

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19**

**FUNGI PERFECTI, LLC**

**Employer**

**and**

**Case 19-RC-339510**

**LABORERS LOCAL 252**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

On April 8, 2024, Laborers Local 252 (“Petitioner”) filed a petition to represent a wall-to-wall unit of the employees of Fungi Perfecti, LLC (“Employer”), about 50 people. A hearing officer of the National Labor Relations Board (“Board”) held a videoconference hearing on the petition on April 16, 17, 19, and 23, 2024. Pursuant to the provisions of §3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I make the following findings and conclusions.

The Employer grows, processes, and sells on both a retail and wholesale basis mushrooms and mushroom-derived products and performs and disseminates research on mushrooms. The business operates out of three facilities in Western Washington.

By its Petition, Petitioner seeks a presumptively appropriate unit. The Employer maintains that the unit sought by Petitioner is not appropriate on numerous bases. First, it argues that the senior and research scientists, the warehouse operations coordinator, the grow room manager, the IT support supervisor, and the warehouse shipping leads should be excluded from the unit as supervisors. Second, it argues that all information technology (IT) and accounting positions and the HR generalist should be excluded as confidential. Finally, it argues that all of the accounting, IT, research and development, and quality assurance (QA) departments, and lab technicians, culture librarians, project coordinators, managers, and the HR generalist lack a community of interest with other petitioned-for employees.

The Petitioner and the Employer reached stipulations as to a number of employees’ supervisory status.<sup>1</sup> They also stipulated that the unit should exclude “all fully remote employees,” but did not reach full agreement on which employees were “fully remote” or what that phrase

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<sup>1</sup> Those classifications (each consisting of a single employee) are as follows, by department (as stipulated in Board Exhibit 2: 1) Farm operations: Director Of Farm Operations, Facilities Capital Improvement Manager, Facilities Maintenance Supervisor, Production Crew Manager, Production Crew Assistant Manager; 2) Research & Development: Research & Development Director; 3) Information Technology: Chief Information Technology Officer; 4) Quality Assurance: Manager of Quality Assurance, Quality Assurance Supervisor; 5) Accounting: Chief Financial Officer; 6) Human Resources: Director Of Human Resources, Human Resources Manager; 7) Supply Chain: Supply Chain Manager, Inventory Manager; 8) Warehouse Operations: Warehouse Operations Manager, WDC Shipping Supervisor. Based on limited testimony and the Employer’s organization chart, the Network Systems Engineer appears to be a supervisor and to work remotely. At hearing, the Petitioner also stipulated that the Extract Production Manager (within Farm Operations) is a supervisor. The parties also stipulated to the exclusion of the network systems engineer, who, based on the hearing testimony and organization charts, appears to be a supervisor.

means. Furthermore, the record establishes that employees' status as fully remote is not dependent on classification, but is a status held by individual employees in numerous classifications. They reached stipulations that the human resources specialist, the IT applications supervisor, and the IT software engineer are fully remote.

The Petitioner contends that the Employer has waived the right to contend that certain employees should be excluded, because they do not appear in its list of excluded employees in its statement of position, or, in some cases, the disputed employees do appear in that list, but the Employer failed to assert the specific reason for the exclusion that it now claims.

A hearing officer of the Board held a hearing in this matter and the parties subsequently filed briefs with me. While, as discussed further below, the Employer's arguments may be precluded under the Board's Rules and Regulations ("Board's rules"), I have the responsibility to make a decision based on the full record as to whether the unit is appropriate or not. As explained below, based on that record and relevant Board law, I find that the Employer has not met its burden of demonstrating that any of the disputed employees are supervisors or that the accounting and IT departments and the human resources specialist are confidential positions. I find that all of the remaining classifications share a community of interest. As the parties stipulated to the exclusion of fully remote employees, all fully remote employees will be excluded from the unit. I will defer to the post-election challenges process any disputes over which employees are fully remote.

## I. DISPUTED CLASSIFICATIONS

The disputed classifications and the reasons the Employer contends the classifications should be excluded are as follows:

Classification	Department	Number of Employees	Remote Status	Disputed based on		
				Community of Interest	Supervisor	Confidential
Lab Tech	Farm Ops.	1		X		
Culture Librarian	Farm Ops.	1		X		
Project Coordinator	Farm Ops.	1		X		
Facilities Project Manager <sup>2</sup>	Farm Ops.	1		X		
Grow Room Manager	Farm Ops.	1			X	
Senior Research Scientist	Research	2	One fully remote	X		

<sup>2</sup> Facilities Project Manager is the title used in the Employer's Statement of Position, although the record references a "Facilities Project Coordinator."

