

**UNITES STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 19**

**THE SEATTLE TIMES CO.**

**Employer**

**and**

**Case 19-RC-261015**

**PACIFIC NORTHWEST NEWSPAPER GUILD,  
COMMUNICATIONS WORKERS OF AMERICA  
LOCAL 37082**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

The Employer operates a daily print newspaper in the greater Puget Sound area and also publishes news online, including at [www.seattletimes.com](http://www.seattletimes.com) and on social media platforms. Petitioner seeks a self-determination election to include full-time and regular part-time digital newsroom employees (“digital news employees” or “petitioned-for employees”) in the existing unit of news, circulation, advertising, marketing, editorial, and operations employees (“existing unit”) already represented by Petitioner.

The Employer maintains that the instant petition should be dismissed, arguing that the Petitioner agreed through the New Media Agreement (“NMA”) not to attempt to represent the petitioned-for employees. As a related argument, the Employer contends that even assuming the NMA does not bar the petition, the NMA nevertheless precludes the Petitioner from presenting evidence of cross-jurisdictional work necessary to support the requested self-determination election. Conversely, Petitioner contends that it did not expressly promise to refrain from seeking representation of the petitioned-for employees, that it is not barred from representing them through the instant petition, and that it may rely on cross-jurisdictional work in support of the instant petition.

The Employer further argues that should I direct an election in this matter, the senior web producer should be excluded due to lack of a shared community of interest and that the editorial engagement editor should be excluded or vote subject to challenge due to insufficient notice that the position was at issue in the instant hearing. Petitioner argues that both positions should be included in any unit or voting group found to be appropriate.

A hearing officer of the Board held a hearing in this matter and the parties subsequently filed briefs with me. As explained below, based on the record and relevant Board law, I find that Petitioner did not expressly promise not to represent the petitioned-for employees through the NMA and thus is not barred from pursuing the requested self-determination election. I further conclude that the petitioned-for digital news employees constitute a separate, distinct segment of the Employer’s workforce. I find that the web producers, web producers/engagement editors, and video journalists share a community of interest with employees in the existing unit and

constitute an appropriate voting group, but find that the senior web producer does not. I am directing a self-determination election accordingly. Of note, I neither include nor exclude the editorial engagement editor, and find that this position may vote subject to challenge.

## **I. THE NEW MEDIA AGREEMENT**

### **A. Facts**

For at least 50 years, Petitioner has represented employees in the existing unit. Petitioner and the Employer have been parties to numerous collective-bargaining agreements, the most recent of which is in effect from April 1, 2019, through March 31, 2023 (“CBA”).

Starting in about 2001, Petitioner and the Employer became parties to the New Media Agreement (“NMA”), which addressed the growing field of digital journalism and allowed unit and non-unit employees to perform cross-jurisdictional work.<sup>1</sup> At the time the parties entered into the NMA, the Employer maintained a separate digital journalism department. The original NMA contained language that Petitioner “will not use this Agreement, work assignments, or products resulting from this Agreement as a means to attempt to represent or claim jurisdiction over any employee(s) from [a non-unit...] home department through accretion, unit clarification procedures, or contract grievance procedures.”

By 2013, the Employer had integrated digital employees from the new media department into the various sub-departments around the newsroom. The record reveals that in 2013, the parties renegotiated the terms of the NMA. The changes included, *inter alia*, the inclusion of sub-departments to reflect the Employer’s organizational changes, specific definitions regarding the scope of permitted cross-jurisdictional work, and additional clarifications regarding use of cross-jurisdictional work assignments for future accretion, unit clarification, or contract grievance arguments made by Petitioner. The NMA remains the same as it was in 2013 and no parties proposed any changes to the NMA in the most recent round of negotiations.

The current NMA, adopted by the parties on January 14, 2020, is included in the current CBA as Addendum 12. The preamble to the New Media Agreement states, *inter alia*, that the parties agree there is “a need to develop a significant degree of flexibility in order to create changed content/products quickly and efficiently, utilizing skills, teams, concepts, and participants who have not historically worked together.” Section A states that unit employees “may be assigned to work on products and projects as may take place in their usual departments, other departments or sub-departments not represented by [the Petitioner] or a Times Subsidiary company.” Section B states that non-unit digital news employees may be assigned to unit work, “provided that the total number of such employees eligible to regularly produce...the print version...shall not exceed 10 percent of the total number of [unit] staff and provided further that not more than 50 percent of the work performed” be unit work. Section C notes that employees’ terms and conditions of employment shall be those of their home department.

---

<sup>1</sup> The Hearing Officer overruled Petitioner’s objection to the bargaining history of the NMA. While I affirm the Hearing Officer’s admission of this evidence, I do not find bargaining history to be determinative in answering the question before me regarding the NMA language.

Of significance to the instant case, Section D, contains the following language:

The Parties further agree the [Petitioner] will not use this Agreement, work assignments, or products resulting from this Agreement as a means to attempt to represent or claim jurisdiction over any unaffiliated employee(s) from a non-[Petitioner-represented] home department or sub-department through accretion, unit clarification procedures or contract grievance procedures. Work assigned or performed pursuant to this cross-jurisdictional Agreement is not intended to enhance or detract from any future accretion, unit clarification or contract grievance argument made by the [Petitioner]. Once this Agreement ends, nothing in it shall prevent the [Petitioner] from seeking accretion, unit clarification or redress through the contract grievance procedure. Furthermore, nothing in this Agreement is intended to alter the historical practice of the parties with regard to unit work performed by unaffiliated employees in supervisory or executive positions. The [Employer] recognizes the National Labor Relations Act, Section 7, rights of employees, including those in unaffiliated departments involved with new products and projects within the scope of the Agreement.

The NMA states that the grievance procedure is not the appropriate process to raise issues concerning the assignment of new work between the existing unit and non-unit employees, including the petitioned-for digital news employees. Rather, per the NMA, the grievance process is limited to enforcing the CBA on behalf of employees in the existing unit assigned to new projects and products. According to the Senior Director of Human Resources and Labor Relations, Petitioner has not filed any grievances under the NMA, but in the early period of the NMA a union representative occasionally called to note that certain digital news employees had a lot of bylines in the Employer's print paper, which was the jurisdiction of the existing unit.

## **B. Analysis**

### *1. Legal Standard*

Under the *Briggs Indiana* doctrine, *Briggs Indiana Corp.*, 63 NLRB 1270 (1945), “a union which agrees by contract not to represent certain categories of employees during the term of a collective-bargaining agreement may not during that period seek their representation.” *Cessna Aircraft Co.*, 123 NLRB 855, 857 (1959). The Board has specified that this rule is applied “only where the contract itself contains an *express* promise on the part of the union to refrain from seeking representation of the employees in question to refrain from accepting them into membership; such a promise will not be implied from a mere unit exclusion, nor will the rule be applied on the basis of an alleged understanding of the parties during contract negotiations.” *Id.* at 857. *See also Springfield Terrace, LTD*, 355 NLRB 937 (2010); *Budd Co.*, 154 NLRB 421, 423 (1965); *Women & Infants' Hospital of Rhode Island*, 333 NLRB 479 (2001)(finding that contract language specifically excluding the petitioned-for respiratory

therapists did not constitute an express promise not to represent employees and ordering the requested self-determination election); *UMass Mem'l Med. Ctr.*, 349 NLRB 369 (2007) (holding that the Regional Director properly directed a self-determination election among the petitioned-for employees, even though the parties' collective-bargaining agreement had excluded the employees from the unit). The agreement does not, however, have to be embodied in a collective-bargaining agreement, so long as it is an express promise. *Lexington Health Care Group, LLC d/b/a Lexington House*, 328 NLRB 894, 896 (1999).

