MUSEUM OF FINE ARTS BOSTON
Employer

and

TECHNICAL, OFFICE AND PROFESSIONAL UNION, LOCAL 2110, UAW, AFL-CIO
Petitioner

DECISION AND CLARIFICATION OF BARGAINING UNIT1

Technical, Office and Professional Union, Local 2110, UAW, AFL-CIO (the Union) seeks to clarify an existing bargaining unit to include certain positions previously permitted to vote subject to challenge. Museum of Fine Arts Boston (the Employer or the Museum) asserts that these positions should be excluded from the bargaining unit as managerial employees and/or supervisory employees.

For the reasons set forth below, I find that the Employer has not carried its burden of proving that the positions are supervisory or managerial, and I will clarify the unit to include the classifications.

FACTS

Background

Museum of Fine Arts Boston is a non-profit organization which operates a comprehensive art museum. Its collection encompasses nearly 500,000 works of art, and it welcomes nearly one million visitors each year. On September 14, 2020, Technical, Office and Professional Union, Local 2110, UAW, AFL-CIO filed petition 01-RC-265998 seeking to represent a wall-to-wall unit

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1 The petition in this case was filed under Section 9(c) of the National Labor Relations Act (the Act). The parties were provided an opportunity to present evidence on the issues raised by the petition at a hearing held before a hearing officer of the National Labor Relations Board (the Board) via videoconference. I have the authority to hear and decide this matter on behalf of the Board under Section 3(b) of the Act.

I find that the hearing officer's rulings are free from prejudicial error and are affirmed; that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction; that the Union is a labor organization within the meaning of the Act; and that a question affecting commerce exists concerning the representation of certain employees of the Employer.

Parties were given the opportunity to file briefs, and both parties did so.
of the Museum’s employees. Pursuant to a stipulated election agreement, the parties agreed that the following employees would be eligible to vote:

All full-time and regular part-time professional and nonprofessional employees employed by the Employer at its 465 Huntington Ave, Boston, MA facility.

The parties further agreed that the following job classifications should be excluded from the collective-bargaining unit:

Skilled Maintenance employees, managerial employees, confidential employees, Chairs, Senior Curators, Lab Heads, Executive Assistant to the Chief of LCE, Executive Assistant to the Director, Payroll Administrator (1), Benefits Coordinator, Board Relations Manager, Executive Assistant to the Chief of Staff, HRIS Analyst, Executive Assistant to the Deputy Director and CFO, Budget and Planning Financial Analyst, guards and supervisors as defined in the Act.

Finally, the parties agreed that the following classifications would be permitted to vote subject to challenge, as their eligibility was not determined prior to the election:


The election was conducted via mail ballot in October and November 2020. On December 2, 2020, the Region issued a Certification of Representative affirming that a majority of valid votes were cast for the Union.

On August 24, 2021, the Union filed the instant petition seeking to clarify the bargaining unit to include the positions permitted to vote subject to challenge. The Region held a 27-day hearing via Zoom in September, October, November, and December 2021, and January 2022.

During the hearing, the parties stipulated that the following positions should be included in the bargaining unit: Senior Exhibitions Preparator, Objects; Senior Exhibitions Preparator, Paper; Program Manager, Membership and Annual Programs; Art Storage Manager; Manager, Web and Interactive Media; Managing Editor (in the Creative and Interactive Media Department);
Art Director; Managing Editor, MFA Publications; Senior Collections Engineer; Facilities Administration Manager; Registrar for Loans; and Digital Systems Manager.  

Additionally, the parties stipulated that the following positions should be excluded from the bargaining unit: Director, Research & Prospect Development; Principal Gifts Officer and Liaison to the Board of Advisors; Executive Assistant to Chief of Curatorial and Conservation; Executive Assistant to the Chief Development Officer and Special Projects Manager, External Relations; Community Arts Organizer; Monica S. Sadler Curator for Provenance; Senior Manager of Public Relations and Social Media; Head of Image Licensing and Digital Archives; Manager of Planned Giving and Development Business Analyst; Senior Leadership Gifts Officer; and Leadership Gifts Officer.

Remaining in dispute at the close of the hearing were the following positions: Curator, Conservator, and Manager of Conservation Administration and Collection Database Administrator. The Employer argues that all twelve curators are managerial employees; that all six conservators are managerial employees; that the Manager of Conservation Administration and Collection Database Administrator is both a managerial employee and a statutory supervisor; and that Coomaraswamy Curator of South Asian and Islamic Art Laura Weinstein is a statutory supervisor in addition to being a managerial employee.

**Supervisory hierarchy**

The Museum employed about 580 employees prior to the Covid-19 pandemic. That number had been reduced to 440 at the time of the hearing, although Jane O’Reilly, the Director of Human Resources, expressed a hope that the workforce would return to pre-pandemic size. The Union represents approximately 233 employees.

The Museum is broadly organized into four divisions: the Territorial Affairs and Exhibition Division, the External Relations Division, the Learning and Community Engagement Division, and the Financial Division. Bargaining unit members are employed in all divisions.

Matthew Teitelbaum is the Employer’s Director and Chief Executive Officer. Teitelbaum’s direct reports include Maggie Scott, Director of Special Projects, Government Affairs Liaison and MFA Safety Officer; Christopher Atkins, Director, Center for Netherlandish Art; Kathryn Gunsch, Director of Collections; Cameron Mason, Chief Development Officer; Christina Yu Yu, Chief of Curatorial Affairs and Conservation; Mark Kerwin, Chief Financial Officer and Deputy Director; and Rob Worstell, Interim Chief of Learning and Community Engagement.

As Chief of Curatorial Affairs and Conservation, Yu Yu’s direct reports include Rhona MacBeth, Director of Conservation and Scientific Research; Jill Kennedy-Kernohan, Director of Registration and Collections Management; Ethan Lasser, Chair, Art of the Americas; Christine Kondoleon, Interim Chair, Art of Ancient Egypt, Nubia, & Near East and Chair, Art of Ancient

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2 All job titles refer to the current job titles as listed in Employer Exhibit 1A, which with respect to some positions differs from the job titles identified in the Certification of Representative and/or the Unit Clarification Petition.
Greece and Rome; Frederick Ilchman, Chair, Art of Europe; Reto Thüring, Chair, Department of Contemporary Art; Anne Havinga, Chair, Department of Photography; and Edward Saywell, Chair, Department of Prints and Drawings. Yu Yu herself holds the title Chair, Art of Asia, as well as Chief of Curatorial Affairs and Conservation.

In addition to her position as Director of Conservation and Scientific Research, MacBeth is the Head of Paintings Conservation. As Director, MacBeth’s direct reports include Jacki Elgar, Head of Asian Conservation; Christine Storti, Head of Furniture and Frame Conservation; Abigail Hykin, Head of Objects Conservation; Annette Manick, Head of Paper Conservation; Meredith Montague, Head of Textile Conservation; and Richeard Newman, Head of Scientific Research.

The six conservators whose positions remain in dispute report to the various department heads beneath MacBeth. Tanya Uyeda and Tatsuya Yamauchi report to Elgar; Gerri Strickler and Mei-An Tsu report to Hykin; Alison Luxner reports to Manick; and Lydia Vagts reports directly to MacBeth in MacBeth’s role as Head of Paintings Conservation.

The twelve curators whose positions remain in dispute work in various departments including Art of Asia; Art of Europe; Contemporary Art; Prints and Drawings; Art of Ancient Greece and Rome; Art of Ancient Egypt, Nubia, and Near East; and Art of the Americas. The curators report directly or indirectly to the various chairs beneath Yu Yu. Katie Hanson reports to Ilchman; Simona Di Nepi reports indirectly to Ilchman through Senior Curator Marietta Cambarerì; Elizabeth Munsell, Michelle Millar Fisher, and Theo Tyson report to Thüring; Meghan Melvin reports to Saywell; Phoebe Segal and Denise Doxey report to Kondoleon; Emily Stoehrer reports to Lasser; Layla Bermeo reports indirectly to Lasser through Erica Hirshler; Laura Weinstein reports directly to Yu Yu in Yu Yu’s role as Art of Asia Chair; and Sarah Thompson reports indirectly to Yu Yu through Senior Curator Anne Morse.

Kay Satomi, the Manager of Conservation Administration & Collection Database, whose position remains in dispute, reports to both MacBeth and Kennedy-Kernohan.

The Employer’s organizational charts show no direct reports to any of the nineteen individuals whose positions are in dispute.

Curators

A curator is responsible for interpreting the Museum’s collection and designing exhibitions. The Museum employs four ranks of curators: senior curators, curators, associate curators, and assistant curators. Senior curators are excluded from the collective-bargaining unit by agreement of the parties. Associate curators and assistant curators are included in the collective-bargaining unit by agreement of the parties. Each rank is not present in each curatorial department; rather, rank is contingent upon each individual’s seniority in the field. Many curatorial policies, including hybrid work schedule and exhibition proposal process, apply equally to curators of all ranks.

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3 The associate curator position was added two to three years ago.
At issue here are fifteen curator positions, three of which are vacant. The parties have agreed that one curator, Victoria Reed, is a statutory supervisor who must be excluded from the bargaining unit.

Art of Asia Chair and Chief of Curatorial Affairs and Conservation Yu Yu testified that there is no difference between the responsibilities of a curator and a senior curator, but that associate curators and assistant curators require more guidance and more supervision. Curator Meghan Melvin concurred that the work performed by curators and senior curators is identical. European Art Department Head Frederick Ilchman likewise testified that while curators at all levels operate with some degree of autonomy, younger and less experienced curators “check in” more often. Senior Curator Marietta Cambareri testified that she expects similar autonomy for curators of all levels; accordingly, she offers encouragement to less experienced curators so as to develop their confidence. Chair of Prints and Drawings Edward Saywell testified that the nuance between an associate curator and a full curator is very, very fine. Curator Denise Doxey testified that she was unaware of any difference between assistant curators and full curators other than salary.4

The Museum has only one job description for curators, which reads in part:

Under general direction of the Deputy Director, Curatorial or senior curatorial staff, assist in the overall operation of a curatorial department which includes safekeeping, planning, implementing, building, maintaining, displaying, researching and publishing a collection of art.