Research Scientist	Research	2		X		
Research Assistant	Research	2		X		
QA Food Safety Specialist	Quality Assurance	1		X		
Sr. Quality Assurance Specialist	Quality Assurance	1		X		
Quality Assurance Specialist	Quality Assurance	1		X		
Warehouse Operations Coordinator	Warehouse & Supply Chain				X	
IT Help Desk Tech	IT	2		X		
Network Specialist (IT)	IT	1		X		
Software Engineer	IT	1	X			
HR Generalist	Human Resources	1				X
HR Specialist	Human Resources	1	X			X
Accountant	Accounting	2	One fully remote	X		X
Accounts Receivable Specialist	Accounting	1		X		X
Accounts Payable Specialist	Accounting	1		X		X

Two of the research scientists, the chemistry senior research scientist and the cell research scientist, were not listed by the Employer on any of the employee lists it filed with its timely Statement of Position. The other two scientists were listed in Attachment D to its Statement of Position as employees it seeks to exclude, but the reasons listed for their exclusion were that, in the case of the senior fungal scientist, the employee lacks a community of interest and is fully remote, and in the case of the chemistry research scientist that he lacks a community of interest; in neither case was supervisory status asserted. The Union contends that the Employer thereby waived its right to contest the inclusion of the three scientists. The two warehouse leads also did not appear on Attachment D. The Union contends that the Employer thereby waived its right to

contest the inclusion of the warehouse leads. The network specialist and IT support technicians were also listed in Attachment D, but the reason listed for their exclusion was lacking a community of interest; confidential status was not asserted. The Petitioner contends that, for the same reason, the Employer also waived its right to contest the inclusion of the IT employees on the basis of confidential status.

## **II. FACTS**

### **A. The Employer's Operations**

As noted above, the Employer operates out of three facilities. One, called the Farm, is located in a rural area in Shelton, Washington. All the production of the Employer's mushroom products is performed at this facility, including both growing of mushrooms and extraction of materials from those mushrooms in a laboratory. The Farm also houses the research department, some quality assurance employees, and information technology employee. The second facility, the Tumwater Distribution Center ("TDC"), located about 25 miles away, is where finished products are package and shipped to customers. The third facility, the River Drive Warehouse ("RDW"), located about a mile away from the TDC, is a new facility that the Employer has not yet fully expanded into. It currently holds overflow storage and offices.

The business is made up of eight departments: farm operations, research and development, warehouse operations, inventory/supply chain, quality assurance, information technology ("IT"), HR, and accounting.<sup>3</sup>

All employees have access to the same basic benefits, including health insurance and 401k. All the employees work Monday through Friday, mostly about 8:30 AM to 5 PM, although a few start a bit earlier in the day.

There was general testimony that annual evaluations determine whether employees receive raises, but no specific testimony as to what rating goes with how much money or about any specific occasion in which an employee received or failed to receive a specific raise because of the specific evaluation the employee received.

#### **1. Farm operations**

The Farm operations department consists of three sub-departments: production, extract, and facilities and maintenance. Five disputed classifications are in the Farm Operations department and its sub-departments: Laboratory Technician, Culture Librarian, Project Coordinator, Facilities Project Manager, and Grow Room Manager.

The Farm facilities consist of two adjoining buildings, plus three office portable buildings. Production and research share one permanent building and grow rooms occupy the other. A shared

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<sup>3</sup> There were a few references in the record to a marketing department and to customer service, but there is no evidence in the record about what either department consists of or where they operate.

breakroom is located in the production/research building and there is a picnic table outside the facility where some employees eat lunch together when weather permits.

The production team uses growing media (mostly rice) to incubate mycelium and grow fruiting bodies (what lay people know as mushrooms). The extract team, consisting of an extract production manager and two extract lab assistants, uses some of the mycelium incubated by production to extract derivative products. No advanced degree is required of extract lab assistants; only a high school degree and two years of production experience is required. These positions pay \$20 to \$28 an hour.

The production team consists of a production crew manager, assistant production manager, a grow room manager, a grow room assistant, a culture librarian, and a laboratory technician. The culture librarian tracks and maintains mushroom tissue lines and checks them out to both production and research team to use in growing mushrooms for production or research. Thus, the work of the department begins with the culture librarian. After a tissue is checked out, production employees inoculate the growing medium with the mushroom tissue. Once the mushroom tissue has fully colonized the medium, the colonized medium is moved to the grow room, where it is cultivated by the grow room employees to sprout mushrooms, which are then harvested and dried. Production crew employees earn \$19 to \$22 an hour, the culture librarian earns \$32 an hour, and the laboratory technician (“lab tech”) earns a salary equivalent to \$36 an hour. For the production and lab tech positions, only a high school diploma is required, with two years of production or warehouse experience preferred. There was no information in evidence on requirements for the culture librarian position.

The grow room manager is responsible for this harvesting work, along with cleaning the grow room racks and tools. This classification’s job description states that that employee “May supervise one or more employees to include hiring, training, evaluating, rewarding and administering corrective action as needed.” Neither the grow room manager nor the grow room assistant testified. The only employee who reports to the grow room manager is the grow room assistant. There was limited testimony from the production manager that the grow room manager interviewed and was given the final say in hiring the grow room assistant, performs that employee’s evaluations, and authorizes overtime and time off for that employee. The main requirement for both grow room manager and grow room assistant is production experience; only a high school degree is required for both positions. The grow room assistant position is paid \$19 to \$25 an hour and the grow manager \$36 an hour.

The facilities and maintenance employees maintain the Farm grounds, and they purchase, maintain, and repair equipment such as forklifts, and maintains and repairs the facilities (it appears that these employees provide these services not only at the Farm, but also at the other two facilities). Maintenance experience is the main qualification for these positions; there is no education requirement. These positions pay \$21 to \$28 an hour.