In *Lexington House*, 328 NLRB 894 (1999), a union, in a separate agreement accompanying a neutrality agreement, had agreed "not to undertake organizing activities for unorganized employees at existing facilities or in unorganized facilities for a period of 12 months." The Board overturned the Acting Regional Director and dismissed the petition, finding that the agreement was a sufficiently express promise not to represent employees even though it was not included in the parties' collective-bargaining agreement. The Board noted that during negotiations the parties discussed both the employer's neutrality and the union's curtailed organizing, and reached agreement as to both issues. *Id.* at 897. The Board concluded that the agreement met the requirements under the *Briggs Indiana* doctrine – "namely that the promise be express, for a reasonable period of time, and the result of bargaining between equals." *Id.*

## 2. Parties' Positions

### a. Employer's Position

The Employer's argument focuses heavily on the phrase "attempt to represent" in the NMA. The Employer contends that these words are a clear and express promise not to "attempt to represent" the digital news employees through a traditional representation mechanism such as the instant petition.

According to the Employer, the Board's line of cases based on *Briggs Indiana Corp.* 63 NLRB 1270 (1945) requires dismissal of the petition,<sup>2</sup> since Petitioner, through the NMA, made an express, enforceable promise not to represent employees. The Employer contends that under the *Briggs Indiana* doctrine, to preclude a petition, a promise does not require any magic words, and that the Board simply meant that the express promise must be in words in a written document, not inferred from conduct. *See Budd Co.*, 154 NLRB 421, 423 (1965).

The Employer further argues that Petitioner made two express promises – one was not to attempt to represent the digital news employees and the other was not to claim jurisdiction over them through accretion, unit clarification procedures, or contract grievance procedures. Per the Employer, the "attempt to represent" language contemplates employee free choice expressed through an NLRB election. Conversely, per the Employer, the NMA's references to accretion,

---

<sup>2</sup> While the Employer argues that the "express promise" of the *Briggs Indiana* doctrine applies to the instant case, the Employer, on brief, also raises arguments regarding the Board's recent decision in *MV Transportation, Inc.*, 368 NLRB No. 66 (2019), applying the contract coverage standard. As I find that the "express promise" standard of the *Briggs Indiana* doctrine is applicable here, I do not deem it necessary to address the Employer's argument regarding contract coverage.

unit clarification, and contract grievance processes address assignment of employees to a preexisting unit's choice of bargaining representative.

In examining the sentence structure of the applicable language of the NMA, the Employer takes the position that the “through accretion...” phrase does not modify the “attempt to represent” phrase. In support of this argument, the Employer cites to another portion of the CBA, Addendum 11, relating to unit sales employees selling products of the Employer's subsidiaries, in which the language states that Petitioner “will not attempt to represent such employees through accretion or unit clarification procedures as provided by the NLRB or the grievance procedure” set forth in the CBA. Per the Employer, this language from Addendum 11 demonstrates that Petitioner knows how to enter into an express promise not to represent non-unit employees solely through accretion, unit clarification, and grievance procedures, and Petitioner's failure to include such language in the NMA shows that the NMA is not limited to those three processes. Per the Employer, to interpret the NMA otherwise would render the “attempt to represent” language meaningless, which would violate the canon of contract interpretation requiring giving meaning to all terms. *See Gulf-Wandes Corp.*, 236 NLRB 810, 812 (1978). The Employer concludes that Petitioner must live with the language it bargained, which on its face bars the instant petition.

*b.* Petitioner's Position

Petitioner argues that the instant petition is permitted under the *Briggs Indiana* doctrine, as the NMA language does not contain “an express promise on the part of the union to refrain from seeking representation of the employees in question.” *Cessna Aircraft Co.*, 123 NLRB 855, 857 (1959). Per Petitioner, the rule that a promise not to represent a specific group of employees must be written and explicit is equally applicable to a self-determination election as for a stand-alone unit. *UMass Mem'l Med. Ctr.*, 349 NLRB 369, 370 (2007).

Petitioner contends that the instant petition is permitted because the NMA language extends the express promise not to use the NMA, work assignments, or products from the NMA “as a means to represent or claim jurisdiction over any unaffiliated employees from a [non-unit...] home department or sub department” to only three limited circumstances: “through accretion, unit clarification or contract grievance procedures.” Petitioner notes that the Employer's attempt to divorce the phrase “attempt to represent” from the phrase “through accretion, unit clarification procedures, or contract grievance procedures” fails to read the sentence as a whole pursuant to ordinary principles of contract interpretation. Petitioner thus concludes that there is no express promise by Petitioner not to agree to organize or attempt to represent the petitioned-for digital news employees through either a stand-alone election or a self-determination election.

*3. Application*

The plain language of the NMA establishes that while Petitioner agreed not to “attempt to represent or claim jurisdiction” over unaffiliated employees, including the digital news employees, it did so only with respect to “accretion, unit clarification procedures or contract

grievance procedures.” The NMA, on its face, limits the scope of the agreement not to “attempt to represent or claim jurisdiction” solely to accretion, unit clarification, and grievance procedures. Each of these has clear meaning under the Act, and each is distinct from the self-determination election, or any alternative election for a stand-alone unit, sought herein. I therefore conclude that Petitioner did not expressly promise not to represent the digital news employees, and thus that the NMA does not bar the instant petition.

I find the Employer’s argument that the “attempt to represent” language justifies barring the instant petition unpersuasive, as it clearly ignores the rest of the sentence limiting the restriction to accretion, unit clarification, and contract grievance proceedings.

I similarly reject the Employer’s argument that no “magic words” are necessary. Here, the NMA does not fail to bar the instant petition due to a lack of specific “magic” language. Rather, I conclude that the language of the NMA, on its face, is limited to three specific instances – accretion, unit clarification procedures or contract grievance procedures – none of which are at issue herein.

I am also unpersuaded by the Employer’s argument regarding Addendum 11, as different language in another addendum to the CBA does not render unclear the otherwise clear language of the NMA.

Moreover, given that the language of the express promise contained in the NMA is limited on its face to the three circumstances not at issue here, I find it unnecessary to examine the bargaining history of the NMA. Even assuming *arguendo* that the bargaining history of the NMA were relevant to the instant inquiry, I find nothing in the bargaining history that undercuts my finding that Petitioner’s express promise is limited to accretion, unit clarification, and contract grievance proceedings, none of which is at issue herein.

In sum, I find that the NMA does not bar the instant petition.

