by videoconference on an electronic video platform to be determined by the undersigned Regional Director after consultation with the parties.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending on July 3, 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 patient dining supervisor 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 **July 17, 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.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.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 in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible

for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

V. RIGHT TO REQUEST REVIEW

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

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.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: July 15, 2020.

A handwritten signature in black ink that reads "David Cohen". The signature is written in a cursive style with a horizontal line underneath it.

David Cohen, Regional Director
National Labor Relations Board, Region 12
201 E. Kennedy Blvd., Suite 530
Tampa, FL 33602-5824