The facilities and maintenance subdepartment also includes two additional classifications, about which there is minimal evidence in the record: the project coordinator and the facilities project coordinator. No job descriptions for these classifications were placed in evidence. The

only testimony about the project coordinator was that he is not at the Farm much, works on special projects, and helped the Farm get a new forklift. The only testimony about the facilities project coordinator was that he led the effort to move into the new RDW facility.

There is evidence that one employee transferred into production from customer service, three transferred into QA from production, one from production to IT, and one transferred from production into research. Production employees occasionally fill in as needed to work in the TDC warehouse doing picking and packing (warehouse crew work).

## **2. Research and Development**

The Research and Development department is also located at the Farm, working in adjoining (and in fact overlapping) space with production and the grow room. Three disputed classifications are in the Research and Development department: Senior Research Scientist, Research Scientist, and Research Assistant.

The department is staffed by two senior research scientists, one of whom works entirely remotely from Pennsylvania; two research scientists; and three research assistants. The research is divided among fungal biology, cell and molecular biology, and chemistry, with each division led by a scientist (two are senior research scientists and the third is a research scientist). One assistant reports to the fungal scientist (a senior research scientist) and two report to the cell and molecular scientist. The Employer's organization chart shows that a fourth research scientist (rather than a research assistant) reports to the chemistry scientist (whose title is senior research scientist and who was omitted from the Employer's employee lists attached to its Statement of Position, appearing neither as an included or excluded employee). There was otherwise no evidence about the work of the chemistry research scientist who reports to the other chemistry research scientist. The cell and molecular biology research scientist also did not appear on either the included or excluded lists attached to the Employer's Statement of Position.

The research department supports the company's production, developing new products and improving production processes, but also performs basic mushroom research—what a witness called “the money and the magic.” The scientists must all have advanced degrees, either master's degrees or PhDs, while the research assistants are required to have bachelor's degrees. Research assistants are paid \$22 to \$24 an hour. The only evidence as to what the scientists are paid is that one is paid the salary equivalent of \$39 an hour.

The production crew regularly supplies the research team with prepared media for experiments and uses sinks in the research area.

The research and development director testified that the research scientists assign research assistants such work as writing project proposals, doing literature reviews, setting up experiments, data collection, data analysis, and report writing. She also testified that the research scientists participate in the hiring process for research assistants and make the ultimate decision of who to hire, although they “consult” with her. The scientists perform evaluations of the research assistants and approve their timecards and time off. The director testified that the senior fungal scientist and chemistry scientist had issued discipline to research assistants. In one case, the employee was

ultimately fired by the senior fungal scientist and in the other the employee was placed on a performance improvement plan that was overseen by the chemistry scientist. However, no research assistant is shown on the organization chart as reporting to the senior chemistry scientist. Other than the organization chart that shows the (junior) research scientist reporting to the senior chemistry scientist, there is no evidence in the record as to what, if any, authority the senior chemistry scientist has over the other chemistry scientist.

### **3. Quality Assurance**

The QA department is responsible for ensuring that the Employer remains compliant with all federal regulatory requirements, including those regulating food and dietary supplements. Three disputed classifications are in the Quality Assurance department: QA Food Safety Specialist, Sr. Quality Assurance Specialist, and Quality Assurance Specialist.

The head of this department has her office at the Farm, and two of the four QA employees work at the Farm. The remaining two QA employees, the QA supervisor and the QA Food Safety Specialist, work at the TDC.

The Food Safety Specialist is responsible for creating and enforcing a companywide food safety plan, preventative maintenance standards, and other programs to ensure compliance with federal food safety regulations, while the senior QA Specialist ensures compliance with federal regulations on labelling and health claims. The remaining QA Specialist samples and analyzes raw materials and finished products and reviews work processes and procedures.

QA employees train employees in other departments and can correct employees if they witness them operating not according to procedure.

A Bachelor of Science degree is preferred for QA positions, but QA experience can substitute. The QA specialists are paid about \$32 an hour; there was no evidence as to what any other QA employees are paid.

### **4. Warehouse and Supply Chain**

The warehouse department, based out of the TDC, is responsible for processing and shipping orders to customers. One disputed classification is located in the Warehouse and Supply Chain department: Warehouse Operations Coordinator.

The department is split between the retail side, which packs and ships items to individual retail customers, and the wholesale side, which packs and ships items to larger wholesale customers. Products arrive at the TDC from the Farm, from co-manufacturers that process Farm-produced materials into finished products, or, in the case of promotional materials such as t-shirts, from third-party vendors.

The 16 shippers pick and pack orders. There is one lead for retail and one for wholesale, who assign daily tasks to the shippers, based on workload and on a rotation among the shippers. Large orders are handled by the shipping coordinator. Shippers use an electronic scanner to

locate items; they work regularly with IT when this equipment malfunctions. Shippers are paid \$19 to \$24 an hour. The leads are paid \$23 to \$24 an hour and the coordinator \$29 an hour.