## **II. HEARING OFFICER’S RULINGS**

### **A. The Hearing Officer’s Ruling to Allow Evidence of Cross-Jurisdictional Work Performed Pursuant to the NMA**

During the hearing, and again on brief, the Employer objected to Petitioner presenting evidence of cross-jurisdictional work, arguing that the language of the NMA barred its use in the instant representation proceeding. The Hearing Officer allowed Petitioner to present this evidence. I affirm the Hearing Officer’s ruling.

Consistent with my finding that the *Briggs Indiana* doctrine does not apply due to the limited scope of Petitioner’s promise in the NMA, I also reject the Employer’s contention that Petitioner is precluded from presenting evidence in the instant proceeding based on work assigned or performed pursuant to the NMA. Similar to the other language in the NMA, the NMA’s section discussing work assignments states that the use of cross-jurisdictional work

assignments “is not intended to enhance or detract from any future accretion, unit clarification or contract grievance argument” brought by the Petitioner. As this proceeding is not an accretion, unit clarification, or a grievance, the NMA on its face does not bar Petitioner from presenting evidence regarding work assignments in the instant representation case.

Accordingly, the Hearing Officer appropriately allowed the Petitioner to present evidence of cross-jurisdictional work assignments and I rely on that evidence herein.

### **B. The Hearing Officer’s Ruling to Reject Employer’s Exhibit 11**

At hearing, the Employer sought to introduce Employer Exhibit 11, which consists of a series of tweets by digital news employees at issue in the instant proceedings discussing, *inter alia*, the cross-jurisdictional nature of their work and their views on Petitioner’s organizing campaign. The Employer argued that this evidence provides further proof of Petitioner’s reliance on cross-jurisdictional work in its representation efforts and thus establishes a breach of the NMA. At hearing, Petitioner offered to stipulate that Petitioner is relying on the cross-jurisdictional work as performed pursuant to the NMA, and the Employer noted that, in light of the offer to stipulate, Exhibit 11 was unnecessary. The Hearing Officer rejected Employer Exhibit 11. However, on brief, the Employer argued that Employer Exhibit 11 should be admitted into evidence. I affirm the Hearing Officer’s ruling.

As a preliminary matter, and as noted on the record, the instant proceeding is not a consolidated investigation into the allegations raised in Case 19-CB-261080. Accordingly, the question of whether Petitioner breached the terms of the NMA is not currently before me. The sole question at issue regarding the NMA is whether it contains an express promise to refrain from representing the petitioned-for digital news employees, and Employer Exhibit 11 has no bearing on this question. This is especially true given that Petitioner stipulated, and the record establishes, that Petitioner relied on the very cross-jurisdictional work arising out of the NMA in support of the instant petition. Accordingly, I affirm the Hearing Officer’s ruling.

## **III. THE PETITIONED-FOR DIGITAL NEWS EMPLOYEES AND THE NEWSROOM EMPLOYEES IN THE EXISTING UNIT**

### **A. Facts**

Petitioner represents an existing unit of employees in the news, circulation, advertising, marketing, and library departments. By the instant petition, Petitioner seeks to include the digital news employees in the existing unit, contending that they all share a community of interest. Below, I set forth the record evidence regarding the relevant newsroom and digital news employees.

#### *1. Departmental Organization and Supervision*

The executive editor runs the Employer’s newsroom, which is one department within the Employer’s organizational structure. Reporting to the executive editor are the managing editor,

who oversees the news desk, metro department, and business sections, and the deputy managing editor, who oversees the features department, Pacific Northwest Magazine, the sports department, and graphics and visual. Additionally, there are three assistant managing editors (“AME”): one oversees news artists, page design, and interactive developers; one oversees photo, video, and digital news employees (“digital AME”); and one oversees the community-funded lab teams (Traffic Lab, Education Lab, and Project Homeless). All sub-departments within the newsroom report up through the managing editor, deputy managing editor, or AMEs.

The petitioned-for digital news employees report to different immediate supervisors. The video journalists and the senior web producer report directly to the digital AME. Some web producers report to the digital editor, who in turn reports to the digital AME. Other web producers are embedded in different sub-departments, such as sports or metro, and report directly to the section editor, while also reporting to the digital editor. Engagement editors each work in a lab and report directly to the lab editor, as well as the digital editor.

The digital editor only supervises digital news employees and does not supervise any employees in the existing unit. The digital AME, section editors, and lab editors all supervise both petitioned-for digital news employees and newsroom employees in the existing unit.

The record suggests that the editorial engagement editor is in the opinions department, which is separate from the newsroom. The record does not establish who supervises the editorial engagement editor.

## 2. *Skills, Training, and Job Functions*

### a. Existing Unit

The existing bargaining unit encompasses the newsroom employees, including reporters, photographers, photo/multimedia specialists, news artists, desk editors, wire editors, and news assistants. The record contains job descriptions and/or testimony about some, but not all, of the unit newsroom positions.

Reporters gather information and write stories, which the Employer publishes in print and digital platforms. According to the job description, reporters are expected to prepare accurate, fair, balanced, and carefully researched stories and multimedia posts. Reporters are expected to have a college degree in journalism or a related field or an equivalent combination of education and experience. Reporters must have 3 to 5 years of reporting experience, preferably on a daily newspaper or website. Per the executive editor, given the size and stature of the Seattle Times, the Employer usually hires from smaller newspapers. The reporter role is not considered an entry-level position. Reporters are expected to write clearly and accurately on multiple platforms, including using Methode, WordPress, and other content management systems used in the newsroom. The job description for reporters specifies that they must be able to create hyperlinks, attach photos and video, understand the use of metadata, taxonomy, search engine optimization, and metrics, and other digital reporting skills. The job description for reporters also notes they must possess social media skills, including the ability to use Twitter, Facebook,

LinkedIn, and other emerging social networks to gather and disseminate news, reach new audiences, and track the changing social landscape. Reporters must also have digital video and photography skills as needed to supplement reporting and writing.

Photographers take pictures, typically to accompany published stories. The record reveals that photographers primarily take still photographs, but may occasionally take video footage. Photographers typically receive assignments to the stories that they are working through an electronic system where reporters or their editors submit requests for photos. These requests and assignments are then gathered up by photo editors who parcel them out and decide which photographer will complete the assignment. The record does not disclose the skills or training necessary for this position.

Photo/multimedia specialists process photographs taken by unit photographers and those that come from the Employer's wire subscriptions to use on all of the Employer's news platforms and select photographs designated for print and digital use. According to the job description, a major function of the photo/multimedia specialists is to publish to Employer social media accounts and blogs. The Employer requires photo/multimedia specialists to hold a college degree in photojournalism or a related field and to have two years of experience at a daily news organization or equivalent experience. The job description notes that photo/multimedia specialists must have familiarity with and the ability to post to social media sites such as Twitter and Facebook.

News assistants generate lists, such as restaurant lists, entertainment listings, and sports events and results, that the Employer runs, frequently in very small type. The record contains a job description for the sports news assistant, which requires that the sports news assistant possess familiarity with content-management practices, deep knowledge of sports journalism, strong grammar and language skills, and a solid foundation in journalistic principles. The sports news assistant position does not have any educational requirements. The record does not contain job descriptions for any other news assistants.