ESSENTIAL FUNCTIONS:

Locate, research, recommend and present objects for acquisition within Departmental Collections Strategy. Refine collection through proposal of regular and responsible de-accessioning. Keep abreast of commercial market, private collecting, local collectors and other important industry trends. With staff of Development department, form and foster relationships with important collectors and donors—seek and act upon opportunities to bring such individuals into contact and close connection with the Museum.

Obtain, develop, plan and organize installations of work of art in the collection galleries. Propose and conduct approved exhibitions; direct and oversee related activities, including presentation in galleries, preparation of publications catalogs, brochures, labels and other interpretive materials. Work closely with conservators, designers, facilities’ staff, security, contractors for installations which ensure proper conditions, security and lighting for the display and maintenance of objects.

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4 Although I note the similarity of the work performed by curators of all levels, I do not rely on the exclusion of senior curators from the bargaining unit or the inclusion of associate curators in the bargaining unit to inform my decision with respect to the curators. As the placement of the senior curators and associate curators was achieved by the parties’ mutual agreement and not as a result of a Board determination, their status is irrelevant to the issue presented here.
Participate in departmental responsibility to document and research the collections. Evaluate and arrange for loans of objects to and from the collection. Assist Chair or senior curatorial staff and work closely with Development Department in grant application process, fundraising, publicity, research activities as necessary.

Make recommendations and consult with Chair/Head of Department for scholarly publications, conduct research; prepare publications, catalogs, articles on the collection. Offer expertise, and maintain extensive contacts with colleagues, scholars, dealers, general public, consultants, and other departments. Lecture on the collection, travel, attend conferences, seminars; visit other Museums, maintain professional affiliations in appropriate organizations. Identify objects and confer/consult with research laboratory staff and other experts to establish authenticity of art objects.

Art of Asia Chair and Chief of Curatorial Affairs and Conservation Yu Yu testified that curators must have a comprehensive understanding of the Museum’s existing collection in order to identify which additional objects should be acquired. Curators also must understand the art market. When curators recommend that the Museum purchase new works of art, they first make those recommendations to their department chairs. Potential acquisitions are then evaluated by the Collections Department and the group of Trustees who comprise the Collections Committee. Yu Yu testified that when a curator comes to her with a recommendation, she asks why the curator thinks the piece is important; whether the piece fits with the Department of Collections strategy; what resources are available; whether the curator has spoken to conservators about the condition of the piece; and the nature of the conservator’s evaluation. Yu Yu and the Collections Department would then decide whether to recommend acquiring the piece to the Collections Committee. The Collections Committee has never rejected Yu Yu’s recommendations during Yu Yu’s three years in her present position.

Curators also play a role in deaccessioning, that is, removing works from the Museum’s collection through sales or donation. The curator initiates the deaccession process and provides the rationale. Yu Yu testified that she has never seen the Collections Department reject a curator’s recommendation to deaccession an item, and that she has never directed a curator to initiate research into deaccessioning an item. However, a curator’s recommendation to deaccession must be approved by a department chair.

The Museum’s Exhibitions Department, and Director Teitelbaum, ultimately determine the exhibition calendar, the locations of any exhibitions, and the budgets of any exhibitions. Exhibitions are often dictated by the willingness of donors to underwrite them. Although the Museum has an overall strategic plan to determine which galleries will open and when, curators develop themes and sub-themes for galleries. Curators choose works to support an overall narrative

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5 Reto Thüring, the Contemporary Art Chair, testified that a chair has “more or less” final say over acquisitions in a department, and that he and his staff collectively advocate for more opportunities to purchase or otherwise acquire new works.
Curators also speak to conservators about which works need to be treated before they are displayed; coordinate with mount-makers or framers; and discuss the layout and aesthetics of the gallery with designers. Further, curators write labels and other text for the displays and work with interpreters if the text is to be displayed in multiple languages. Yu Yu testified that while she has never seen a curator’s chosen narrative be rejected outright, she has seen curators make revisions after receiving feedback.

In addition, Curators establish relationships with collectors, partially in the hopes of securing a donation; research the Museum’s existing collection, including by reading books and by studying the collection in person; assess whether other institutions’ requests to borrow the Museum’s works are feasible, and arrange loans as appropriate; engage in fundraising and publicity; and give talks and lectures.

Curators have no budgetary authority and often have little insight into the budgets which affect their projects.

The twelve curators whose positions remain in dispute work in various departments including Art of Asia; Art of Europe; Contemporary Art; Prints and Drawings; Art of Ancient Greece and Rome; Art of Ancient Egypt, Nubia, and Near East; and Art of the Americas. The curators report directly or indirectly to the various chairs beneath Yu Yu. Katie Hanson reports to Ichman; Simona Di Nepi reports indirectly to Ichman through Senior Curator Marietta Cambareri; Elizabeth Munsell, Michelle Millar Fisher, and Theo Tyson report to Thüring; Meghan Melvin reports to Saywell; Phoebe Segal and Denise Doxey report to Kondoleon; Emily Stoehrer reports to Lasser; Layla Bermeo reports indirectly to Lasser through Erica Hirshler; Laura Weinstein reports directly to Yu Yu in Yu Yu’s role as Art of Asia Chair; and Sarah Thompson reports indirectly to Yu Yu through Senior Curator Anne Morse.

1. **Sarah Thompson, Curator of Japanese Prints**

Sarah Thompson reports indirectly to Yu Yu in Yu Yu’s role as Art of Asia Chair through Senior Curator of Japanese Art Anne Morse. Thompson is responsible for the Museum’s Japanese print collection, which numbers more than 50,000 pieces.

Yu Yu testified that Thompson was solely responsible for the deaccession of several Japanese woodblock prints within the past three years. Thompson made her recommendation to Yu Yu and Morse after determining that the prints were either duplicates or beyond repair. Yu Yu made no changes to the recommendation before passing it to the Collections Department.

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6 A very small percentage of the Museum’s collection is on display for public viewing at any given time.

7 However, higher-level managers must approve all solicitations of gifts, and no testimony suggests that curators independently make solicitations.

8 In general, it is the Museum’s policy to permit as many loans as possible. As discussed below, though, curators have recommended loans which have ultimately been denied by their managers.
Because Japanese prints are in high demand for travel exhibitions, Thompson regularly travels with the Museum’s prints. Thompson also works with the Museum’s publication department to draft catalogues to accompany the travel exhibitions. Thompson generally proposes multiple ideas for an exhibition narrative to the receiving venue and the receiving venue chooses the narrative it prefers.

2. Laura Weinstein, Coomaraswamy Curator of South Asian and Islamic Art\(^9\)

Weinstein joined the Museum in 2009 as an assistant curator. After approximately a year, she was officially promoted to her present position, although she was internally considered to be an assistant curator for several more years.\(^{10}\) Weinstein reports directly to Yu Yu in Yu Yu’s role as Art of Asia Chair.

Weinstein is the curator responsible for a new gallery of Islamic Art. Weinstein chose the gallery’s narrative and chose the works of art that would best support that narrative. Yu Yu described her role as asking questions of Weinstein so as to understand Weinstein’s plan and support her vision.\(^{11}\) However, Weinstein had no role in crafting the original strategic plan which included the new gallery or in securing funding for the project.

The Museum recently employed a curatorial research associate, Roxanne Goldberg, in a temporary position. Yu Yu testified that Weinstein interviewed and hired Goldberg, although Yu Yu also interviewed multiple applicants and concluded that Goldberg was the strongest candidate. Because Goldberg was hired into a temporary position, she did not receive a formal performance evaluation; however, Weinstein met with her periodically to review her work. Goldberg’s main responsibility was to assist Weinstein in understanding the Museum’s Islamic art collection.\(^{12}\)

Weinstein completed a grant application which resulted in the Museum receiving a grant allowing it to endow a new assistant curator of Islamic art position. The hiring process was ongoing at the time of the hearing. Weinstein crafted the job description from templates and incorporated feedback from Yu Yu, from Emma Rose Rainville (Development Officer for Foundation and Government Relations), and from the Lilly Grant itself. Weinstein eliminated an initial group of applicants who did not have any relevant experience and brought the remaining candidates to Yu

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\(^9\) Laura Weinstein is the only curator whose supervisory status is in dispute. The Museum takes the position that all curators are managerial employees, but that Weinstein alone is also a supervisor.

\(^{10}\) Her title change was triggered by the endowment of her current position; her salary did not initially change and then-Deputy Director Katie Getchell explained that Weinstein would still be considered an assistant curator internally. In about 2018, Weinstein acted as Chair of her department and received the accompanying pay raise. When she ceased acting as Chair, her salary was reduced to a level in between the Acting Chair salary and the assistant curator salary.

\(^{11}\) Yu Yu testified that she has learned about Islamic art from Weinstein because Islamic art is Weinstein’s area of expertise.

\(^{12}\) The scope of Goldberg’s duties was determined in part by the grant that funded her position.
Yu. The first-round interviews were conducted by Weinstein and Kevin Cotter of the Museum’s Human Resources Department. The second-round interviews were conducted by Weinstein, Cotter, and an additional panel. Yu Yu met individually with each second-round candidate. Yu Yu and Weinstein shared a goal of reducing the candidate pool to four finalists; however, the members of the hiring committee agreed that two finalists were not good candidates. A third finalist withdrew. Left with only one candidate, Weinstein began to review previously rejected applications and schedule additional interviews.

Weinstein testified that she expects the new hire to report to her until that person is promoted to curator, at which time both Weinstein and the new curator will report to Yu Yu. There is no standard timeline for promotion from assistant curator to curator. Yu Yu testified that Weinstein alone would evaluate the performance of the future assistant curator, and, accordingly, would be responsible for increases to that assistant curator’s pay.