The warehouse operations coordinator is responsible for ensuring compliance with company-established good manufacturing practices, maintaining the facilities (with assistance from the facilities and maintenance team), conducting safety trainings (certifying employees to operate forklifts), and overseeing the custodian's work. Although there was testimony from the warehouse operations manager that the coordinator had the final say in hiring the custodian, there was only a single applicant to the position and the manager, HR, and the coordinator were all in agreement that this applicant was acceptable. The custodian's tasks are set by a cleaning checklist; the coordinator will remind the custodian if any task is undone. If the custodian completes these tasks and has extra time, the coordinator can assign additional tasks (such as breaking down boxes); the coordinator testified that he checks with the warehouse operations manager on such occasions. The coordinator is responsible for authorizing the custodian's time off and for issuing an annual evaluation of the custodian, but the record was unclear as to whether any evaluation had ever been issued to him. There was no evidence that the coordinator had ever fired or disciplined anyone or has the authority to do so. No other employees besides the custodian report to the coordinator. The coordinator is paid about \$28 an hour and the custodian \$19.

The supply chain, or inventory, department is responsible for storage and replenishment of the items that shippers pick and pack. It consists of two receiver/stockers, an inventory specialist, a purchasing specialist, a senior purchasing specialist, a supply chain logistics coordinator, and an inventory manager, reporting to the supply chain manager. The supply chain employees are paid between \$22 an hour (receivers/stockers) and \$47 an hour (supply chain logistics coordinator).

## **5. Information Technology**

The IT department is responsible for fixing internal technological and network issues. Two disputed classifications are employed in the IT department: IT Help Desk Tech and Network Specialist.

The IT department receives requests to fix issues either through the Employer's IT ticket system or by employees' contacting them directly, by phone, through electronic communication, or in-person. The primary people responding to these requests are the two support technicians or the network specialist. The network specialist and one support technician are based at RDW; the other support technicians are based at the Farm. The network specialist reports to the network systems engineer (stipulated to be fully remote), while the support techs report directly to the Chief Information Officer. There is also a web developer and software engineer (stipulated as fully remote), who report to the applications supervisor (there was some dispute about whether he is fully remote, but the stipulations and testimony indicate that he is entirely or nearly entirely remote).

The IT department does not work on the programs used for payroll or timekeeping, as those software systems are maintained by third parties.



The IT employees have administrative-level privileges on most of the Employer's computer files. In the course of assisting employees in fixing computer issues and transferring files from old to new computers, they are able to view files that may contain sensitive or confidential information. However, the IT witnesses testified that they try to respect privacy by not looking at documents if they can help it and that they never have any reason to examine or analyze any sensitive or confidential documents.

There was no evidence that the CIO or any other supervisor in IT creates labor relations policy.

The IT tech positions require only 6 months of help desk experience while the network specialist position requires technical certifications or an associate degree, plus two years of network administration experience. The network specialist position pays \$26 to \$36 an hour and IT tech positions pay \$22 to \$29 an hour.

## **6. Human Resources**

The HR department consists of a director, an HR manager, an HR specialist (stipulated to be fully remote), and an HR generalist. The HR department operates out of the RDW facility and reports to the HR manager. One of these classification is disputed: HR Generalist.

The HR department performs standard HR duties such as policy drafting and implementation, administrative investigation, disciplinary procedures, performance management, payroll, and benefits navigation assistance. The HR generalist has access to employee personnel files, as well as to payroll, time, and performance records. She collects employment authorization documents, uploads disciplinary paperwork into the HR system, assists with supervisor training, sits in on employee performance reviews, receives employee complaints and forwards them to the HR manager, revises job descriptions, and posts job advertisements. The HR generalist position is paid a salary equivalent to \$28 to \$39 an hour.

Although the HR manager testified that she (the manager) implements HR policies, including updating the employee handbook, there was no evidence that she formulates HR policies.

## **7. Accounting**

The accounting department is responsible for managing the company's finances, overseeing the inflow and outflow of monies, tracking the company's general ledger, and processing payroll. The accounting department operates out of the RDW facility. The department consists of four employees who report to the chief financial officer: an accounts receivable specialist, an accounts payable specialist, and two accountants (according to an Employer organization chart, one of them is fully remote). All of these classifications are disputed in this case.

Accounting department employees appear not to have frequent in-person interaction with other petitioned-for employees but do have in-person contact with numerous employees throughout the company when they perform fixed asset audits (once every three years) or physical

inventories of the Employer's assets (approximately once a year). They also engage in regular electronic communications with employees in other departments.<sup>4</sup>

The accounts receivable and payable specialists earn about \$30 an hour; there is no evidence as to what any other accounting employees earn. A degree in accounting is required for these positions.

### **III. BOARD LAW**

#### **A. Preclusion**

Board rules preclude parties from raising any issue it failed to raise in a timely statement of position. The Board rules specifically state as follows:

If a party contends that the proposed unit is not appropriate in its Statement of Position but fails to specify the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit, the party shall also be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. If the employer fails to timely furnish the lists of employees described in § 102.63(b)(1)(i)(C), (b)(2)(iii), or (b)(3)(i)(D), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

29 CFR § 102.66

Here, the Employer failed to list two research scientists on Attachment B or D to its Statement of Position, its list of employees in the petitioned-for unit and list of those it seeks to exclude. As regards all other employees the Employer contests, those employees were all listed on Attachment D, although the precise reason now asserted was not in all cases listed. Therefore I find that, while the lack of precision as to the basis for their exclusion may violate the spirit of the Board's rule, I find that the Employer is not precluded from contesting their inclusion in the unit. As regards the two research scientists, under the clear terms of the Board's rules cited above, the Employer would be precluded by its failure to list these employees in Attachment D to its Statement of Position. However, I find that, regardless of preclusion, and as discussed further below, the Employer has not met its burden of demonstrating that they have supervisory authority. Therefore, any preclusion issues are moot.