News artists, also known as graphic artists, generate graphics, illustrations, maps, and other visual items that typically also run with stories. The record does not disclose the skills or training necessary for this position.

Desk editors typically work primarily near the end of the process, as they give a final edit, write a headline, write line cuts, and fact-check before a story is published. Desk editors focus largely on print, but not exclusively. According to the job description, desk editors edit across all of the Employer's platforms, including print, digital and mobile channels, social media, and other platforms that may emerge. Desk editors edit copy for factual, grammatical, usage, spelling, punctuation, and style errors, and write headlines. The desk editor job description notes that they must post stories to the Employer's website; be able to post to Facebook, Twitter, or blogs as needed; monitor the performance of the Employer's content on multiple social medial platforms; and adjust headlines and summaries to maximize audience. Wire editors are a subset of desk editors who pull stories from the Employer's subscription news services, such as the Associated Press, Bloomberg News, and the New York Times. The

Employer requires desk editors to be college graduates with degrees in journalism or related fields, or to have an equivalent combination of education and experience; 5 years of desk editing at a major metropolitan newspaper is preferred. The job description requires excellent grammar and language skills and strong computer skills, including use of social media for news gathering and dissemination.

News page designers are the final step in the process and focus solely on designing the pages of the print newspaper. According to the job description, news page designers plan and execute design for daily news coverage and project work, primarily for the print product but also in collaboration with digital design and multiple platforms in mind. Per the job description, news page designers manage the workflow for all visual elements in the daily print and design cycle, and work collaboratively with digital designers on management of visual design assets. News page designers participate in storyboarding and planning with other visual and digital teams. News page designers are expected to have a bachelor's degree in journalism or publication design or an equivalent combination of education and experience. News page designers must have a mastery of design and publishing software and tools and be willing to master constantly changing technology.

b. Digital News Employees

i. *Web Producers*

Web producers strategically maintain and update the Employer's website by optimizing headlines, choosing photos, strategically arranging content online, and using basic HTML to improve the website's appearance. Web producers also craft posts for social media platforms, such as Facebook, Twitter, and Instagram, and updates for electronic newsletters. Web producers write not only in the form of regular social media and other electronic posts that tend to be shorter blurbs, but also in the form of longer stories.

The job description for web producers notes that they create, edit, and format content for the Employer's digital products, with an emphasis on increasing audience engagement and seeking innovative ways to tell stories. Functions include crafting social media posts, producing the Employer's website homepage, writing news alerts, and monitoring social media. The position requires excellent news judgment, strong grammar and language skills, and the ability to craft accurate and enticing headlines. Per the job description, the Employer requires a bachelor's degree in journalism, communication, or a related field, or equivalent experience. Successful applicants must also have prior experience in professional digital news media and "native-level fluency with the web and social media," as well as a deep understanding of how people use digital tools to produce and consume information. The Employer considers web producers to be entry-level positions.

ii. *Engagement Editor*

Engagement editors, who are a subset of web producers, work directly with one of the Employer's three labs – Education Lab, Traffic Lab, or Project Homeless. Engagement editors

polish the lab's digital presence, write news alerts, grow and tend to partnerships, plan events (such as question and answer sessions with readers or online book clubs), and help reporters better incorporate insights from the public into their work. Engagement editors are responsible for writing the lab's weekly newsletter and reporting stories based on community interest.

The record contains conflicting evidence regarding the extent of engagement editors' writing responsibilities. The executive editor testified that engagement editors do some reporting or writing, maybe 10 to 20 percent of their time, but that it is not the main part of their job. Conversely an engagement editor testified that her role includes traditional reporting, such as listening to city council meetings, interviewing experts, and soliciting questions from people in the community about what they want to know about a certain topic within the lab's focus. The engagement editor testified that her writing and reporting appears anywhere the Employer produces the news, including the printed newspaper, the website, and social media. The engagement editor specified that she has had at least 50 stories, if not over 100 stories, published in the print paper. The engagement editor testified that while her time allocation varies week to week, she generally spends about 50 percent of her time writing/reporting (split equally between engagement reporting and traditional reporting) and then 50 percent of the job is digital engagement work (split between digital production work, events, and outreach). A former engagement editor who subsequently became a reporter testified that he estimated that he spent about 60 to 70 percent of his job as engagement editor writing stories, which is now what he does exclusively as a reporter. The former engagement editor testified that he wrote an average of one story per week that appeared in the print newspaper and on the website.

The Employer requires engagement editors to possess an undergraduate degree in journalism or communications, or a combination of related professional work experience. According to the job description, the Employer also desires familiarity with audience engagement tools, such as Twitter, Facebook, Instagram, Hearken, Crowdtangle, and Groundsource. The Employer looks for 3 to 5 years of experience in audience engagement, preferably for a daily newspaper or a website.

The Employer generally employs three engagement editors, one for each lab, but one position is currently vacant.

*iii. Editorial Engagement Editor*

The record contains extremely limited evidence about the editorial engagement editor. According to the dearth of record testimony, the editorial engagement editor works in the opinions department but has similar job duties to the engagement editors working in the labs, in that she engages with readers of the opinions section, does digital production, and copy edits.

*iv. Video Journalists*

The video journalist position includes the lead video journalist,<sup>3</sup> senior video journalist, and video journalist (collectively “video journalists”). The video journalists direct, film, and edit documentary video stories. According to the job descriptions, the lead and senior video journalists focus on in-depth projects, while the more junior video journalist focuses on news, feature, and sports stories. Video journalists shoot video of stories, either clips that run with the text or stories or longer, standalone, documentary-style video stories. If unit photographers take video, video journalists edit the video and publish it on the website.

The Employer requires video journalists to have a bachelor’s degree in journalism or a related field, or combined equivalency of education and experience. The Employer additionally requires at least two years’ experience at a daily news organization or equivalent relevant experience. Video journalists must possess strong storytelling skills and an advanced understanding of video, lighting, and audio equipment. Video journalists must also demonstrate social media skills, including the ability to use Twitter, Facebook, and other emerging social networks to gather and disseminate news.

v. *Senior Web Producer*

The senior web producer, also referred to as the newsroom operations analyst, is a technical liaison between the newsroom and other departments and represents the digital needs of the newsroom. The record establishes that the senior web producer develops priorities for the technology and new products to request for the newsroom, makes decisions about what databases to use, recommends new technology to the assistant managing editors of the newsroom, and performs long-term analytics. The senior web producer works extensively with other departments, trains newsroom employees on new content management systems, and establishes goals for web producers to implement, such as having a certain number of people subscribed to newsletters. The senior web producer does not design the web page in the way that the web producers do. No other web producers have the job functions of the senior web producer.