3. **Katie Hanson, Curator, Paintings Art of Europe**

Hanson, who has a PhD in French art, is the curator responsible for European paintings, post-1800. Prior to joining the Employer, Hanson worked at the Museum of Modern Art in New York City. She was promoted from associate curator to full curator approximately two years ago. She reports to Frederick Ilchman, the Department Head for European Art, Middle Ages and Curator of Italian Paintings.

Hanson’s area of specialization includes popular works by Monet, Cezanne, Klimt, and Schiele, among others. Accordingly, Ilchman testified that the Museum is particularly financially reliant on exhibits curated by Hanson to attract visitors. Hanson is known for her ability to make deadlines, including by writing a book on Monet in just over two weeks so the Museum could place the book in its store in time to accompany a Monet exhibition. Hanson is also a “conspicuous curator” in that she often travels to give talks.

Ilchman testified that in 2018, the Museum asked Hanson to fill an exhibition slot quickly and Hanson proposed bringing light-sensitive pastels out of storage for the occasion. Ilchman testified that, because Hanson had already given lectures on the material and knew it well, he trusted her to design the exhibition independently. Ilchman offered encouragement and read the labels, but his involvement in the process was largely limited to discussing the title with Matthew Teitelbaum, the Museum’s Director and Chief Executive Officer. Likewise, when the Museum needed to “fill a slot” quickly for early 2020, Hanson proposed the Monet exhibition which was ultimately popular enough to warrant a second exhibition.

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13 Julia Welch, a bargaining unit member, is an assistant curator for European paintings pre-1800.

14 Curators at all levels are expected to speak publicly, and do so; Hanson is unusually prolific.

15 Teitelbaum has ultimate say over whether a show will open, be canceled, or be postponed.
Hanson was also the lead on an exhibition which was touring Australia at the time of the hearing. Ilchman testified that Hanson titled the exhibition, wrote half the catalog, and did much of the work the exhibition entailed, while Ilchman’s role was to state that his department supported the exhibition. Final approval rested with the Director and the Trustees. While Ilchman is generally tasked with approving loans, he may be overruled by the Director or the Trustees.

In general, the galleries for which Hanson is partially responsible display a mixture of art forms; thus, Hanson chooses which paintings to display but not which sculptures to display. Multiple Museum employees collaborate on a gallery’s overall appearance, although Ilchman testified that some aspects of the presentation—such as the display of the Museum’s prized Gaugin painting *Where Do We Come From? What Are We? Where Are We Going?* — are a given and do not require a decision-making process.

Ilchman testified that seeking acquisitions to fill gaps in the Museum’s collection is a group effort involving discussion throughout the department and the Museum. For example, Director Teitelbaum initially drew the group’s attention to a Van Rysselbergh portrait, but Hanson was the one who determined that the portrait was a necessary addition to the Museum’s collection. While Hanson took the lead in the acquisition of another painting, Ilchman and other curators traveled to New York to see the painting beforehand because “it’s like getting an inspection on your apartment or your house.” Hanson has also identified paintings as desirable that the Museum did not ultimately acquire.

Ilchman testified that his role with respect to the work of curators of all levels is to see the big picture, rather than to work alongside curators as they focus on their individual specialties. He further testified that he is more likely to give specific feedback to curators whose area of expertise overlaps with his own.

4. Simona Di Nepi, Schusterman Curator of Judaica

Di Nepi, who joined the Museum in 2017, reports to Senior Curator Marietta Cambareri. Cambareri in turn reports to Ilchman, the Department Head for European Art, Middle Ages and Curator of Italian Paintings.

In 2010, the Museum established a new collecting area for Jewish ritual objects, known as Judaica. Di Nepi and Cambareri are responsible for building the new collection and, accordingly, consistently monitor and discuss the market in the hopes of making new acquisitions for the Museum. Cambareri testified that she does not provide oversight to Di Nepi; instead, the two of them engage in a collaborative process with respect to building the collection. No object recommended for purchase by Di Nepi and Cambareri has been rejected by the Museum’s Collection Committee, but Di Nepi has suggested purchases which were not brought before the Collections Committee because the purchase price was too high. Among the objects successfully

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16 Tr. 986.

17 Cambareri testified that no one person determined that the purchase price was too high.
acquired by Di Nepi is an early 18th century German Torah shield. While the decision to pursue the Torah shield was, according to Cambareri, “obvious,” it was Di Nepi who approached the donor who provided the necessary funding.

Cambareri further testified that she and Di Nepi, along with Ilchman, collaborate when discussing how to include Judaica in the Museum’s various galleries. Cambareri testified that neither she nor Ilchman has ever rejected Di Nepi’s suggestions to include a piece of Judaica in a gallery; rather, circumstances such as budget and timing control their ability to implement proposals.

Like other curators, Di Nepi is charged with proposing exhibitions. For several years, Di Nepi has been pursuing a loan exhibition involving marriage contracts from the Yale University Beinecke Library. The proposal has not yet been submitted, but Cambareri expects Di Nepi to handle the loan process independently.

5. Elizabeth Munsell, Bressler Curator of Contemporary Art

Munsell joined the Museum in 2009 as a curatorial research associate. She was later promoted to assistant curator and finally, in 2017, to curator. Munsell reports to Reto Thüring, Chair for the Department of Contemporary Art.

Munsell was recently the curator for the Museum’s Basquiat and the Hip Hop Generation exhibition. The exhibition was assigned to Munsell by Director Teitelbaum, likely because she was the only contemporary curator in her department. Munsell co-curated with writer/musician Greg Tate, who is not employed by the Museum. It was Munsell’s idea to invite Tate to become involved, but she required authorization from Director Teitelbaum and Edward Saywell (who was then in charge of exhibitions) before she was able to approach Tate.

As the Basquiat curator, Munsell developed the framework of the exhibition; developed the substance of each section of the exhibition; built the checklist of the exhibition; worked with lenders, because most works displayed in a special exhibition are borrowed; and worked closely with employees who were responsible for cleaning walls and building cases.

Thüring testified that, when supervising a curator overseeing a project of the Basquiat exhibition’s magnitude, his role is to make certain that the curator is investing her time and efforts appropriately. Munsell testified that at the design review meeting, Director Teitelbaum requested that the exhibition include community voices. Munsell and her co-curator, Tate, objected on the ground that including non-expert voices would imply that the Museum takes Basquiat less

18 While Di Nepi and Cambareri are part of the Art of Europe Department, their goal to expand the Museum’s focus on Judaica extends across all departments.

19 The project lasted approximately three years; it was initially set to open in April 2020 but due to the Covid-19 pandemic did not open until October 2020.
seriously than it takes, for example, Picasso. Director Teitelbaum over-ruled Munsell and Tate, and community voices were included in the exhibition.

Similarly, Munsell and fellow curator Michelle Millar Fisher recently asked that a loan request be approved; Thüring refused to approve the request because the request would preclude the work from being shown at the Museum for years to come.

6. Michelle Millar Fisher, Wornick Curator of Contemporary Decorative Arts

Millar Fisher began to work for the Museum in 2019. She had previously been a curator at the Philadelphia Museum of Art. She reports to Reto Thüring, Chair for the Department of Contemporary Art.

Millar Fisher testified that exhibitions in the Department of Contemporary Art come about in two ways. Some exhibition ideas are generated by curators who propose their ideas to department chairs, while other exhibition ideas are generated by department chairs who assign the concepts to curators for development. However, Millar Fisher testified, while any curator may propose an exhibition, Thüring alone determines whether a proposed exhibition is elevated to Director Teitelbaum and the Exhibition Department for further consideration. For example, Thüring has thus far not chosen to pursue any of Millar Fisher’s proposals, including her Designing Motherhood proposal and her Craft B Cross Planet and Sustainability proposal.

Once a proposal has been approved, Thüring assigns a curator or several curators to the exhibition. Millar Fisher testified that if a curator told Thüring that an exhibition required an additional curator, Thüring would listen.

Millar Fisher was recently the curator for the New Light Contemporary Encounters exhibition, which juxtaposes recent acquisitions of contemporary art with older art from the Museum’s collection. The exhibition was conceived by Thüring and proposed by the Department of Contemporary Art but was a collaborative effort by many of the Museum’s departments. The curators wished to display a large piece of Egyptian art at the exhibition, but Chief of Curatorial Affairs and Conservation Yu Yu chose to exclude the piece because of the difficulties involved in moving it.

Millar Fisher is in the midst of a long-term project which involves traveling throughout the United States to visit smaller craft centers. This foundational research is expected to propel acquisition, a book, programming, and installations of permanent galleries and special exhibitions. Millar Fisher testified that everyone in the Department of Contemporary Art proposes objects for acquisition and that she is generally successful in proposing objects. Likewise, Thüring listens to all opinions with respect to loan requests but makes the final decisions.
7. Theo Tyson, Vinik Curator of Fashion Arts

Tyson began work at the Museum during the course of the hearing. Thüring, as Chair of the Department of Contemporary Art, hired Tyson and testified that he expected Tyson to report to him.\footnote{No additional evidence was available for Tyson, as he was a new hire.}

8. Meghan Melvin, Sharf Curator of Design

Melvin joined the Museum as a research assistant in 2003 and was promoted into her current role in 2011. Melvin testified that for the last five years she has been actively engaged in curating exhibitions and has therefore spent less time on other aspects of a curator’s job, such as acquisitions.

Melvin reported to Anne Havinga during Havinga’s time as Interim Chair of Prints and Drawings; she now reports to Edward Saywell, the current Chair of Prints and Drawings. Havinga testified that she believes that curators do their best work when permitted to think creatively and that Melvin is both trustworthy and thorough; accordingly, Havinga rarely gave specific direction to Melvin, particularly because Havinga was only an interim chair.