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<sup>4</sup> Testimony referenced especially the marketing department. There was otherwise no information in the record about the marketing department.

## **B. Appropriate Unit**

### **1. Board Standard**

A requirement of any unit is that it be appropriate. *Overnite Transportation Co.*, 322 NLRB 723, 723 (1996). When deciding whether the unit sought in a petition is appropriate, the Board focuses on whether the employees share a “community of interest.” *NLRB v. Action Automotive*, 469 U.S. 490, 494 (1985), considering the following factors: (1) similarity in skills, duties, and working conditions; (2) functional integration; (3) employee contact and interchange; (4) centralized control of management and supervision; (5) geographic proximity; and (6) bargaining history. *See, e.g., Exemplar, Inc.*, 363 NLRB No. 157 (2016); *Clarian Health Partners, Inc.*, 344 NLRB 332, 334 (2005); *Bashas’, Inc.*, 337 NLRB 710, 711 (2002); *Alamo Rent-A-Car*, 330 NLRB 897, 897 (2002). Where a union has petitioned for a multi-facility unit, the question is simply whether the petitioned-for unit is an appropriate one; the Board’s single-facility presumption does not apply and does not need to be overcome. *Hazard Express, Inc.*, 324 NLRB 989, 989 (1997) (citing *NLRB v. Carson Cable TC*, 795 F.2d 879, 886-87 (9th Cir. 1986); *Capital Coors Co.*, 309 NLRB 322, 325 (1992)).

In addition, Congress expressly contemplated employer- and plantwide units in Section 9(b) of the Act, and the Board has held that “[a] plant-wide unit is presumptively appropriate under the Act, and a community of interest inherently exists among such employees.” *Airco, Inc.*, 273 NLRB 348, 349 (1984) (quoting *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 136 (1962)). When a union has petitioned for a plant-wide unit, the burden is on the employer to demonstrate that the interests of a given classification are so disparate from those of other employees that they cannot be represented in the same unit. *Airco*, 273 NLRB at 349 (citing *E. H. Koester Bakery Co.*, 136 NLRB 1006, 1011 (1962)).

Here, the Petitioner petitioned for an Employer-wide unit. The Employer contends that all accounting, IT, and QA positions, the lab technician, culture librarian, project coordinators, and the human resources generalist lack a community of interest with the rest of the Employer-wide unit. I find that because the Employer introduced almost no evidence on any of the factors below regarding the project coordinators, that the Employer failed to meet its burden of showing this classification lacks a community of interest. Below I address the specific community of interest facts for the other disputed classifications. Because the facilities at issue do not have a history of collective bargaining relevant to the question before me, I have not addressed this factor as a separate consideration.

### **2. Community of Interest Factors**

#### **i. Skills, Duties, and Working Conditions**

The petitioned-for employees have disparate skills, duties, and working conditions. Some work at desks in offices, others in laboratories, and others in a warehouse. The warehouse positions do not require high levels of education, while the research assistants must have bachelor’s degrees and the scientists PhDs. Their rates of pay vary. However, all petitioned-for employees work similar hours and receive the same benefits.

However, variance in skills, duties, and working conditions is unsurprising in a wall-to-wall unit. I find this factor weighs against finding that the accounting, IT, and QA positions, the lab technician, culture librarian, project coordinators, and the human resources generalist share a community of interest with the rest of the employees, although not strongly so.

### **ii. Functional Integration**

Functional integration refers to when exists when employees must work together and depend on one another to accomplish their tasks. See, e.g., *Casino Aztar*, 349 NLRB 603, 605 (2007); *Publix Super Markets, Inc.*, 343 NLRB 1023, 1024-1025 (2004). “Functional integration refers to when employees’ work constitutes integral elements of an employer's production process or business.” *Ikea Distribution Servs., Inc*, 370 NLRB No. 109 (2021).

Here, all departments are integral elements of the Employer’s business of delivering mushroom products to customers—beginning with research and the culture librarian, who provide the basic mycological materials that production uses to grow mushrooms, which then move to the warehouse team for shipping out to customers. All of this works depends on quality assurance to ensure products are uncontaminated, IT to keep computers used by all these employees functioning, on accounting to keep payments for raw materials and equipment flowing out and payments for the products flowing in, and on human resources to support this workforce. The work of the classifications the Employer concedes should be included could not be completed without the work of those it seeks to exclude.

I find that this factor weighs heavily in favor of community of interest between the employees the Employer seeks to exclude and the rest of the petitioned-for employees.

### **iii. Employee Contact and Interchange**

Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange “may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills.” *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. *Executive Resource Associates*, 301 NLRB 400, 401 (1991), citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1081).