According to the job description, the senior web producer serves as the primary newsroom conduit to IT and other departments, and advocates for prioritization of newsroom-related projects in those departments. The job description notes that the senior web producer helps troubleshoot digital publishing problems; ensures that newsroom tools, skills, workflow, and structure change with the changing needs of news coverage; works with others, including engagement editor, to build newsroom’s capacity for data-driven, audience-focused journalism, advising on selection and rollout of analytic tools; seeks to complete the newsroom’s transformation from a print-centric structure to one that reaches audiences on multiple and evolving platforms; manages newsroom digital security; co-leads meetings with the digital audience editor to update newsroom digital staff, product staff, and other groups about digital needs, problems, and developments; and monitors progress in digital development on platforms. The Employer requires the ability to build smarter decision making by developing paths to better

---

<sup>3</sup> The record establishes that the more experienced lead video journalist serves as a coach for the less-senior video journalists and attends meetings to communicate the status of video stories. The parties do not contend, and the record does not establish, that the lead video journalist is a supervisor within the meaning of Section 2(11) of the Act.

data and attention to editing processes; awareness of trends, developments, and best practices in digital publishing; and willingness to master constantly changing technology.

Per the job description, the Employer requires a bachelor's degree or equivalent combination of education and experience. The Employer also looks for 5 to 7 years of experience at a news organization working as a digital producer or systems specialist; proficiency with WordPress, other content-management systems used by the newsroom; Methode; Javascript, HTML5, and CSS; knowledgeable in Microsoft Office; social media skills; and reader engagement skills.

### *3. Functional Integration*

The newsroom is a fast-paced work environment where employees collaborate to cover breaking news and develop in-depth stories. Both the petitioned-for digital news employees and the newsroom employees in the existing unit work toward the end goal of creating and publishing news content for the Employer's various publication platforms. The record establishes that web producers, engagement editors, video journalists, reporters, and photographers work together on news stories extensively, often daily or even multiple times per day.

The articles published in the print paper also appear on the Employer's website, either in the same version or as a slightly different version, depending on the news cycle. The web producers work to place these articles on the Employer's website and other platforms, such as social media, in a strategic and accessible way. Specifically, web producers constantly adjust the front page of the website, sometimes making changes to where an article appears as often as every 15 minutes, in order to engage the Employer's digital audience. When web producers draft news alerts based on articles, they approach the relevant editor, such as the Coronavirus editor, the metro editor, or sports editor, or the relevant reporter to confirm the accuracy of the news alert. Web producers also regularly work with photographers and video journalists to embed photos and videos into stories and share them on social media, especially in a breaking news situation. For larger stories, web producers are frequently included in the reporter's story development, as it helps the web producers craft better social media content. Finally, when unit wire editors encounter stories they believe will be well-read by the Employer's audience, the wire editors send the articles to the web producers, who in turn write social media pitches, share the articles online, and place them on the homepage; this occurs much of the day every day.

Video journalists work with unit reporters and photographers by meeting regularly with reporters to discuss possible stories and sources, to evaluate how to incorporate video into a story, to create an engagement plan, and to develop and finalize the actual story. As an example of a larger project, sometime within the past year, one of the video journalists collaborated with a reporter and wrote almost the entirety of a Sunday magazine and an online companion piece that included video and additional photographs. Another video journalist worked closely with metro editors and reporters on a story about unemployment and the impact of Coronavirus, for which he took video and photographs that appeared in the print newspaper. Video journalists also collaborate with unit photographers by going on the same assignment, strategizing the story,

handing off footage for editing, and sometimes alternating filming the same individuals during interviews. Content from the video journalist team appears in the magazine or print paper about once per month. Although video does not appear in the print paper, there is often a reference to the video in the print paper. Video journalists sometimes have bylines alongside unit reporters.

Engagement editors work alongside and collaborate with unit reporters assigned to their respective labs. Engagement editors write content that appears on a digital platform at least daily. One engagement editor testified that she writes two to three articles per week, and that those articles always get published on the Employer's website and about 75 to 90 percent of the time also appear in the print paper. A former engagement editor, who now works as a reporter for Project Homeless, testified that as an engagement editor he wrote stories, did reporting, organized events in person and online, wrote social media copy (including tweets and Facebook posts) for stories written by the two Project Homeless reporters.

The digital news employees also work closely with one another. For example, the video journalists work with web producers and engagement editors on engagement plans for stories, write language for social media, and determine timelines for "pushing" content to readers. During recent protests, video journalists regularly live streamed on location and the web producers worked closely with them to ensure the appropriate placement of the live video for maximum accessibility.

The senior web producer's primary role is to engage with supervisory editors and employees from across the newsroom, such as through training, development, and collaborating to set digital goals.

The record is silent as to the editorial engagement editor's integration into the Employer's operations.

#### *4. Contact*

As discussed above in the section discussing functional integration, the petitioned-for senior web producer, web producers, engagement editors, and video journalists collaborate extensively with newsroom employees in the existing unit.

As part of this collaboration, video journalists attend meetings where reporters are discussing stories, attend investigative team meetings with the editor where reporters discuss the stories on which they are working, and go into the field with reporters to film video interview with the subject of the story.

An engagement editor testified that the week of the hearing she had worked with a photographer, a graphic designer, other engagement editors, news producers, editors, and reporters on the traffic lab and education lab teams. Engagement editors also participate in weekly meetings with their respective labs, which include unit reporters, in which the lab editor asks everyone what they are working on, they talk through ideas together, and share work. Of note, the engagement editor testified that she sometimes writes articles with reporters.

Web producers, as noted above, work daily with unit reporters, photographers, and wire editors, ensuring that the appropriate content is distributed electronically to readers.

Although evidence of contact is more limited for the senior web producer, the record establishes that the senior web producer has contact with unit employees when he conducts training and attends meetings. The record does not establish how regularly he has such contact.

The sole evidence of contact between the editorial engagement editor and the rest of the petitioned-for employees or newsroom employees in the existing unit is her participation in the weekly “Warp and Woof” meetings. At these meetings, engagement editors, web producers, and the senior newsroom analysts discuss ideas for improvement of digital operations, use of different tools, and performance of social media posts and news alerts.

Regarding work location, all the employees at issue have been working remotely for months due to the Coronavirus pandemic. Normally, prior to the pandemic, the petitioned-for digital news employees and the unit newsroom employees work out of the newsroom in the Employer’s main office in downtown Seattle, with some also working at times in the field. In the middle of the newsroom is the “hub,” which is a central area where many web producers not assigned to sub-departments, metro editors, and photo editors sit. Web producers assigned to a specific sub-department, such as sports or features, generally sit close to their respective groups. The video journalists work in cubicles adjacent to the hub, near the unit photographers and photomedia specialists. The engagement editors usually sit close to the lab teams to which they are assigned. One engagement editor sits in the business section on the other side of the wall of the real estate reporter, and near the Amazon reporter, the traffic lab reporters, the King county reporters, and the public safety reporters. One reporter who used to work as an engagement editor testified that he has had the same desk his entire time working for the Employer. Everyone in the newsroom has access to the same small kitchen area.

The Employer also has a Diversity and Inclusion Task Force specifically for newsroom employees, that includes both unit and non-unit employees. One of the video journalists is also a chair of this task force. About 12 to 15 core members regularly participate in the task force.

##### *5. Interchange*

The record reveals some temporary interchange between the petitioned-for digital news employees and unit employees who work in the newsroom.

During the regular workweek, as discussed in detail above, web producers, engagement editors, and video journalists perform unit work as part of their normal duties. Specifically, engagement editors write articles for print and web publication, as do unit reporters. Video journalists take photographs, as do unit photographers, that run in the print paper.