Melvin proposed and planned the Museum’s Ekua Holmes exhibition. When Holmes, who is a Boston-based artist, expressed an interest in working with teenagers in the context of the exhibition, Melvin incorporated the exhibition into the Museum’s curatorial study hall program. Teenagers involved in the program worked with Melvin and Holmes to create interpretive texts used in the exhibition. Saywell testified that he had no direct involvement with this facet of the exhibition.

Melvin was the venue curator when a Winnie the Pooh exhibition organized by the Victoria and Albert Museum visited the Museum. In that role, Melvin helped fit the exhibition into the Museum’s space and shape the exhibition for the Museum’s visitors. The Employer’s Exhibition Department had proposed that the Museum host the show and requested Melvin’s services as curator. Melvin is considered to be a curator of books due to the amount of design found in illustrated books.

Additionally, Melvin was curator for Kay Nielsen’s Enchanted Vision. Donors Kendra and Allan Daniel, whose relationship with the Museum predates their relationship with Melvin, made the Museum a promised gift of their collection of Kay Nielsen works. In turn, the Museum agreed to put on an exhibition of part of the collection and create a publication related to the collection. Saywell ultimately sent the letter to the donors confirming the agreement. However, Melvin proposed the exhibition; was primarily responsible for securing funding; worked with the Employer’s design and community engagement departments; and shaped the vision of the show. Melvin was also the primary author of the book which accompanied the exhibition. Havinga testified that she was involved only to offer advice and support; Saywell testified that he helped with some contractual issues and, upon request, provided advice with respect to the book.
Because works on paper are light-sensitive, they must be rotated through the Employer’s galleries regularly. Melvin is responsible for these rotations. Havinga testified that she was not always aware of what Melvin changed.

Melvin was the curatorial and project lead when the Museum successfully applied to the Getty Paper Project for a grant. The grant provides resources for cataloguing and digitizing never-displayed works acquired by the Museum in the 1890s. Because the grant application was complex, Melvin handled one aspect while other members of the department—including Saywell—handled other aspects. However, Melvin was named as the lead because the terms of the grant require that the curatorial lead be in the early stages of a career in prints and drawings.

9. Phoebe Segal, Bryce Comstock Curator of Ancient Greece and Rome

Segal has been with the Museum for more than ten years and has been a full curator since 2016. Segal reports to Christine Kondoleon, Chair of the Museum’s Department of Art of Ancient Greece and Rome.

Segal worked with the Museum’s early Greek art gallery and selected the objects for display. Kondoleon testified that she allowed Segal the freedom to make all display-related decisions, which are complex due to the sheer number of objects which tell many stories in many layers.

Kondoleon and Segal jointly curated a gallery centered around daily life in ancient Greece. Segal was responsible for the portion of the gallery centered on motherhood, children, and marriage, although Kondoleon made suggestions such as creating a simulation of loom weights in action.

Segal proposed an exhibition on Africans in Greek and Roman art. She spoke to partner institutions and proceeded through the Museum’s exhibition proposal structure. However, Director Teitelbaum determined that the timing was not right for the exhibition in 2021 or 2022; Kondoleon testified that she expects Segal to return to the project in the future.

Additionally, Segal has applied for grants; made connections with donors; led a patron trip to Greece; and overseen library additions. She looks into acquiring ancient coins to augment the Museum’s collection; Kondoleon testified that anything acquired by Segal was pursued with Kondoleon’s support and authority. The Museum’s relationships with coin dealers go back many decades, and Segal is now responsible for maintaining those relationships.

10. Denise Doxey, Curator, Ancient Egyptian, Nubian and Near Eastern Art

Doxey has been employed at the Museum for 22 years. She was initially hired as an assistant curator and was promoted to full curator after about eight years. She testified that her duties did not change when she was promoted to her present position. Doxey currently reports to Senior Curator Lawrence Berman. At the time of the hearing, the department did not have a chair, and so Berman reported to Christine Kondoleon in Kondoleon’s role as Interim Chair.
Under ordinary circumstances, the department chair determines Doxey’s work assignments. The Museum’s exhibition strategy team chooses exhibition topics; the leadership team sets the exhibition calendar for opening and closing of a show. Doxey testified that she has never participated in the process of proposing an exhibition.

Doxey is the primary author MFA highlights book *Arts of Ancient Nubia*. Berman, who contributed an essay to the book, testified that he provided no direction to Doxey after initial discussions about the book’s contents. Berman further testified that most stylistic direction with respect to the book came from the Museum’s publishing department.

Doxey curated the Museum’s Ancient Nubia traveling exhibition. She coordinated with the borrowing institution in the Netherlands. Berman and Doxey discussed which objects should be included, but Berman testified that he did not need to provide oversight because Doxey knows the Museum’s collection as well as he does. Doxey wrote the catalogue for the Ancient Nubia traveling exhibition and acted as liaison for other traveling exhibitions.

While the exhibit was in the Netherlands, a space opened in the Museum’s Gund Gallery. Edward Saywell, who was then in charge of exhibitions, asked Doxey to adapt the Ancient Nubia exhibit for the Museum. Accordingly, Doxey worked with designers and interpretation staff; however, she testified that she was often overridden by the former department chair. Additionally, due to time constraints, she was forced to make compromises on her preferred object list. Doxey testified that the Museum wanted the exhibit’s labels to explicitly confront colonialism, and that while she approved of the decision, it had not been her original choice.

Additionally, Doxey oversees several projects staffed by volunteers, including a project to provide improved storage boxes for some objects. While Berman occasionally requests a progress report, he does not work directly with volunteers. Likewise, Berman does not become directly involved when Doxey assists visiting researchers.

11. Layla Bermeo, Servison Curator of Paintings

Bermeo began working at the Museum in autumn 2016. She reports indirectly to Ethan Lasser (Chair of the Art of the Americas Department) through Senior Curator Erica Hirshler.

In recent years, Bermeo was responsible for envisioning the installation and design for two new galleries, Latin American Figurative Art and Nature Abstracted. She assessed objects for display, evaluated the need for conservation of the objects, and proposed loans. Hirshler testified that she offered suggestions to Bermeo but did not provide oversight.

Bermeo also initiated the translation project, an effort to bring different languages into the Museum’s galleries. Together, Bermeo and Hirshler selected objects in the Museum’s Art of Colonial Boston gallery and added bilingual labels to the works; Bermeo approached various outside advisors to discuss the use of various languages. Hirshler testified that the choice to start
with a few objects in a single gallery, rather than implementing the project on a larger scale, was a mutual decision made at a staff meeting.

In early 2019, Bermeo curated an exhibition entitled Frida Kahlo and Arte Popular. The exhibition was produced so quickly that the Museum was unable to create an accompanying catalogue; thus, Bermeo wrote an accompanying book at a later date. Bermeo proposed the publication to the Museum’s Publications Department, which accepted the proposal. Hirshler testified that she did not know whether Bermeo planned to have a colleague read the manuscript prior to publication.

12. Emily Stoehrer, Kaplan Curator of Jewelry

Stoehrer worked at the Museum as an intern and research associate for several years before leaving in 2010. In 2014, she returned to the Museum in her present role as the Kaplan Curator of Jewelry. While technically a member of the Department of Textile and Fashion Arts, she presently reports to Ethan Lasser, the Chair of the Art of the Americas Department.\(^2\)

At the time of the hearing, Stoehrer was in the process of rewriting the Art of the Americas strategic plan to focus on adding more works by BIPOC artists; Lasser testified that he would review and revise Stoehrer’s work, but that as Stoehrer is the field specialist, his role is largely one of advice and support.

At the time of the hearing, Stoehrer was also curating a show built around a significant object, the Boivin starfish brooch. Accordingly, Stoehrer was responsible for writing interpretation; working with designers to create the installation; promoting the show; and making certain that everything was installed safely. Lasser testified that he intended to review labels and offer support as needed. Stoehrer testified that she was restricted from removing existing cases in the display area and had to find a way to conceal them; that she sought permission to use a video clip in the show, but that Lasser deemed the rights too expensive to obtain; and that she did not determine the scope of the project. When the brooch is removed from public view, Stoehrer will curate the next exhibit presented in that space.

As the Museum seeks to incorporate jewelry in various galleries to give jewelry a greater footprint within its displays, Stoehrer selects pieces to be displayed and incorporated. Lasser offers feedback and encourages peers to speak with Stoehrer about the process.

\(^2\) She also reports to Thüring, the Department of Contemporary Art Chair, with respect to her Fashion Council responsibilities. Historically, her role with the Fashion Council has been to plan one program on jewelry each year. In the absence of a fashion curator—prior to the hiring of Theo Tyson—she planned all Fashion Council programming for 2020 and 2021. Stoehrer testified that she ran her ideas by Thüring and made adjustments based on his feedback.
In addition, Stoehrer was crafting a proposal centered around the theater of jewelry celebrating a gift from Carole Tanenbaum.\textsuperscript{22} After Stoehrer crafts the initial proposal, Lasser will workshop the idea with the Art of the Americas Department; review the draft; and present the proposal to Director Teitelbaum. However, on multiple occasions Stoehrer’s proposals for exhibitions, such as an exhibition on the Chinese jeweler Wallace Chan, have been denied.

13. Vacant Curator Positions

At the time of the hearing, vacant curator positions included the Lynch Curator of American Decorative Arts and Sculpture; Curator for Folk Art and Self-Taught Art; and Curator for Artist Estates. Although there is no specific evidence with respect to these positions. Yu Yu testified that all curators work under the same job description.

Conservators

A conservator is responsible for the physical care of individual objects, such as paintings or sculptures, in the Museum’s collection. Conservators clean and restore works of art, monitor the artwork’s environment, and advise on proper travel care for a work that is loaned to another institution to be exhibited elsewhere.