The employees in the various classifications that work at the Farm—production, research, grow room, facilities, quality assurance, lab technicians, culture librarian, and IT support—all have regular contact due to their proximity. They share a breakroom, outdoor eating area and even, in the case of research and production, work equipment. They also have electronic contact with IT and HR employees stationed elsewhere. At the TDC, IT employees similarly work in the same building with warehouse and QA employees. HR, IT, and quality assurance employees are in frequent contact with employees from all departments (often electronically, but especially in the case of QA, in-person as well). Accounting has less contact but communicates electronically with other department employees.

As regards interchange, one employee transferred into production from customer service, three transferred into QA from production, one from production to IT, and one transferred from production into research. Production employees fill in as needed to work in the TDC warehouse doing picking and packing.

While somewhat mixed, I find that this factor weighs slightly in favor of finding community of interest.

#### **iv. Centralized Management and Supervision**

Separate supervision does not mandate separate units; it is less important than the degree of interchange, contact and functional integration. *Casino Aztar*, 349 NLRB at 607 n.11.

Here, the HR, IT, accounting and QA employees the Employer seeks to exclude are in distinct departments, with separate supervision, while the lab technician, coordinators, and culture librarian share supervision with other petitioned-for employees.

I find this factor weighs against community of interest in the case of the HR, IT, and QA employees.

#### **v. Geographic Proximity**

HR and accounting both are based at RDW, which is only a mile from the TDC, where numerous other petitioned-for employees work. IT employees are located at both RDW (as noted only a mile from the TDC) and the Farm, where other petitioned-for employees work and which is about 25 miles from the other two facilities. QA employees work at all the facilities, and the lab technician and culture librarian work at the Farm in close proximity to other petitioned-for employees.

I find this factor weighs in favor of finding community of interest between the disputed employees and the rest of the petitioned-for employees.

### **3. Community of Interest Conclusion**

Given all these factors, including especially the functional integration of the disputed employees with the rest of the petitioned-for employees, I find that the Employer has not met its burden of demonstrating lack of community of interest between accounting, IT, and QA positions, the lab technician, culture librarian, project coordinators, and the human resources generalist, and the rest of the petitioned-for Employer-wide unit.

### **C. Supervisory Status**

The Act excludes supervisors from its coverage. Individuals are statutory supervisors if (1) they hold the authority to engage in any 1 of the 12 supervisory functions listed in Section 2(11); (2) their exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment; and (3) their authority is held in the interest of the employer. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006). The 12 supervisory functions are as follows: hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees,

or responsibly to direct employees, or to adjust their grievances, or effectively to recommend such action. 29 USC §152(11). The party asserting supervisory status bears the burden of proving it by a preponderance of the evidence. *Oakwood Healthcare*, 348 NLRB at 694. “Mere inferences or conclusory statements, without detailed, specific evidence, are insufficient to establish supervisory authority.” *UPS Ground Freight, Inc.*, 365 NLRB No. 113, slip op. at 1 (2017) (citing *Lynwood Manor*, 350 NLRB 489, 490 (2007); *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006)). Nor can a party prove supervisory status where the record evidence “is in conflict or otherwise inconclusive on particular indicia of supervisory authority.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). To exercise independent judgment, “an individual must at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data.” *Oakwood Healthcare*, supra at 692–693.

The fact that only a single employee reports to a putative supervisor tends to weigh against finding supervisory status, as independent judgment will not be found where there is only one obvious and self-evident choice of which employee to select for tasks or overtime and no scope for promotion. See, e.g., *Brusco Tug & Barge Co.*, 359 NLRB 486, 491 (2013), recess Board decision, incorporated by reference at 362 NLRB No. 28 (2015) (assignment of overtime to sole engineer); *Cook Inlet Tug & Barge, Inc.*, 362 NLRB No. 111, slip op. at 2 n.8 (2015) (assignment of tasks to sole deckhand); *Peacock Productions of NBC Universal Media, LLC*, 364 NLRB No. 104, slip op. at 3 (2016) (assignment of duties to sole associate producer). Similarly, as regards assignment, the “de minimis principle obviously applies” and that if, for example, “a charge nurse gives a single ad hoc instruction to an employee to perform a discrete task, that would not, without more, establish supervisory status.” *Oakwood Healthcare, Id.* at 691 n.28. Similarly, a judgment does not rise above the clerical or routine when “there is only one obvious and self-evident choice,” or, in the case of assignment, if an assignment is made “solely on the basis of equalizing workloads.” *Oakwood Healthcare*, 348 NLRB at 693.

The authority to complete evaluations that have not otherwise been shown to affect job status is insufficient to establish supervisory status. *Wilshire at Lakewood*, 343 NLRB 141, 143 (2004) (citing *Waverly-Cedar Falls Health Care*, 297 NLRB 390, 393 (1989)). Here, there was general testimony that evaluations determine raises, but no more specific evidence. I am therefore discounting this as a factor in finding supervisory status for any of the employees.

Below, I address the alleged supervisory status of each employee at issue.