During weekends, unit and non-unit newsroom staff rotate working weekend shifts, which can occur several times per quarter. On these weekend shifts, web producers and

engagement editors work full-time reporting shifts. The web producers and engagement editors working as reporters on the weekend check news sources, such as social media, Seattle 911, and Associated Press wires, to establish what news has broken overnight and receive assignments from editors to follow up on stories, such as by conducting interviews and calling sources. Even when web producers work in their own roles on weekends, those shifts are very different from workweek shifts. Specifically, on weekends, there are no wire editors, so the web producers also fill that role by selecting and promoting certain stories from subscription services, such as the Associated Press, Bloomberg, the Washington Post, or the New York Times. Photo/multimedia specialists and photo editors are not scheduled to work until the afternoon on weekends, so web producers working a weekend morning shift select photographs for the website, which is usually a task performed by unit employees.

If the senior web producer is away, such as on vacation, no one fills in for him. There is no record evidence regarding temporary interchange for the editorial engagement editor.

The record also establishes some permanent interchange between the petitioned-for digital news employees and newsroom employees in the existing unit within the last several years. In looking at movement from the petitioned-for digital news employees to the existing unit, three engagement editors moved into reporter unit positions and one website producer transferred to a desk editor unit position. No video journalists have moved into the existing unit. Regarding movement out of the existing unit, one reporter became a Traffic Lab engagement editor and one news assistant became a website producer.

## *6. Terms and Conditions of Employment*

### *a. Wages*

Wages for employees in the existing unit are governed by the wage minimums set forth in the CBA. Wage rates are hourly, and the annual amounts included herein are calculations provided in the record based on the hourly rate. The lowest minimum wage for unit employees is \$30,318 per year and the highest minimum rate is \$62,257 per year, but it is common for employees to be paid overscale. One reporter testified that he earns about \$58,000 as a reporter. The current CBA established a one percent across the board wage increase and a lump-sum pay equity payment.

In January 2019, before the current CBA, the Union conducted a wage survey of employees in the existing unit based on the payroll data for the pay period ending January 19, 2019. Based on that study, the Union representative testified that the lowest annual pay for unit employees was \$33,018, the highest annual pay was \$116,725, and the median pay was \$64,363. According to the Union representative, around 90 percent of unit newsroom employees fall into the wage classifications of A1 (\$56,033 to \$115,610, with a median of \$75,885) or A3 (\$54,100 to \$116,725, with a median of \$73,439). Reporters and photographers are in the A3 wage classification.

Wages for unrepresented employees, including the petitioned-for digital news employees, are based on pay ranges. The Senior Director of Human Resources and Labor Relations also provided approximate wage ranges from 2016, and testified that the average wages had certainly increased by 6 to 10 percent along with market rates by the time of the hearing. Web producers and engagement editors are both in pay range 18 (minimum \$47,674 to maximum \$69,127). The Senior Director of Human Resources testified that web producers typically earn from the high \$40s to about \$58,000 and that engagement editors generally earn from the low \$50s to the low \$60s. A web producer each testified to earning about \$53,000 per year and a former engagement editor testified to earning \$53,000 per year. Video editors are in pay range 20 (minimum \$52,560 to maximum \$76,212). The lead video editor earns about \$80,000 per year. The senior web producer earns around \$80,000 per year.

Employees in the existing unit, web producers, engagement editors, and video journalists are paid hourly and complete biweekly payroll forms. The senior web producer is salaried.

b. Benefits

The Employer generally offers similar or identical benefits to employees in the existing unit and unrepresented employees, including the petitioned-for digital news employees. Specifically, these groups have the same medical plan, dental plan, employee assistance plan, 401(k) and matching plan, and vacation accrual plan. Employees in the existing unit must pay the full cost of a vision benefit that is not defrayed by the Employer; unrepresented employees do not participate in this vision plan.

c. Hours

Generally, the petitioned-for digital employees work a day shift schedule, though some start earlier than others. Many work Monday through Friday, but some also work on a regularly scheduled weekend day. Sometimes, when projects are reliant on other people's schedules, employees will shift their schedules to work weekends and take a different day off. Reporters in the existing unit also usually have a daytime weekday schedule.

Some of the petitioned-for digital news employees and certain newsroom employees in the existing unit, such as reporters, also work rotating weekend shifts. For example, one engagement editor testified to working about three weekend shifts per quarter. As discussed above, when digital news employees work on weekends, they often perform different duties than their weekday shifts.

d. Work Rules

The same work rules, such as expectations, harassment, social media, and ethics, apply to all of the Employer's employees. Unit and non-unit employees participate in the same orientation.

e. Tools and Equipment

Newsroom employees either receive Employer-issued smartphones or receive reimbursements for use of their personal smartphones for work purposes. Although not explicit in the record, it is implied that both unit and non-unit newsroom employees use computers to perform their duties. Newsroom employees use email and slack to communicate and a variety of news publishing software.

Petitioned-for video journalists and unit photographers are issued equipment by the Employer. There is a photo studio with lights and backdrops available to both video journalists and photographers. Video journalists are each issued a camera kit, which includes a Sony Fs5 video camera and a Sony a7III photo and video camera, several Canon lenses, microphones and other audio equipment, a tripod, and a boom pole. There is also a video team camera kit that includes a Canon 5D Mark III, which is a still camera, and some lenses in case video journalists need to take photographs. Photographers use high-end still cameras, often Canon, which are optimized for still photography but have some video capability. Video journalists and photographers also have access to a shared pool of equipment. Photographers, photo editors, and video journalists use editing software, though the record does not reveal the similarities or differences between these types of software.

## 7. *Bargaining History*

The record establishes that the digital news employees have historically been excluded from the existing unit.

### **B. Analysis**

#### 1. *Applicable Board Law*

Board elections typically only present the question of whether employees wish to be represented by a labor organization. However, the Board will, under some circumstances, conduct an election that also resolves a unit placement issue, referred to as a self-determination election. One type of self-determination election is a so called *Armour-Globe* election, directed where a petitioner seeks to add a group of unrepresented employees to an existing unit, derived from *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937) and *Armour & Co.*, 40 NLRB 1333 (1942). An *Armour-Globe* election determines not only whether the employees wish to be represented, but also whether they wish to be included in the existing unit. *Warner Lambert, Co.*, 298 NLRB 993 (1990).

When a petitioner seeks an *Armour-Globe* election the first consideration is whether the voting group sought is an identifiable, distinct segment of the workforce. *St. Vincent Charity Medical Center*, 357 NLRB 854, 855 (2011) (citing *Warner Lambert*, 298 NLRB at 995). Whether a voting group is an identifiable, distinct segment is not the same question as whether the voting group constitutes an appropriate unit, which is the analysis were the petitioner seeking to represent the employees in a standalone unit. *St. Vincent*, 357 NLRB at 855 (petitioned-for employees in a single classification constituted an identifiable and distinct group appropriate for

an *Armour-Globe* election where they were in a single department, worked in the same location, and shared the same supervision). Instead, the identifiable and distinct analysis is merely whether the voting group sought unduly fragments the workforce. *Capitol Cities Broadcasting Corp.*, 194 NLRB 1063 (1972) (finding the voting group sought arbitrary, and inappropriate for an *Armour-Globe* election, because the employees in the voting group were scattered across various unrepresented departments and lacked similarities).