The Museum currently employs six conservators; two conservator positions are presently vacant. The Museum has only one job description for conservators, which reads in part:

Under general direction of the Head Conservator, responsible for the conservation and restoration techniques in the conservation laboratory for art objects. Handle all administrative responsibilities; instructional direction, development, training and supervision of staff,\textsuperscript{23} assist with budget preparation, interpret Museum policies, goals and public service objectives.

Devise restoration and preservation methods and techniques to solve new problems. Record and document treatment of conservation processes; prepare necessary records and reports. Initiate conservation research projects and disseminate information in the field of conservation. Research, develop and document improved methods of conservation. Recommend, request, and perform some scientific analyses of objects.

Work closely with curator to plan and schedule conservation work performed by the department. Advise curator on conditions and authenticity of potential acquisitions and on

\textsuperscript{22}Stoehrer had been responsible for securing the gift for the Museum. Tanenbaum initially reached out to Director Teitelbaum, and Teitelbaum connected Tanenbaum and Stoehrer. Stoehrer discussed possible requests with Ben Weiss, who was then the Director of Collections, and Pam Parmal, then the Chair for Textile and Fashion Arts.

\textsuperscript{23}The Employer does not allege that the conservators are statutory supervisors. Rather, MacBeth testified that conservator is a senior position and, accordingly, are expected to advise or help other members of their departments.
methods to conserve the collection. Prepare conditions reports on potential and new acquisitions or objects leaving the building.

Offer expertise and work closely with colleagues to promote collaboration, training and quality of conservation procedures and techniques. Travel, lecture, attend and arrange seminars, conferences; visit other laboratories, publish technical reports and articles in scholarly journals, periodicals. Give tours as required, provide information to other scholars, collectors, general public. Keep abreast of latest conservation developments and problems of environment and environment control; determine proper environmental conditions, maintain professional affiliations in appropriate organizations. Assist with the preparation of the budget as requested.

Employees enter the conservation field with a graduate degree from a recognized conservation program. They then undergo three to four years of training and one to two years of internships or fellowships. At this point, employees become assistant conservators. After a minimum of five years’ further experience, assistant conservators are promoted to associate conservators. The most skilled and experienced associate conservators may eventually become full conservators. Each conservator’s area of expertise is so specific that the Museum does not have policies which may restrict a conservator’s discretion in determining what treatments should be applied to a given work of art. Director of Conservation and Scientific Research and Head of Painting Conservation Rhona MacBeth described the decisions made by conservators as “never completely black and white.” However, the American Institute of Conservation publishes a code of ethics by which the Museum’s conservators abide.

The six conservators whose positions remain in dispute work in six conservation labs: Asian Conservation, Furniture and Frame Conservation, Objects Conservation, Paintings Conservation, Paper Conservation, and Textile Conservation. The two vacant conservator positions are Conservator for Chinese Paintings and Paintings Conservator.

1. Tanya Uyeda, Asian Conservation

Tanya Uyeda began working at the Museum in January 2000 as an assistant conservator. She was promoted to associate conservator in 2009 and to full conservator in 2019. Uyeda reports

24 “Conservator” refers to a full conservator in this decision and in the Employer’s job descriptions and organizational chart. Assistant conservators and associate conservators are included in the collective-bargaining unit.

25 Tr. 140.

26 The record contains no specific evidence with respect to the vacant positions.

27 Although Uyeda is a full conservator, her position is part of the Museum’s operating budget and therefore vulnerable to downsizing or layoff. An endowed position—such as the Higashiyama Kaii conservatorship held by Uyeda’s colleague Tatsuya Yamauchi—commands insulation from layoffs as well as a higher salary and prestige.
to Head of Asian Conservation Jacki Elgar. Uyeda testified that while she reports to Elgar, their areas of expertise differ because Elgar is a trained as a paper conservator, not a conservator of Japanese paintings. Elgar testified that while she sets guidelines and becomes involved when a project is too time-consuming or costly, she does not tell Uyeda how to treat and preserve artwork. Elgar further testified that she would not tell Uyeda what to research except in an unusual situation where funding would attach to particular research. Rather, Elgar described her role as making certain the conservators have the equipment, materials, and time needed to complete their projects. Elgar meets more frequently with assistant conservators and associate conservators than with Uyeda or conservator Tatsuya Yamauchi, although conservators at all levels write their own treatment proposals and manage their own workloads.

Uyeda’s workspace is in the basement of the Museum’s Asian wing and has remained unchanged during her 21 years with the Museum. Currently working in the vicinity are Elgar and Yamauchi.

Uyeda testified that she determines how to treat an object in her lab through experience and training acquired by viewing, discussing, and reading about many different types of works of art. Japanese paintings include hanging scrolls, folding screens, hand scrolls, fans, lanterns, and albums. Uyeda testified that she must consider not only the painting itself but how the painting is assembled and the painting’s cultural context. The Employer does not have policies or guidebooks to follow when making such decisions because very little has been published about the preservation of Asian paintings, particularly in English.

While Uyeda’s decisions are not binding upon other conservators, the records of Uyeda’s work will be used to inform future treatments. Ideally, any treatment can be safely undone in the future. Uyeda does not otherwise set policies or train employees.

Uyeda does not choose which objects she works on; that decision lies with the curators. When a curator presents a group of objects which have been selected for an exhibition, Uyeda and the curator discuss the needs of the various objects. Curators do not overrule Uyeda’s recommendations for the correct treatment of Japanese paintings. Elgar has likewise never overruled Uyeda’s treatment proposals. Indeed, no one overruled Uyeda’s treatment decisions prior to Uyeda’s promotion to her current job title.

One of Uyeda’s projects, the Rakan Project, involves a set of fifteen paintings that the Museum has never displayed as a full set due to poor condition and mismatched formats. Elgar made a proposal to the Sumitomo Foundation, which agreed to fund the project. Uyeda was still titled “associate conservator” when she began work on the project. Her work has not changed since

28 Elgar testified that she reminds conservators of deadlines and may tell a conservator that, for example, “you cannot take five years to do this one painting.” Tr. 1739

29 Much of Uyeda’s education and training took place in Japan, as the field of Asian painting conservation has historically been based on apprenticeship-style training. She is one of three Americans with her particular educational background in the United States. Uyeda testified that the Museum possesses the finest collection of Japanese art outside of Asia, and positions such as hers are unusual.
her promotion to full conservator. Her work has involved in evaluating the paintings; estimating the time needed to restore the paintings; determining the types and amounts of materials required; and determining how to source those materials, including through custom weaving of mounting silks, hand dying those silks with natural dyes, and custom ordering fifteen sets of matching end knobs from a lacquer artist in Tokyo. Elgar has communicated to Uyeda that at least eight paintings must be finished and ready for mounting so that Yamauchi can mount them by the end of December 2023. Uyeda monitors her own workflow and has created her own strategic plan so that the Rakan Project can proceed in a timely manner.

During the Museum’s Covid-19 shutdown, Uyeda and five to ten other conservation employees volunteered to take part in the digital working group to develop online content while the Museum was physically closed. Uyeda’s daughter helped her launch an Instagram account, which is now overseen by fellows and interns. Uyeda also worked with Charlotte Ameringer, a conservator in the paintings conservation lab, to gather footage to be used in a 2½ minute video highlighting the Museum’s conservation work. The Museum outsourced the actual production of the video. Additionally, at Macbeth’s and Elgar’s direction, Uyeda took part in the creation of a virtual lab tour. Elgar testified that she was directly involved with the virtual tours because she has experience with creating videos but that she did not otherwise offer direction to the digital working group.

2. Tatsuya Yamauchi, Higashiyama Kaii Conservator of Japanese Paintings

Tatsuya Yamauchi joined the Museum as the Higashiyama Kaii Conservator of Japanese Paintings (an endowed conservatorship) in August 2021. Yamauchi’s father was a well-known scroll mounter in Kyoto. Yamauchi worked in his father’s studio and performed contract work for the Museum before accepting a permanent position upon the retirement of Phillip Meredith, the previous Higashiyama Kaii Conservator of Japanese Paintings.30 Like Uyeda, Yamauchi reports to Head of Asian Conservation Jacki Elgar. Elgar testified that Yamauchi’s hiring was a five-year process.

Elgar testified that Yamauchi, as a comparatively new employee, is in the process of “getting up to speed,” but that the conservator job description accurately describes his duties. Yamauchi did not testify.

3. Gerri Strickler, Objects Conservation

Gerri Strickler began working at the Museum in March 2008 as an associate conservator. She was promoted to full conservator in March 2021. She has previously worked as an assistant conservator at the Williamstown Art Conservation Center and was promoted to associate conservator there. She reports to Abigail Hykin, Head of Objects Conservation.

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30 Elgar testified that, prior to his retirement, Meredith supervised an associate conservator. The record contains no specific evidence of Meredith’s duties in this regard. The record likewise contains no evidence that Yamauchi, or any other current conservator, has ever acted as a supervisor.
Strickler works primarily with European and American decorative arts and sculpture for various gallery renovations, installations, and projects. Among her current projects is the Dutch gallery renovation; objects involved include a dollhouse, a chandelier, and a model ship. An upcoming French Salon project involves hundreds of pieces of silver which need to be cleaned, photographed, and studied.

Strickler is one of few people on the staff who is certified in radiography. Radiography is required to understand how objects are made and repaired, and must be done safely. Strickler is involved in a long-running project involving the Employer’s x-ray room; the project began when Strickler was an associate conservator. Strickler has made no independent decisions about the design or construction of the room. Director of Conservation and Scientific Research and Head of Painting Conservation MacBeth testified that she asked both Hykin and Strickler whether Strickler would be willing to take on the role of making certain that the x-ray room was renovated appropriately.

Hykin testified that she and Strickler communicate regularly about Strickler’s projects, and that Strickler approaches Hykin with questions or requests. At the time of Hykin’s testimony, Hykin was aware that Strickler was assembling a chandelier but had no intention of being present while Strickler worked. Strickler generally works without oversight; for example, her knowledge of silver conservation exceeds that of Hykin.