### **1. Grow Room Manager**

Only a single employee, the grow room assistant, reports to the grow room manager. There was no testimony from the grow room manager about his own authority, and only minimal testimony that the grow room manager participated in the interview of the grow room assistant candidates and had the final say in hiring the grow room assistant, and performs that employee’s evaluation, gives assignments, and approves overtime and time off. Given that only a single employee is at issue, I do not find that assigning tasks, approving overtime, and time off involve independent judgment. Therefore, the only potential indicator of supervisory status is hiring. Given that the grow room manager did not testify and there was no evidence about whether there were multiple candidates who applied or were considered for the position of grow room assistant,

I find the Employer has not met its burden of demonstrating that the grow room manager is a supervisor.

## **2. Warehouse Operations Coordinator**

Here, too, only a single employee, the janitor, reports to the warehouse operations coordinator. The bulk of this employee's time is devoted to completing cleaning tasks from a checklist. Although the warehouse operations coordinator checks to see that those tasks are completed and may remind the janitor if they are not, no independent judgment is involved. There was testimony that on occasion when the janitor has completed all his regular listed tasks, the warehouse operations coordinator may direct him to perform such tasks as breaking down boxes; the warehouse operations coordinator testified that even with regard to such direction, he checked first with his own supervisor. I find this does not rise to the level of assignment with independent judgment. I also do not find that authorizing the lone janitor's time off or overtime requires independent judgment. As regards hiring, although the warehouse manager testified that the warehouse operations coordinator had the final say in hiring the janitor, there was only a single candidate and there was general agreement that he was satisfactory. I find that the Employer has not met its burden of demonstrating that the warehouse operations coordinator is a supervisor.

## **3. Retail and Wholesale Shipping Leads**

The only supervisory indicator that was in evidence regarding these leads is that they can move personnel between retail and wholesale and between picking and packing, based on workload and on a rotation of employees through these duties. This does not demonstrate any independent judgment. I find that the Employer has not met its burden of demonstrating that the shipping leads are supervisors.

## **4. Research Scientists**

As regards the senior fungal scientist, that person is fully remote, and the parties stipulated that fully remote employees are excluded. Therefore the senior fungal scientist is excluded in any case, so I do not reach the question of his supervisory status.

The research and development director testified that the senior research scientists and research scientists have authority to hire, fire, and discipline research assistants and described specific instances in which the two senior research scientists (the fungal and chemistry scientists) each exercised the power to fire or discipline research assistants. However, no research assistant is shown on the organization chart as reporting to the chemistry senior research scientist. As noted above, a research scientist is shown on the organization chart as reporting to the chemistry senior research scientist, but there was no evidence in the record as to whether that senior research scientist has any supervisory authority over this chemistry research scientist employee. Therefore, I find the Employer has not met its burden of establishing that the senior research scientists are supervisors.

As regards the chemistry research scientist who reports to the chemistry senior research scientist, there is no evidence that this employee possesses any supervisory authority. Therefore,

I find that the Employer has not met its burden of demonstrating that this research scientist is a supervisor.

The only remaining research scientist is the cell research scientist. Two research assistants report to that scientist. There was no specific testimony showing the cell research scientist's exercising authority to hire, fire, or discipline. There was testimony that the cell research scientist has the authority to assign tasks to the research assistants. However, there was no testimony as to how the scientist goes about this, including whether the scientist assigns tasks to one or the other according to the assistant's specific professional specialty or skill set or simply according to workload. For all these reasons, I find that the Employer did not meet its burden of establishing that the cell research scientist is a supervisor.

#### **D. Confidential Status**

The Supreme Court formally approved the Board's longstanding policy decision to exclude confidential employees from bargaining units in spite of the fact that confidential employees are not necessarily § 2(11) supervisors or § 2(13) agents of an employer. Such employees have the right to engage in § 7 activities, and to receive the protections of the Act, but are not suitable for inclusion in a bargaining unit due to their close relationship with management-side individuals who formulate labor policy. Specifically, the Supreme Court affirmed the Board's decision to limit "confidential employee" status "to only those employees who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations." *NLRB v. Hendricks County Rural Electric Corp.*, 454 U.S. 170 (1981). This standard is known as the "labor-nexus" standard. *Id.*

In the same case, the Supreme Court affirmed that employees also may be found to be "confidential" employees depending on their access to confidential information:

[C]onsistent with the underlying purpose of the labor-nexus test, [the Board has also] designated as confidential employees persons who, although not assisting persons exercising managerial functions in the labor-relations area, 'regularly have access to confidential information concerning anticipated changes which may result from collective-bargaining negotiations.'

*Id.* at 189 (citing *Pullman Standard Division of Pullman, Inc.*, 214 NLRB 762, 762-763 (1974)).

However, the "confidential employee" designation is "narrow," *Dunn & Bradstreet*, 240 NLRB 160, 163 (1979), and the Board "adhere[s] strictly" to the definition it created. *B.F. Goodrich Co.*, 115 NLRB 722, 724 (1956). The Board has also found an employee was not confidential when the employee had no way of knowing from statistical data that he prepared what labor policy proposals might result. *American Radiator & Standard Sanitary Corp.*, 119 NLRB 1715, 1720-1721 (1958). In *Swift & Co.*, 119 NLRB 1556, 1565 (1958), the Board found that the fact that some employees may be entrusted with business information to be withheld from their employer's competitors or that their work may affect employees' pay scales did not render such employees either confidential or managerial. Similarly, in *Consol. Papers, Inc.*, 179 NLRB 165 (1969), the Board found that a high-ranking supervisor who did research and formulated recommendations relied upon by an employer's negotiator did not render said supervisor a person



who “formulates, determines, or effectuates” labor relations policy, and as such the high-ranking supervisor’s secretary was not a confidential employee under the labor-nexus standard. Also see *Holly Sugar Corp.*, 193 NLRB 1024, 1026 (1971) (that corporate officials consulted with certain supervisors before bargaining sessions did not render the secretaries of those supervisors confidential employees); *Eastern Corp.*, 116 NLRB 329, 333 (1956).

