Cultural Workers United-AFSCME DC 57 (Petitioner) seeks to represent the following unit of all full-time and regular part-time employees employed in the following job classifications at the Sonoma Valley Museum of Art (Employer), located at 551 N. Broadway, Sonoma, California:

- Exhibition and Facilities Managers
- Education Coordinators
- Administrative Coordinators
- Visitors’ Services Associates
- Teaching Artists
- Preparators

excluding all other employees, guards and supervisors as defined by the Act.

The Petitioner argues that the Board should assert its discretionary jurisdiction over the Employer because it met the $1 million gross-revenue standard for the year 2021. The Employer argues that the Board lacks jurisdiction over its operation based on its contention that contributions and donations it receives do not constitute revenue and, in that event, it would not meet the minimum $1M revenue threshold.\(^1\)

The Employer also maintains that the Exhibition & Facilities Manager and the Education Coordinator classifications should be excluded as supervisors, as defined by Section 2(11) of the Act. Petitioner takes a contrary position. Both parties agree, however, that the unit of approximately 18-20 employees should include all full-time and regular part-time Administrative Coordinators, Visitors’ Services Associates, Teaching Artists, and Preparators.

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\(^1\) There is no dispute that the Board has statutory jurisdiction over the Employer because that standard requires only a de minimis amount of movement of goods or services over state lines. The evidence established, and no party disputes, that the Employer’s retail store purchased and received goods and services in the amount of $30,000 directly from points outside the State of California during calendar year 2021.
A hearing officer of the Board held a hearing in this matter on May 3 and 4, 2022, and the parties orally argued their respective positions prior to the close of the hearing. Both parties waived written briefs.

As explained below, based on the record and well-established Board law, I find that the Board has jurisdiction over the Employer. Additionally, because the Exhibition & Facilities Managers and Education Coordinators comprise a relatively insubstantial percentage of the overall unit sought, I shall defer the question of their supervisory status to post-election proceedings, if necessary.

I. FACTS

The Employer is a California corporation operating as an art museum, located at 551 Broadway, Sonoma, California. The Employer’s sole witness at the hearing was its Executive Director, Linda Keaton (Keaton), who has filled that role for the last seven years. Keaton testified about various financial records the Employer prepares annually, and certain of those records were entered into evidence. The most relevant financial record to the jurisdictional matter at issue here is the Employer’s 2021 Income Statement.

In the 2021 Income Statement, “Total Income” is broken down into two major categories: “Contributed Income” and “Earned Income.” The former reflects the contributions and donations the Employer earned in 2021.2 “Earned Income” reflects the income the Employer derived in 2021 from its retail store, admission fees to the museum, investments, and education & public programs. In 2021, the Employer received $987,874 in “Contributed Income” and $124,910 in “Earned Income,” earning a “Total Income” (i.e. gross revenues) of $1,112,784.

II. ANALYSIS

The Board has long applied a $1 million gross-revenue standard for discretionary jurisdiction over museums and similar employers. Helen Clay Frick Foundation, 217 NLRB 1100 (1975) (art museum); Colonial Williamsburg Foundation, 224 NLRB 718 (1976) (historical restoration and preservation); Rutland Free Library, 299 NLRB 524 (1990) (private nonprofit library); Wave Hill, Inc. 248 NLRB 149 (1980) (nonprofit environmental center). No party contests the applicability of this standard here.

Contrary to the Employer’s contention at hearing, the Board has long established that contributions and donations received by an employer do, in fact, constitute gross revenue. See Hanna Boys Center, 293 NLRB 359, 359 & n.3 (1989) (relying on donation revenue to assert jurisdiction); Trustees of the Corcoran Gallery of Art, 186 NLRB 565, 566 (1970) (relying in part on “donations and memberships” to calculate gross revenues for purpose of asserting jurisdiction); Pacifica Found.-KPFA, 186 NLRB 825, 825 (1970) (asserting jurisdiction and

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2 Contributed Income is further broken down into the following categories: Donations less than 4999; Donations 5000 – 19,999; Museum Fund; Major Gift Pkg/Donor greater 20,000; Foundations; Government Grants; Scholarships; Membership Revenue; Annual Gala Income; and “GPGS.”
finding the employer’s gross income “was derived principally from subscriptions from listeners and contributions”); Springfield Library and Museums Assoc., 221 NLRB 1209, 1209 (1975) (including “contributions from individuals and organizations” in calculating the employer’s revenues); Viewer Sponsored Television Foundation, d/b/a KVST-TV, 217 NLRB 419 (1975) (Board has asserted jurisdiction over nonprofit public television stations whose revenues from donors or sponsors were determined to be a component of its gross revenue).

Here, as detailed above, the evidence established that for 2021, the Employer received $987,874 in “Contributed Income” (i.e. donations and contributions) and $124,910 in “Earned Income,” earning total annual gross revenues of $1,112,784. Accordingly, I conclude that the Employer derived gross revenues in excess of the $1M threshold for museums and that the Employer meets the Board’s standard for discretionary jurisdiction. As noted above, the evidence establishes and I conclude that the Employer also meets the Board’s de minimis standard for statutory jurisdiction based upon its purchase and receipt of more than $5,000 in goods and services from outside the state of California.

III. CONCLUSION

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. 3

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

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 an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

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3 For the reasons set forth above, I find that the Employer is an employer defined in Section 2(2) of the Act that engages in commerce within the meaning of Sections 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.

4 The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of the Act.
All full-time and regular part-time Administrative Coordinators, Visitors’ Services Associates, Teaching Artists, and Preparators employed by the Employer, excluding all other employees, guards and supervisors as defined by the Act.

**The Exhibition & Facilities Managers and Education Coordinators are neither included in, nor excluded from, the unit. Rather, they will be permitted to vote subject to challenge, and their eligibility and unit placement will be determined during post-election proceedings, if necessary.**

**DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret mail-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 Cultural Workers United-AFSCME DC 57.

A. **Election Details**

In its Petition for an election, the Union requested that the election be held via mail ballot, and the Employer requested the same in its Statement of Position. Thus, I have determined that a mail-ballot election will be held.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit by staff members from the office of the National Labor Relations Board, Region 20 (Region 20), on **May 24, 2022**. 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. All ballots will be commingled and counted at Region 20’s offices at 2:00 p.m. on **June 14, 2022**. In order to be valid and counted, the returned ballots must be received at the Region 20 office prior to the counting of the ballots.

Any person who has not received a ballot by noon on **June 2, 2022**, should immediately contact the National Labor Relations Board by either calling the Region 20 Office at 415-356-5130 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

B. **Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period immediately preceding this decision and direction of election. including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all employees in the unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board’s designated office.
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 classifications 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, and, in a mail ballot election, before they mail in their ballots to the Board’s designated office; (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. The Employer must also include in a separate section of that list the same information for those individuals who, according to this direction of election, will be permitted to vote subject to challenge.

To be timely filed and served, the list must be *received* by the regional director and the parties by **May 20, 2022**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will not 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.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlrb.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.nlrb.gov](http://www.nlrb.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.

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 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 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.nlrb.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, 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. 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: May 18, 2022

JILL H. COFFMAN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 20
901 Market Street, Suite 400
San Francisco, CA 94103-1738