Strickler was initially hired on a two-year contract to work on American gallery renovations. She continued to work on renovations as her contract was renewed from year to year. She often worked as a project lead prior to her promotion. A project lead works with the curator on the exhibition list by assessing the condition of the objects that the curator has chosen and discussing whether those objects should be included in the gallery. The project lead also collaborates with designers, mount-makers, other conservators, and the project manager.

Strickler’s treatment proposals have been reworked by project managers due to budgetary concerns. This may lead to an object being removed from an exhibition and replaced with an object which requires less restoration.

Within the lab, projects are assigned to a particular conservator based on experience and availability. Hykin and the lead conservator determine whether a project requires a contract conservator. Strickler cannot make the decision to hire a contract conservator independently or otherwise enter contracts on behalf of the Museum. Strickler does not choose her own projects; the project schedule is driven by the exhibition and loan schedule.

Conservators follow no guidebook or manual. Strickler trains interns and new employees to handle artwork on a courier trip based on the Museum’s guidelines; she performed this training while an associate conservator. She also seeks advice from junior conservators because junior conservators often bring new ideas to the lab.

Strickler testified that her job did not change significantly when she was promoted from associate curator to full curator. The sole change occurs when Hykin is absent; on those occasions,
Strickler may, for example, examine an area under construction to evaluate its impact on objects in the gallery space. Prior to her promotion, Strickler attended division head meetings when Hykin was not available. Strickler is not, however, involved in personnel decisions; she learned during the hearing that her colleague Mei-An Tsu had been promoted from associate conservator to full conservator.

4. Mei-An Tsu, Objects Conservation

Mei-An Tsu was promoted to full conservator during the course of the hearing. Tsu has been with the Museum for twenty years. Like Strickler, she reports to Abigail Hykin, Head of Objects Conservation.

Tsu is the primary conservator working with the Museum’s jewelry collection. At the time of the hearing, she was working on the large stone objects being installed in the Museum’s Ancient Greek and Roman galleries. Hykin generally assigns African gallery work to Tsu. Tsu is also involved in outreach for limited-sight visitors.

Hykin testified that Tsu’s new position will be similar to her former position and that because Tsu, like Strickler, is an experienced practitioner she requires little direct oversight although communication about projects and priorities is expected. Tsu has no involvement in crafting the policy of employees’ terms and conditions of employment.

5. Alison Luxner, Paper Conservation

Alison Luxner initially worked for the Museum as a post-graduate fellow and assistant paper conservator between 1994 and 1997. In 2008, she was rehired as an associate conservator; she was promoted to full conservator in 2019. Luxner reports to Annette Manick, Head of Paper Conservation.

Luxner is responsible for making conservation acquisition assessments. When the Museum acquires new works on paper (including photographs), Luxner examines the object and writes a report documenting the work’s condition and potential future problems. Although curators take Luxner’s recommendations seriously, they sometimes choose to acquire artworks even though Luxner feels that the work’s condition is suspect.

She is also responsible for treating works of art to keep their conditions from deteriorating and for performing cosmetic work to art that will be displayed. At the time of the hearing, Luxner’s projects included the Ekua Holmes exhibition (assigned to her after a fellow departed) and a Dutch global touring exhibition. Manick testified that the work involved in exhibitions follows standard Museum processes so that Luxner does not require direction from Manick.

Luxner cannot choose her own projects; all work is assigned to her by Manick, although Luxner may ask Manick for permission to do something which she believes would be helpful in the lab. Manick testified that when she assigns exhibitions to the various conservators in her department, she attempts to avoid assigning too many exhibitions to any one conservator.
Luxner’s treatment proposals must be approved by the heads of the appropriate
departments (often Prints and Drawings or Photography, although paper conservators perform
work for every department in the Museum). However, she initially discusses treatment goals with
a curator.

Luxner is not bound by other conservators’ treatment decisions, nor are other conservators
bound by her decisions. Luxner testified that her work does not differ from that of her colleague,
Associate Paper Conservator Katrina Newbury. She further testified that her job did not change
after her promotion to full conservator. Like Strickler, Luxner testified that she enjoys working
with fellows and junior colleagues because new arrivals bring recent developments and ideas with
them to an inherently collaborative process.

Luxner has no budgetary authority and cannot enter into contracts on behalf of the
Museum. When she requests the purchase of an item, the item may not be purchased or may be
purchased from a different vendor at a lower price.

Luxner acts as health and safety liaison for the Paper Conservation Lab. She tracks and
orders supplies, monitors chemical inventory, and makes certain that safety data sheets are up-to-
date. She follows established procedures while doing so.

She has submitted Instagram posts to the conservation account and conservation stories to
the Museum’s web page. Her proposed content has never been rejected, although it has been edited,
such as by changing words or adding emojis. Other employees, including associate conservators
and fellows, have also added content to the Museum’s digital offerings.

6. Lydia Vagts, Paintings Conservation

Lydia Vagts worked for the Museum as an intern, a fellow, and a contractor at various
times between 1984 and 2004. In 2005 she was hired as an associate conservator; she was
promoted to full conservator during the course of the hearing. She reports directly to Rhona
MacBeth in MacBeth’s role as Head of Paintings Conservation. MacBeth and Vagts were the only
paintings conservators in the studio at the time of the hearing, although the Museum hoped to hire
new conservators in the near future. Thus, Vagts was unable to project precisely how her day-to-
day responsibilities might change in light of her promotion, although MacBeth had advised her
that she might supervise someone in the future. MacBeth testified that she expected Vagts to attend
more curatorial planning meetings for upcoming exhibitions in her new role.

As a conservator, Vagts frequently travels with the Museum’s paintings when they are
loaned to exhibitions. She is heavily involved with the Museum’s annual Art in Bloom event,
during which floral arrangements are displayed beside the works that inspired them. Additionally,
she is involved with emergency preparedness. While Vagts submits purchasing requisitions for
items such as blotting paper and gloves, she does not have input into the paintings conservation
budget.
Although MacBeth does not formally approve Vagts’ treatment plans for specific paintings, Vagts does not conduct treatments before consulting with MacBeth. Curators do formally approve Vagts’ treatment plans. Vagts does not choose to work on particular paintings; rather, she must work on paintings that are scheduled to be displayed or loaned to an outside exhibition.  

**7. Vacant Conservator Positions**

At the time of the hearing, the Employer had two unfilled conservator positions: Conservator for Chinese Paintings and Paintings Conservator. The record contains no evidence specifically about these positions. However, as noted above, there is only one job position for all conservators.

**Manager of Conservation Administration and Collections Database Administrator**

The Manager of Conservation Administration and Collections Database Administrator, Kay Satomi, reports to both Rhona MacBeth (Director of Conservation and Scientific Research) and Jill Kennedy-Kernohan (Director of Registration and Collections Management). Satomi testified that she performs administrative support functions for both departments, which had previously been a single department.

Satomi plans events for MacBeth and the Department of Conservation and Scientific Research. Her tasks may include sending invitations, securing an appropriately-arranged room for the occasion, arranging for food, and other logistical tasks. Satomi does not determine whether an event will be held or whether food will be served, but she may suggest that, for example, a particular lab ought to participate in a particular event.

Satomi manages the collections database, known as Artemis, for Kennedy-Kernohan and the Department of Registration and Collections Management. The collections database includes information on all objects which may be displayed by the Museum, including whether an object is the property of the Museum or on loan from another Museum; whether the Museum is planning to purchase an object it does not own; whether an object owned by the Museum is on display or on loan to another museum; and whether an object has been destroyed. Satomi makes certain that the data is both thorough and accurate. She offers training on how to use the database every five to six weeks and each time the Museum welcomes a new group of interns. She determines the content of the training. She drafts and distributes “cheat sheets” so that more experienced employees can teach themselves to manipulate the database in new ways when the database is upgraded.

Before upgrading the database or turning on database features, Satomi consults with some combination of Kathryn Gunsch (Director of Collections), Julia McCarthy (Assistant Director of Collections), Catherine O’Reilly (Collections Management Specialist), Nora Donnelly (Collections Manager), and Kennedy-Kernohan as well as the technical-side employees who are

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31 When the Museum employed numerous paintings conservators, and a large number of paintings were set to be exhibited together, each conservator was given the opportunity to choose a painting from the group to treat.
responsible for programming the Employer’s computer systems. Although Tom Catalini (Senior Director of Information Systems and Tech. Services) ultimately determines whether to upgrade the Employer’s operating system as a whole, Satomi determines when to upgrade the database.\textsuperscript{32} MacBeth testified that while she might request that the database include certain features, the decision ultimately lies with Satomi, whose knowledge of the database is greatest.

Satomi monitors the budget for both departments. Her budgetary role includes putting in orders to purchase materials; making certain that grant money is used as directed by the terms of the grant;\textsuperscript{33} letting the Finance Department know whether her departments are overspending or underspending as the fiscal year progresses; tracking the salaries and promotions of employees; and compiling information about various grants and funds to create a path to the purchase of expensive equipment for the science research lab.

The Museum’s Finance Department enters the budget for the year into an Oracle database. Satomi reviews the database to determine the amount of funds available. If an employee requests a purchase which does not fit into the budget, Satomi consults with MacBeth or Kennedy-Kernohan and attempts to find a solution, such as asking for permission to go above the department’s budget or asking another department to split the cost of the purchase. The final decision lies with MacBeth, Kennedy-Kernohan, or Chief of Curatorial Affairs and Conservation Yu Yu. Although she makes certain that contracting work fits within the departments’ budgets, Satomi does not set contractor rates or negotiate contractor rates.

Satomi has approved spending authority of up to $15,000. She testified that she does not make discretionary decisions on how to spend the money; rather, she trusts the staff not to request purchases unless those purchases are absolutely necessary. She does, however, have the discretion to move funds from one division to another within a department if, for example, one division has not spent its share of the budget at the end of the year and another division needs extra funding. MacBeth testified that although Satomi alone has access to the department’s credit card, MacBeth has authority to make purchases and authorize purchases.