As the party asserting that the HR generalist and accounting and IT classifications are confidential positions, the Employer bears the burden of proving that claim. *Crest Mark Packing Co.*, 283 NLRB 999 (1987).

Below, I apply these standards to the employees the Employer asserts are confidential.

### **1. Human Resources Generalist**

The HR generalist reports to the HR manager. There is no evidence that that manager formulates or determines labor relations policies for the Employer. Therefore, the HR generalist is not confidential under the labor nexus test. As regards “access to confidential information concerning anticipated changes which may result from collective-bargaining negotiations,” naturally, in this enterprise there has been no collective bargaining. In any case, the duties of the HR generalist involve individual employees, not overall labor policy: she collects and maintains personnel documents, assists with supervisor training, sits in on employee performance reviews, receives employee complaints and forwards them to the HR manager, revises job descriptions, and posts job advertisements. While in the course of her work it is conceivable that she might at some point have access to labor relations policy information, that is speculative and does not meet the Employer’s burden. I find that the HR generalist is not a confidential position.

### **2. Accounting Employees**

The accounting employees report to the CFO. There is no evidence that the CFO formulates or determines labor relations policies for the Employer. Therefore, the accounting employees are not confidential under the labor nexus test. As regards “access to confidential information concerning anticipated changes which may result from collective-bargaining negotiations,” as noted above, in this enterprise there has been no collective bargaining. In any case, the duties of the accounting employees are to track the company’s finances, overseeing the inflow and outflow of monies, and process payroll. None of this involves labor relations information, except derivatively. While it is conceivable that in some future collective bargaining negotiations, accounting employees might be tasked with costing out proposals, that is speculative and does not meet the Employer’s burden. I find that the accounting classifications are not confidential positions.

### **3. IT Employees**

The IT employees report to the chief information officer. There is no evidence that he formulates or determines labor relations policies for the Employer. Therefore, the IT employees are not confidential under the labor nexus test. As regards access to labor relations information, the IT employees have the administrative permissions to access nearly all Employer files, but

they have no work reason to examine the content of these files. I therefore find that these employees are not confidential employees.

#### IV. CONCLUSION

In determining that the unit sought by Petitioner is appropriate, I have carefully weighed the community-of-interest factors cited above. I conclude that the Employer has not met its burden of demonstrating that the petitioned-for Employer-wide unit is not appropriate. I have found that the Employer has not met its burden of demonstrating that any of the petitioned-for employees are supervisors or confidential employees.

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>5</sup>
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

*Included:* All full-time and regular part-time employees employed at the Employer's facilities located at 8940 Select Ct SE., Olympia, WA, 98501; 8109 River Dr. SE, Olympia, WA 98501; and 50 SE Nelson Rd, Shelton, WA 98584.

*Excluded:* Fully remote employees, Director Of Farm Operations, Facilities Capital Improvement Manager, Facilities Maintenance Supervisor, Production Crew Manager, Production Crew Assistant Manager, Extract Production

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<sup>5</sup> The parties stipulated to the following commerce facts:  
The Employer is a State of Washington limited liability company, engaged in the business of manufacturing and processing dietary supplements at its facilities located at 8940 Select Ct SE., Olympia, WA, 98501; 8109 River Dr. SE, Olympia, WA 98501; and 50 SE Nelson Rd, Shelton, WA 98584. During the past calendar year, a representative period, the Employer had gross revenues in excess of \$500,000 and purchased and received at its facilities located within the State of Washington goods valued in excess of \$50,000 directly from points outside the State of Washington.

Manager, Research and Development Director, Chief Information Technology Officer, Manager of Quality Assurance, Quality Assurance Supervisor, Chief Financial Officer, Director Of Human Resources, Human Resources Manager, Supply Chain Manager, Inventory Manager, Warehouse Operations Manager, WDC Shipping Supervisor, Network Systems Engineer, and other supervisors and guards as defined by the Act.

There are approximately 50 employees in the unit found appropriate.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Laborers Local 252.

#### **A. Election Details**

The election will be held on **Tuesday, June 18, 2024**, from 7:30 a.m. to 9:00 a.m. at 8109 River Dr. SE, Olympia, WA 98501; 10:00 a.m. to 12 noon at 8940 Select Ct SE., Olympia, WA, 98501; and from 1:30 – 3:30 p.m. at 50 SE Nelson Rd, Shelton, WA 98584.

#### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending **immediately preceding the date of this Decision**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

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

#### **C. Voter List**

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

available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

The Petitioner waived 8 of the 10 days with the voter list that it is entitled to.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Wednesday, June 5, 2024**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

#### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of

notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

### **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.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, 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.

Dated: June 3, 2024

*Ronald K. Hooks*

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