If the voting group sought is an identifiable and distinct segment of the workforce, the question then is whether the employees in that voting group share a community of interest with the existing unit. As stated by the Board, when petitioner seeks an *Armour-Globe* election “the proper analysis is whether the employees in the proposed voting group share a community of interest with the currently represented employees, and whether they constitute an identifiable, distinct segment.” *St. Vincent*, 357 NLRB at 855.

This inquiry requires application of the Board’s traditional community of interest test, including:

whether 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.

*United Operations, Inc.*, 338 NLRB 123, 123 (2002). *See also PCC Structural*s, 365 NLRB No. 160, slip op. at 6 (2017). The Board has found that in the self-determination context, differences in employment terms that result from collective bargaining do not mandate exclusion. *Public Service Co. of Colorado*, 365 NLRB No. 104, slip op. at 1, n.4 (2017).

## 2. *Analysis*

As set forth below, I find that the senior web producer, web producers, engagement editors, and video journalists at issue in the instant hearing constitute an identifiable and distinct segment of the Employer’s workforce and also share a community of interest with the newsroom employees in the existing unit. I conclude that the record contains insufficient evidence to either include or exclude the editorial engagement editor in the voting group,<sup>4</sup> and I will allow that position to vote subject to challenge.

### a. Identifiable and Distinct Segment

---

<sup>4</sup> Given the extremely limited record evidence regarding the editorial engagement editor, I do not discuss that position as part of the analysis.

Both parties agree, and I find, that the digital news employees are an identifiable and distinct segment of the workforce. The record establishes that the senior web producer, web producers, engagement editors, and video journalists all work in the newsroom, in the same location, and either directly or indirectly report to the same digital AME. All classifications in the voting group work towards the goal of maximizing the Employer's digital presence. Other than the editorial engagement editor, who may vote subject to challenge, the record does not reveal any other digital employees beyond those classifications sought herein. Based on the above, I find that the voting group sought does not unduly fragment the Employer's workforce.

b. Community of Interest

i. *Departmental Organization*

The petitioned-for senior web producer, web producers, engagement editors, and video journalists all work in the Employer's newsroom, which also houses a significant number of the unit employees. Departmental organization thus weighs in favor of a shared community of interest.

ii. *Skills and Training*

The petitioned-for digital news employees share significant skills and training with unit newsroom employees. For example, the Employer requires the petitioned-for positions to hold a bachelor's degree or equivalent experience, something also required of most unit newsroom positions. Similarly, the Employer requires the petitioned-for employees to demonstrate excellent news experience, writing skills, and knowledge of social media and content-management systems, something also required of many of the newsroom unit positions. To the extent that the senior web producer position also requires proficiency in certain additional skills, such as Javascript and HTML, I do not find this to outweigh the other shared skills and trainings with the petitioned-for digital news employees and the unit newsroom employees. Accordingly, I find that skills and training weigh in favor of finding that the petitioned-for web producers, senior web producer, engagement editors, and video journalists share a community of interest with the existing unit

The Employer contends that petitioned-for digital news employees can be distinguished from the newsroom employees in the existing unit based on their different skills and training, that are respectively tailored to either digital or print media. While I agree that certain skills are more tailored to print or digital work, as noted above, many of the core competencies are shared by the petitioned-for employees and those in the existing unit.

Accordingly, I find that common skills and training weigh in favor of finding a shared community of interest.

iii. *Job Functions*

The record establishes a significant degree of overlap in job functions with unit newsroom employees. Unit reporters solely prepare and draft articles for publication, and engagement editors spend over half of their time writing articles for publication. Unit photographers sometimes take video footage, and video journalists sometimes take still photographs. Web producers draft headlines for the website and help format articles for the website and other electronic publication, while unit employees draft headlines and format the print paper. Accordingly, I find that the shared job functions weigh in favor of establishing a shared community of interest with respect to the web producers, engagement editors, and video journalists with the newsroom employees in the existing unit.

The Employer contends that the creation and curation of digital content, which is the core duty of the petitioned-for news employees does not translate to print and thus at their core differ from employees in the existing unit. The Employer further notes that to the extent that unit employees, such as reporters, use and/or post to social media for their work, they are not hired for these skills and these skills are not essential to their completion of assignments. However, these arguments ignore much of the record testimony regarding shared job functions, as well as the job descriptions of unit employees that specifically seek digital competencies.

The record does not show any shared or similar job functions between the senior web producer and any employees in the existing unit. Accordingly, job functions weigh against including the senior web producer.

*iv. Functional Integration*

The Employer's newsroom operates as a specialized unit with each group playing specific functions in realizing the goal of developing and publishing news content in print and electronic platforms. The emphasis on integrating the Employer's print and digital presence, including social media, makes it difficult to separate the print and digital operations. Given how closely the petitioned-for digital news employees and unit news employees work in realizing these reporting and publishing goals, I find that functional integration weighs heavily in favor of finding that a shared community of interest exists.

*v. Contact*

All of the petitioned-for employees have extensive daily contact with the unit newsroom employees, both due to the interrelated nature of their work and their physical proximity to one another in the Employer's fast-paced newsroom. Also, I note that while the current situation is work from home, the record is clear that this is a temporary response to the COVID-19 pandemic.

The Employer does not deny that the employees at issue all work in the same physical area within the newsroom. Instead, the Employer notes that this is a product of the NMA, and that the common workspace would necessarily be disentangled upon dissolution of the NMA and the physical workplace would change. I am not bound by what the Employer might do in

another circumstance, but must instead base my decision on the current workplace as explained in the record.

Accordingly, I find that contact weighs in favor of finding that the petitioned-for digital news employees share a community of interest with employees in the existing unit.

*vi. Interchange*

The record establishes temporary and permanent interchange between the petitioned-for digital news employees and the unit newsroom employees.

Regarding temporary interchange, I find it to be significant that on weekends engagement editors serve as reporters and that web producers fill other unit rolls, such as wire editors and photo/multimedia specialists. Additionally, during the week, video journalists are at times asked to take photographs, which is normally a unit photographer role. Although the Employer argues that I cannot consider evidence of temporary interchange between petitioned-for and unit employees due to the NMA language, I have already addressed this argument above and do not find that the NMA prohibits me from relying on evidence of regular temporary interchange.

Regarding permanent interchange, the record establishes that a number of employees have moved between petitioned-for and unit positions in the last several years. I agree with the Employer's contention that permanent interchange is a less significant indicator of community of interest than is temporary interchange. However, even given that, I nevertheless find that the mix of temporary and permanent interchange established in the record between the web producers and engagement editors and the unit newsroom employees weighs in favor of finding a shared community of interest.

The lack of evidence of either temporary or permanent interchange for the senior web producer weighs against finding a shared community of interest with the existing unit with respect to those positions.

*vii. Terms and Conditions of Employment*

Terms and conditions of employment, taken on balance, weigh in favor of finding a shared community of interest.