No employees currently report to Satomi. She approved timesheets on behalf of MacBeth’s predecessor when MacBeth’s predecessor was on leave. Programmers briefly reported to Satomi before being moved to a different department in approximately 2012; however, she did not assign work to the programmers. MacBeth testified that the Employer plans to create a new position in the future and that Satomi will be on the hiring committee and will supervise the new employee should the position be filled.

\textsuperscript{32} Satomi testified that she determines when, rather than whether, to upgrade the database because by its nature the database must be upgraded periodically in order to function.

\textsuperscript{33} Satomi has no role in setting the terms of a grant.
ANALYSIS

Supervisory Status

Pursuant to Section 2(11) of the Act, the term “supervisor” means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, where the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in Section 2(11) of the Act. Rather, possession of any one of them is sufficient to confer supervisory status, *Chicago Metallic Corp.*, 273 NLRB 1677, 1689 (1985).

The burden of proving supervisory status rests on the party alleging that such status exists, *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 121 S.Ct. 1861, 167 LRRM 2164 (2001). The status of a supervisor under the Act is determined by an individual’s duties, not by his title or job classification, *New Fern Restorium Co.*, 175 NLRB 871 (1969). The Board will refrain from construing supervisory status too broadly, because the inevitable consequence of such a construction is to remove individuals from the protection of the Act, *Quadrex Environmental Co.*, 308 NLRB 101, 102 (1992).

1. Laura Weinstein, Coomaraswamy Curator of South Asian and Islamic Art

The Employer argues that Weinstein is a supervisor on the basis of her involvement in the hiring of a new assistant curator. 34 It is undisputed that Weinstein crafted the job description from templates and incorporated feedback from Yu Yu (Chair of Art of Asia Department and Chief of Curatorial Affairs and Conservation), among others; eliminated an initial group of applicants who did not have any relevant experience; conducted the first round of interviews alongside an admitted manager; conducted second round interviews while Yu Yu conducted her own interviews of the candidates; and reviewed previously rejected applications in the hopes of finding additional finalists.

Crafting a job description is a technical duty which does not establish the authority to hire any specific applicant, particularly where, as here, Weinstein relied on an established format and sought feedback from her own manager.

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34 At the time of the hearing, no employees reported to Weinstein, although the new assistant curator was expected to report to Weinstein upon being hired. A temporary employee reported to Weinstein in the time period immediately preceding the hearing. However, the record reveals insufficient evidence to establish that Weinstein assigned work to that employee or responsibly directed her. Indeed, the Employer makes no argument in its brief that Weinstein did so. Nor does either party argue that Weinstein transfers, suspends, lays off, recalls, promotes, discharges, rewards, or discipline other employees, or adjusts their grievances, and the record includes no evidence to suggest that she does.
Weinstein’s elimination of candidates who did not have appropriate experience likewise did not require independent judgment. The Board has held that narrowing the applicant pool by screening applicants and recommending several to the ultimate decisionmaker does not constitute an effective hiring recommendation. *Wake Electric Membership Corp.*, 338 NLRB 298, 298–299 (2002); *Ohio State Legal Services Assn.*, 239 NLRB 594, 596 (1978); *The Door*, 297 NLRB 601, 602 (1990).

It is well-established that a putative supervisor does not effectively recommend hiring where acknowledged supervisors also interview candidates. *Peacock Productions of NBC Universal Media*, 364 NLRB No. 104, slip op. at 4–5 (2016); *Republican Co.*, 361 NLRB 93 (2014); *J. C. Penney Corp.*, 347 NLRB 127, 129 (2006); *Boston Medical Center Corp.*, 330 NLRB 152, 201 (1999); *Ryder Truck Rental, Inc.*, 326 NLRB 1386, 1387 fn. 9 (1998).\(^{35}\)

Yu Yu’s involvement at every stage of the hiring process indicates that Weinstein has had no opportunity to exercise independent judgment or make an effective recommendation, as Yu Yu has always been in a position to make her own evaluation of the candidates and act upon that evaluation.

I find that the Employer has not carried its burden of establishing that Weinstein has the authority to hire employees, or to effectively recommend the hire of employees. Thus, I conclude that Weinstein should not be excluded from the collective-bargaining unit as a supervisor.

2. Kay Satomi, Manager of Conservation Administration and Collections Database Administrator

Kay Satomi presently supervises no employees. The record contains conclusory testimony that Satomi supervised employees approximately ten years ago, but does not contain evidence indicating that Satomi ever hired, transferred, suspended, laid off, recalled, promoted, discharged, assigned, rewarded, or disciplined those employees, or responsibly directed them, or adjusted their grievances.

The Employer notes that Satomi may, in the future, supervise an as-yet-unhired employee. However, in evaluating an employee’s supervisory status, the Board only considers “what the individuals filling these classifications actually do now,” not what they “speculatively may be doing some time in the future.” *Southwestern Bell Telephone Co.*, 222 NLRB 407 (1976).

Because Satomi undisputedly does not presently supervise any employees, and because there is no specific evidence to suggest that she has ever exercised any of the numerous supervisory indicia, I conclude that the Employer has not met its burden of establishing that the Manager of Conservation Administration and Collections Database Administration should be excluded from the collective-bargaining unit as a supervisor.

\(^{35}\) The same holds true with respect to Weinstein’s role in hiring temporary curatorial research associate Roxanne Goldberg. Yu Yu interviewed multiple candidates and independently concluded that Goldberg should be hired.
Managerial Status

Managerial employees are defined as those who formulate and effectuate high-level employer policies or “who have discretion in the performance of their jobs independent of their employer’s established policy.” General Dynamics Corp., 213 NLRB 851, 857 (1974); Republican Co., supra. “Managerial status may not be based on decision making which is part of the routine discharge of professional duties. Only if the activities of professional employees fall outside the scope of the duties routinely performed by similarly situated professionals will they be found aligned with management.” Montefiore Hospital and Medical Center, 261 NLRB 569, 570 (1982).

The party seeking to exclude an individual as managerial bears the burden of proof. LeMoyne-Owen College, 345 NLRB 1123, 1128 (2005); Waste Management de Puerto Rico, 339 NLRB 262, 279 (2003). See Allstate Insurance Co., 332 NLRB 759, 762 (2000) (managerial status defined as the “taking or recommending discretionary actions that effectively control or implement employer policies”).

1. Conservators and Curators

The Employer argues that the curators and conservators act as managers for the Museum because their role in the Museum’s mission makes them so completely aligned with management that they can only be viewed as representatives of management. In making this argument, the Employer relies heavily on the managerial exception defined by the Supreme Court in NLRB v. Yeshiva Univ., 444 U.S. 672, 682-83 (1980). In Yeshiva, the Court held that a private university’s full-time faculty members whose authority in academic matters was absolute, who decided what courses would be offered, when they would be scheduled, and to whom they would be taught, who determined teaching methods, grading policies, and matriculation standards, and who effectively decided which students would be admitted, retained and graduated, exercised supervisory and managerial functions. The Court explained that “managerial employees must exercise discretion within, or even independently of, established employer policy and must be aligned with management.” Id. Final authority is not required to show managerial status; rather, “the relevant consideration is effective recommendation or control.” Yeshiva, 444 U.S. at 684 fn. 17. Employees meet the standard for “effective recommendation” or “control” where their decisions are routinely approved without independent review, Univ. of Great Falls, 325 NLRB 83, 93 (1997).

In arguing that the decisions made by curators and conservators are not the routine discharge of professional duties as contemplated by the Board in General Dynamics Corp., the Employer asserts that the discretion and judgment exercised by curators and conservators entirely comprises the Museum’s direction. The Museum’s business is art; curators and conservators decide what art the Museum should acquire, what art the Museum should display, the manner in which art is displayed, and the way the art is presented to visitors to the Museum. The Employer has implemented no policy to dictate what objects will be displayed or how those objects will be preserved. The Employer argues that decisions made by curators and conservators are subject primarily to budgetary or space limitations rather than to review by the curators and conservators’ supervisors.
With respect to the acquisition of art, the record reveals that an acquisition proposal goes through multiple layers of review. A curator at any level recommends an acquisition to a department chair. For example, Ilchman, the Art of Europe Chair, testified that seeking acquisitions is a group effort involving discussion throughout the department and the Museum. Similarly, Thüring, the Contemporary Art Chair, testified that a chair has “more or less” final say over acquisitions in a department. When Curator Hanson took the lead in the acquisition of a painting, Ilchman and other curators traveled to see the painting beforehand. Curator Hanson, like Curator Di Nepi, has identified works as desirable that the Museum did not ultimately acquire. When a department head has determined that acquisition is appropriate, the recommendation is brought to the Collections Department and to the group of Trustees who comprise the Collections Committee, which generally issues its approval.\[36\]

To the extent that curators’ recommendations are followed, the Union appropriately draws a comparison to publishing house employees whose recommendations to purchase certain manuscripts “represents the exercise of literary criticism,” G. P. Putnam’s Sons Inc., 226 NLRB 1256, 1262 (1976) or acquisitions librarians who responsible for developing and maintaining the library’s collection of books, Marymount Coll., 280 NLRB 486, 489 (1986). In G. P. Putnam’s Sons, the Board upheld an ALJ’s decision that:

While they recommend the purchase of manuscripts, and apparently decide on their own to reject a manuscript, such function represents the exercise of literary criticism, not a managerial function. The managerial function occurs in the decision to purchase a manuscript and to commit company funds to its publication and promotion, and the record indicates clearly that assistant editors have no authority in this area.

In Marymount, the Board held that the work of the acquisitions librarian was not managerial where the director of library services had final authority over library material and budget.

Conservators play a more straightforward role in acquisition; they are often asked to assess an object’s condition before the Museum attempts to acquire that object. Conservator Allison Luxner testified that, although curators take her recommendations seriously, they sometimes choose to pursue artworks even though Luxner believes that the artwork’s condition is suspect. In this situation, a conservator is merely required to exercise technical expertise so that the individuals who make a final decision to acquire a piece have been provided with all possible information.

Regarding decisions as to which art should be displayed, curators do not determine the exhibition calendar, the locations of exhibitions, or the budgets of exhibitions. While curators do propose exhibitions, their proposals are subject to review and are frequently rejected. Many—if not most—curatorial assignments stem from proposals made by a manager or dictated by the terms of a gift to the Museum. Curator Doxey has never participated in the process of proposing an exhibition. Contemporary Art Chair Thüring has thus far not chosen to pursue any of Curator Millar Fisher’s proposals. Curator Segal, Curator Di Nepi, and Curator Stoehrler have also proposed exhibitions that did not move forward. Curators’ role in proposing exhibitions is quite

\[36\] A curator’s recommendation to deaccession artwork must also be supported by a department chair.
different from the role of the faculty in Yeshiva, who had discretion to decide what courses would be offered and when they would be scheduled, rather than the mere ability to propose a course which they would like to teach if permitted.

Once assigned to an exhibition or gallery, curators do choose works to support an overall narrative and break those works into sub-groups. However, their discretion is not absolute. They must conform to space and budgetary constraints over which they have no control. Their decisions may be subject to review, as when Chief of Curatorial Affairs and Conservation Yu Yu determined that it would require too many resources to display a piece in the New Light exhibition.

Conservators have virtually no ability to choose their own projects. Rather, they treat pieces as assigned to prepare the pieces for showings they did not propose. While a conservator may deem an artwork to be too fragile to display, or in too poor condition to restore in a timely manner, such judgements are plainly professional in nature. Each conservator is highly educated and experienced in a very specific sub-specialty. Managers and curators do not overrule conservators’ treatment plans because conservators adhere to professional standards needed to protect fragile artwork.

Finally, the curators’ choices with presentation of art are subject to managerial approval. Yu Yu herself testified that curators make revisions after receiving feedback. During the planning of the Basquiat exhibition, Curator Munsell objected strenuously to a proposal that non-expert voices write some of the exhibition’s labels; she was over-ruled. Curator Doxey’s proposed narrative for the Ancient Nubia exhibition was altered, and while she approved of the change, it was not ultimately her creation or decision. When Curator Stoehrer wanted to use a video clip and remove display cases for Boivin starfish brooch exhibition, she was unable to secure permission to do so. A preponderance of evidence revealed in the hearing suggests that curators’ choices are not routinely approved and are subject to regular review.

In support of its contention that the curation of exhibitions and installations is not managerial, the Union cites, inter alia, Westinghouse Broad. Co., 215 NLRB 123, 124 (1974); Post-Newsweek Station WPLG-TV, 217 NLRB 14, 14-15 (1975); Musical Theatre Ass’n, 221 NLRB 872, 873–74 (1975); Northwestern Bell Tel. Co., 79 NLRB 549, 552 (1948); Scranton Trib., 294 NLRB 692, 693 (1989); and Kenosha News Pub. Corp., 264 NLRB 270, 272 (1982).

In Westinghouse and Post-Newsweek Station, the Board held that producer/directors responsible for the “look of a show” were not managerial where their discretion did not exceed the bounds of policy determined by others. In Musical Theatre Ass’n, the Board held that directors and choreographers who gave artistic instruction to performers were not managerial and did not formulate, determine, and effectuate their employer’s business policies. In Northwestern Bell Tel. Co., the Board reiterated that a lack of close supervision and freedom to exercise considerable judgment and discretion do not equate to managerial status where the decisions made must be in accordance with the employer’s established policy. Finally, in Scranton Trib. and Kenosha News, the Board held that newspaper editors’ abilities to determine a paper’s content and layout, to rewrite or remove stories, and to determine which stories should be covered to what extent do not, alone, demonstrate managerial status.
In support of its position, the Employer cites Republican Co., supra, in which the editorial page editor held “pitch” meetings with the two editorial writers who reported to him and selected the editorial topics for the paper without any affirmative approval from the publisher to whom he reported. The editorial page editor either assigned an editorial to one of two editorial writers or wrote it himself. The Board found that the editor was a managerial employee even though the newspaper’s publisher had a rarely exercised authority to veto an editorial proposed by the editor, noting that final authority is not required to prove managerial status.

I find that Republican Co. is distinguishable. The editor’s role in that case is more closely analogous to a department chair’s position than to a curator’s position. The curators may propose that the Museum acquire an artwork or stage an exhibition, but the department chair determines whether the proposal moves on to the higher levels of management for approval. As the Employer notes, the curators’ choices of works to display or narratives to implement are more often limited by financial or time constraints than by the artistic opinions of department chairs or higher-level managers. However, the curators’ professional decisions require no more authority to formulate policy than the artistic decisions made by directors and choreographers in Musical Theatre Ass'n or the “look of a show” decisions made by the producer/directors in Westinghouse.

The Employer further argues that the curators’ and conservators’ ability to drive the work of other employees throughout the Museum is indicative of their managerial status. That is, when a curator selects an object for display and a conservator determines that the object needs treatment, other employees may be required to move the object, erect an appropriate case for the object’s display, or assist with the object’s restoration. The Employer notes that the Board has found managerial status where an employee can affect the production schedule of their employer citing Virginia Mfg. Co., 311 NLRB 992 (1993) (excluding production control clerk who tracked production data and based on his data compilations and calculations made lists for management to determine daily production priorities); CF&I Steel Corp., 196 NLRB 470, 472 (1972) (production coordinators who perform short-term planning involving production for each mill and check daily fluctuations in the planner’s overall forecasts are managerial employees); Firestone Tire and Rubber Co., 112 NLRB 571, 573 (1955) (“scheduler in production” is a managerial employee where he tracked delivery orders and, in consultation with the plant superintendent, determined the number of machines needed to meet the production schedules). This argument is not persuasive. The record is replete with examples of curators’ and conservators’ plans being altered by a lack of time and managers advising curators and conservators to remember their deadlines. Curators and conservators do not determine the Employer’s priorities or expenditures; they work within predetermined limits.

Additionally, the Employer highlights the fact the curators and conservators hold themselves out as representing the Museum, including when they give lectures, solicit donations, or publish books. However, none of these job duties are inherently managerial. In Minneapolis Soc. Of Fine Arts, 194 NLRB 371, 374 (1971), the Board held that a chairman who “instructs and lectures on art” was not managerial; in George Junior Republic, 224 NLRB 1581, 1583 (1976), the Board held that communicating with donors to solicit funds is not managerial if final approval for fundraising must be obtained from a superior; and in Northwestern Bell Tel. Co.,
supra, the Board held that representing an employer to the public in conferences with others in the field is not managerial.

The core responsibility of a curator is to build, maintain, display, research and publish on a collection of art; the core responsibility of a conservator is the care and restoration of works of art. These responsibilities require professional judgment, but they do not, in and of themselves, mandate that a curator or conservator must be managerial.

Based on the record evidence, I find that the curators and conservators do not effectively formulate and effectuate the policies of the Employer, and therefore, are included in the bargaining unit.

2. Manager of Conservation Administration and Collections Database Administrator

The Employer argues that Satomi acts as a manager for the Museum because she tracks department spending, makes purchases on behalf of the Employer, consults with Director of Conservation and Scientific Research MacBeth about budgetary matters, trains users on database operation, designs database training, determines when the database should be updated, and determines which database features should be turned on.

With respect to Satomi’s role in maintaining the Employer’s database, the Board has held that an employee’s decision-making regarding the modification or upgrade of software or hardware is not managerial where such decisions do not concern the employer’s business. For example, in Nurses United for Improved Patient Healthcare, 338 NLRB 837, 839-40 (2003), the Board held that an employee who updated her employer’s recordkeeping system, effectively recommended the purchase of computers, and formulated policies with respect to hardware and software was not a manager. The Board noted that that employer’s business was not computer systems but “healthcare delivery.”

As regards Satomi’s role in training other employees to use the database, the Board has held that conducting training does not remove an employee from a bargaining unit. This issue generally arises in the context of alleged supervisory status. In Sears, Roebuck and Co. 292 NLRB 753, 754 (1989), the Board held that an experienced employee who instructs new workers is not a supervisor; in F.A. Bartlett Tree Expert Co., Inc. 325 NLRB 243 fn. 1 (1997), the Board held that crew foremen who provide on-the-job training to trimmers are not supervisors. The Board has likewise held that troubleshooting software systems, developing computer system policies, and training employees on the computer system are not managerial functions, Bakersfield Californian, 316 NLRB 1211 (1995).

Finally, with respect to Satomi’s role in budgetary matters, it is well-established that the authority to extend the employer’s credit is not controlling in assessing managerial status, Simplex Indus., Inc., 243 NLRB 111, 112-13 (1979). Rather, employees must “exercise sufficient independent discretion in their jobs to truly align them with management,” Bell Aerospace, 219 NLRB 384, 386 (1975). Satomi does not determine when and whether funds should be spent;
instead, she trusts other employees not to request frivolous purchases and makes purchases within
the department’s budget, which she does not determine. To the extent that Satomi tracks her
department’s budget, her role is merely administerial. She does not set the budget; she does not
prioritize spending; and she cannot choose to go over the budget.

Based on the record evidence, I find that the Manager of Conservation Administration and
Collections Database Administrator does not effectively formulate and effectuate the policies of
the Employer, and, therefore, is included in the bargaining unit.

**CLARIFICATION OF BARGAINING UNIT**

**IT IS HEREBY ORDERED** that the collective-bargaining unit represented by the Union
be clarified to include Curators, Conservators, and the Manager of Conservation Administration
and Collection Database Administrator.

**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](http://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.
Museum of Fine Arts, Boston
Case 01-UC-281826

Dated: June 16, 2022

JESSICA L. FOLEY
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