Regarding wages, the record establishes that the wages of and applicable wage ranges for the petitioned-for web producers, engagement editors, and video journalists fall within the established ranges in the CBA for unit newsroom employees. All of these employees are paid hourly. This weighs in favor of finding a shared community of interest for these classifications. The Employer contends that pay for the petitioned-for digital news employees is substantially lower than that of unit employees. While I agree that the web producers, engagement editors, and video journalists earn less than many of the unit employees, I do not find this to be determinative given that the wage rates of the petitioned-for employees fall within the CBA wage bands. Moreover, even assuming *arguendo* I concluded that this weighed against finding a

shared community of interest with respect to wages, it would not outweigh the remaining shared terms and conditions of employment.

The senior web producer is a salaried employee whose salary also falls within the CBA wage ranges for unit newsroom employees, which also weighs in favor of inclusion.

Regarding benefits, the petitioned-for digital news employees, employees in the existing unit, and the remainder of the Employer's unrepresented employees all share the same medical plan, dental plan, employee assistance plan, 401(k) and matching plan, and vacation accrual. This clearly weighs in favor of a shared community of interest. While unit employees must participate and pay for a separate vision benefit that no other employees have, this is not dispositive given the otherwise overwhelmingly shared benefits.

Regarding hours, the petitioned-for digital news employees and newsroom employees in the existing unit largely work similar schedules, which weighs in favor of a shared community of interest.

Regarding work rules, the Employer applies the same work rules to all employees, which weighs in favor of a shared community of interest.

The Employer, citing to *Overnight Trans. Co.*, 322 NLRB 327 (1996), contends that the Board has found that the fact that employees share common benefits or are subject to common work rules does not warrant a conclusion that a community of interest exists where the employees are separately supervised, do not interchange, and/or work in a physically separate area. The case cited by the Employer is clearly distinguishable as here the employees do not merely share benefits and work rules, they also share supervision, interchange, and work in the same newsroom.

In sum, I find that terms and conditions of employment weigh in favor of a shared community of interest.

*viii. Supervision*

The record establishes shared supervision between the petitioned-for digital news employees and unit newsroom employees. While some web producers report to the digital editor, who only supervises digital employees, the remaining web producers and engagement editors report to other supervisors, who also supervise unit newsroom employees. Additionally, the senior web producer and video journalists report directly to the digital AME, who also oversees other newsroom employees. This shared supervision weighs in favor of finding that the petitioned-for digital news employees share a community of interest with the unit newsroom employees.

#### IV. CONCLUSION

I conclude that the NMA does not bar Petitioner from seeking to represent the digital news employees by the instant petition. I also find that it is appropriate to proceed in a self-determination election to allow digital news employees, including web producers, web producers/engagement editors, and video journalists, to decide whether they wish to be represented by Petitioner as part of the existing unit, as they constitute an identifiable and distinct segment of the Employer's workforce and share a community of interest with employees in the existing unit.

In determining that this voting group is appropriate, I have carefully weighed the community-of-interest factors cited in *United Operations*, 338 NLRB 123. Specifically, I conclude that it is appropriate to include web producers, engagement editors, and video journalists in the voting group because departmental organization, skills and training, job function, functional integration, contact, terms and conditions of employment, and supervision weigh in favor of finding a shared community of interest between these classifications and newsroom employees in the existing unit. Interchange weighs in favor of a shared community of interest with respect to web producers and engagement editors, but not with respect to video journalists. I therefore find it appropriate to order a self-determination election with respect to these petitioned-for classifications.

Conversely, I am excluding the senior web producer. I find that the senior web producer has a different compensation structure and does not interchange with employees in the petitioned-for unit. Moreover, the senior web producer does not have the same type of contact and functional integration with employees in the existing unit, as the position interacts significantly with supervisors and serves more of a background role in news production rather than in a role of news production itself. On balance, I find that the evidence weighs against the inclusion of senior web producer in the voting group.

Finally, as the record contains extremely limited evidence regarding the editorial engagement editor, and thus I neither include nor exclude this position. Instead, the editorial engagement editor position will be permitted to vote subject to challenge.

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

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

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>5</sup>

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. The following employees of the Employer constitute a voting group 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 digital newsroom employees, including web producers, web producers/engagement editors, and video journalists, employed by the Employer at or out of its Seattle, Washington facility.

Excluded: All other employees, senior web producer, temporary employees as defined by the parties' collective-bargaining agreement, confidential employees, managers, and guards and supervisors as defined in the Act.

As noted below, the editorial engagement editor position is permitted to vote subject to the Board's challenged ballot procedures.

There are approximately 11 employees in the voting group found to be appropriate.

## **V. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting group found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Pacific Northwest Newspaper Guild, Communications Workers of America Local 37082. If a majority of valid ballots are cast for Pacific Northwest Newspaper Guild, Communications Workers of America Local 37082, they will be taken to have indicated the employees' desire to be included in the existing unit currently represented by the Petitioner. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

---

<sup>5</sup> The Employer, a Delaware corporation, with a facility located in Seattle, Washington, is engaged in publishing a newspaper, the Seattle Times, which advertises nationally sold products and subscribes to interstate news services. During the past calendar year, a representative period, the Employer derived annual gross revenues in excess of \$200,000. During the same time period, the Employer purchased goods and materials valued in excess of \$50,000 directly from firms located outside the State of Washington.

### **A. Election Details**

The election will be conducted by mail. On Thursday, August 27, 2020, the ballots will be mailed to voters by a designated official from the National Labor Relations Board, Region 19 or SubRegion 36. **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 and did not receive a ballot in the mail by Thursday, September 3, 2020, should communicate immediately with the National Labor Relations Board by either calling the Region 19 Office at 206-220-6300 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 19 office by 12:00 noon PST on Wednesday, September 23, 2020. All ballots will be commingled and counted by an agent of Region 19 of the National Labor Relations Board on Friday, September 25, 2020 at 1:00 p.m. with participants being present via electronic means. No party may make a video or audio recording or save any image of the ballot count. If, at a later date, it is determined that a ballot count can be safely held in the Regional Office, the Region will inform the parties with sufficient notice so that they may attend.

### **B. Voting Eligibility**

Eligible to vote are those in the voting group who were employed during the payroll period ending August 15, 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 editorial engagement editor 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(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by Monday, August 24, 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](http://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](http://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 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.

## **VI. 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 10 business 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 elections on the grounds that it did not file a request for review of this Decision prior to the elections. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations. A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.<sup>6</sup> 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. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated this 20<sup>th</sup> of August, 2020.

*Ronald K. Hooks*

\_\_\_\_\_  
Ronald K. Hooks, Regional Director  
National Labor Relations Board, Region 19  
915 Second Ave., Suite 2948  
Seattle, WA 98174

---

<sup>6</sup> On October 21, 2019, the General Counsel (GC) issued Memorandum GC 20-01, informing the public that Section 102.5(c) of the Board's Rules and Regulations mandates the use of the E-filing system for the submission of documents by parties in connection with the unfair labor practice or representation cases processed in Regional offices. The E-Filing requirement went into immediate effect on October 21, 2019, and the 90-day grace period that was put into place expired on January 21, 2020. 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, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden.