

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 18-SUBREGION 30**

**FAMILY VALUES @ WORK: A MULTISTATE  
CONSORTIUM, INC.<sup>1</sup>**

**Employer**

**and**

**OFFICE & PROFESSIONAL EMPLOYEES  
INTERNATIONAL UNION LOCAL 39<sup>2</sup>**

**Petitioner**

**Case 18-RC-345724**

**DECISION AND ORDER**

Petitioner seeks to represent a unit of all full-time and regular part-time employees employed by the Employer in lead worker positions, including the positions of Strategic Communications Director, Development Director, Digital Strategy Director, Finance and Administration Director, Programs and Advocacy Director, Federal Strategy Director, Movement Learning & Culture Change Director, OASIS Director, and Human Resource and Operations Associate.<sup>3</sup> The petitioned-for unit accounts for nine positions.

The Employer asserts that the eight Directors of the petitioned-for unit are statutory supervisors as defined by Section 2(11) of the Act and are managerial employees that are not covered by the Act pursuant to Board policy. The Employer further asserts that the Finance and Administration Director and Human Resource and Operations Associate are confidential employees. The Petitioner maintains that the individuals in the petitioned-for unit are statutory employees and do not exercise any authority indicative of supervisory or managerial status, nor are they confidential employees.

A hearing officer of the National Labor Relations Board held a videoconference hearing in this matter from July 16 – 26, 2024, and the parties were provided with an opportunity to call, examine, and cross-examine witnesses, to introduce into the record evidence of the significant facts that support their contentions, and submit post-hearing briefs. The Employer and Petitioner timely submitted post-hearing briefs.

Having considered the parties' positions, the evidence, and the entire record, I find that the Employer met its burden of proof demonstrating that each petitioned-for Director is a managerial employee as they formulate and effectuate management policies by expressing and making operative the decisions of their employer and have discretion in the performance of their jobs

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<sup>1</sup> The Employer's name appears as amended by stipulation of the parties.

<sup>2</sup> While the Petition lists "Communication Workers of America" in Box 10, the parties stipulate that the Communication Workers of America represents a separate unit of employees at the Employer, as indicated on the Petition, and that there is no intervenor in this matter.

<sup>3</sup> The individuals in the petitioned-for unit are alleged to be Lead Workers in the Petition and throughout the hearing. But for purposes of clarification in this Order, the positions will be referenced by specific and/or collective titles.

independent of any established policy. I further find that the Employer satisfied its burden of proof demonstrating that each petitioned-for Director is a statutory supervisor who assigns and responsibly directs employees, and most Directors have the authority to hire in the interest of the Employer, which requires the use of independent judgment. I am not ruling on whether the Finance and Administration Director is also a confidential employee because this position is managerial and a statutory supervisor. As such, these eight Directors are not entitled to the protections under the Act. Lastly, I find the Employer has not met its burden to prove that the Human Resource and Operations Associate is a confidential employee. Under Board law, a single person unit is not appropriate, therefore, I am dismissing the Petition.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Based on the record in this proceeding, I find:

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 would effectuate the purposes of the Act to assert jurisdiction herein.<sup>4</sup>
3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. There is no question affecting commerce 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. There is no collective-bargaining agreement in effect covering any of the individuals in the petitioned-for unit and, therefore, no contract exists barring consideration of the instant petition.

## **I. RECORD EVIDENCE**

### **A. Employer's Operations and Staff**

The Employer is a 501(c)(3) non-profit organization dedicated to supporting workers and families through lobbying and policy work at the state and national levels, including championing paid family and medical leave, earned sick and safe days, and affordable, high-quality childcare. The Employer coordinates a national network of 27 state and local coalitions, which brings together more than 2,000 diverse partner organizations.

At the time of the hearing, the Employer had a staff of 24 employees. Most, if not all, of the staff work remotely in states across the United States. While the Employer's managerial and supervisory structure is at issue with the proposed bargaining unit in this case, the record is clear that Josephine Kalipeni is the Executive Director and Erica Clemmons Dean is the Deputy Director. Executive Director Kalipeni has been in her position since 2022. Deputy Director Dean has been in her position since fall of 2023 and succeeded Sade Moonsammy who left in August 2023. Reporting to Kalipeni is Marie Lindberg who is the Executive Assistant.<sup>5</sup>

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<sup>4</sup> The parties stipulated that the Employer, a Wisconsin corporation, with a place of business in Milwaukee, Wisconsin, is a policy advocacy organization. During the last twelve months, a representative period, the Employer has derived gross revenues in excess of \$500,000. During this same period, the Employer purchased and received goods at its Milwaukee, Wisconsin location valued in excess of \$50,000 directly from points outside the State of Wisconsin.

<sup>5</sup> The parties stipulated that the Executive Assistant to the Executive Director is a confidential employee.

There is a Board of Directors, but the record is not clear about the duties, responsibilities, and makeup of the Board of Directors, other than they attend meetings, review financial reports, make some decisions based on recommendations, and supervise Executive Director Kalipeni.

The remaining staff are either part of the petitioned-for bargaining unit or part of a 12-member bargaining unit for whom recognition was sought and granted voluntarily to the Communication Workers of America.<sup>6</sup> The staff work collaboratively in one or more of seven departments: Finance and Administration, Development, Strategic Communications, Federal, States/Advocacy and Programs,<sup>7</sup> Digital Strategy, and Movement Learning & Culture Change. Each department has a Director with a team comprised of a combination of other positions – lower level Director(s), Manager(s), Coordinator(s), Associate(s), Organizer(s), State Lead(s), Consultant(s), or Contractor(s). The seven department Directors, who seek to be included in the unit, are as follows:

Finance and Administration Director	Linda Garcia Barnard
Movement Learning & Culture Change Director	Jennifer Morales
Development Director	Rachel Mannino
Digital Strategy Director	Suzette Gardner
Programs and Advocacy Director	Marianne Bellesorte
Federal Strategy Director	Sammy Chavin Grant
Strategic Communications Director	Safiya Jafari Simmons

The two other positions seeking to be included in the petitioned-for unit are as follows:

OASIS Director <i>in the Movement Learning &amp; Culture Change Department</i>	Liana Cassar
Human Resource and Operations Associate <i>in the Finance and Administration Department</i>	Kate Jiannacopoulos

## **B. Employer's Leadership Teams**

The parties agree that the Employer's leadership is organizationally divided into three teams: the Executive Team, the Sustainability Team, and the Strategy Team.

The Executive Team consists of Executive Director Kalipeni and Deputy Director Dean. The record demonstrates that they make decisions affecting the Employer and its staff, with and without recommendations from the Sustainability and Strategy Teams. Executive Director Kalipeni testified that the Sustainability and Strategy Teams were created to “draw on the expertise of existing staff....to inform and influence and share decisions.”<sup>8</sup> She also testified that

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<sup>6</sup> On June 3, 2024, the Employer voluntarily recognized all full-time and regular part-time employees of the Employer, holding the following positions: Staff Accountant; Voter Engagement Coordinator; Leading State Organizer; Federal Organizer/State Lead; Individual Giving Manager; OASIS Program Coordinator; Communications Associate; Instructional Designer and Documentarian; Development Manager; State Lead/Childcare Organizer; Culture Change Manager; and Digital Programs (and Partnerships) Strategist (referred to as the CWA Unit). The parties agree that the 12-member bargaining unit are paid at compensation Levels 3 and 4 as outlined in the pay ranges of the Employer's Employee Handbook.

<sup>7</sup> The record is not clear about the correct name of the department.

<sup>8</sup> The Union's Post-Hearing Brief agrees with Executive Director Kalipeni's characterization.

the Sustainability and Strategy Teams work and finalize fundraising priorities and are involved in annual department work planning and budgeting processes.

The Sustainability Team consists of Executive Director Kalipeni, Deputy Director Dean, and Directors Barnard, Mannino, and Morales. The Sustainability Team oversees the Employer's financial and personnel sustainability and develop resources and capacity in services to its strategy, program, and tactics. Based on the overarching testimony, the Sustainability Team reviews and suggests changes to policies and budgets and provides advice to the Executive Team. The documentary and testimonial evidence demonstrates that the Sustainability Team also formulates, reviews, and/or effectuates policies and decisions affecting the Employer's operations and its staff. For example, the Sustainability Team reviewed data, discussed, recommended, and implemented a four-day work week; added two floating paid days for religious observance; and updated the parental and medical leave policy to include six months paid parental leave and fourteen weeks of paid family leave, including for purposes of bereavement, paid sick leave, and paid safe leave for all staff. The Sustainability Team also provided feedback and finalized the Employee Handbook which has been in effect since March 2024. The Sustainability Team meets monthly, and any member can recommend an item for discussion, such as when Director Mannino had the five year fundraising strategy added onto the meeting agenda.

The Strategy Team consists of Executive Director Kalipeni, Deputy Director Dean, and Directors Morales, Bellesorte, Grant, Simmons, and Gardner. The Strategy Team develops and implements the strategy, programs, and tactics to achieve the Employer's mission and theory of change, along with strategic growth and development plans. Just like the Sustainability Team, the witnesses generally testified that the team provides advice to the Executive Team and Director Morales testified that they could suggest changes to any proposals or programs. Director Bellesorte testified that they review grant proposals and make recommendations to the Executive Team. The documentary and testimonial evidence demonstrates that the Strategy Team also formulates, reviews, and/or effectuates policies and decisions. For example, prior to or during the meeting on May 29, 2024, Director Bellesorte recommended allocating an unplanned, unbudgeted amount of \$100,000 for an Election and Emergencies Fund for network partners. The Strategy Team adopted a plan to split the money towards any network partner's rapid response and election purposes or emergencies. The Executive Team approved the plan. During the same meeting, Director Grant introduced an agenda item to discuss "DIVE [program] on abortion, Palestine, and Biden". During the meeting, there was debate and discussion amongst the members on whether the Employer should have a position and whether to go public with it. Director Simmons recommended that the Employer make no comment on the issues and that recommendation was followed. During the February 7, 2024 meeting, there was much discussion about the 2024 Caregiving Narrative, drafted by Directors Simmons and Morales, and Manager Collins, which would be used "through the year in TPs,<sup>9</sup> statements, ways to reiterate our messaging in every place we can." Additionally, the Strategy Team weighed in on programmatic proposals such as a Rapid Response Process and ChildCare Digital Organizing funds. The Strategy Team meets monthly, and any member can recommend an item for discussion.

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<sup>9</sup> There is no testimony or documentary evidence for the definition of TP.

### **C. The Petitioned-for Unit<sup>10</sup>**

In total, Petitioner seeks to represent nine positions as part of the proposed unit. There are seven department Directors who are paid at compensation Level EB 2 (\$104,000 – \$156,000), who report directly to Executive Director Kalipeni and/or Deputy Director Dean, and “Manage[] Staff, Programmatic Budgets, Strategic Planning Development, Organizational Development, Management Executive Teams (Strategy and Sustainability[])” These seven Directors serve on the Strategy and/or Sustainability Team. The petitioned-for OASIS Director is paid at compensation Level 5 (\$87,000 – \$131,000) and “Manages Staff and Consultants, Manages Programmatic budget, Supervised by EB 2.” This Director has a lower compensation level because she does not serve on the Strategy or Sustainability Team and does not lead a Department.

In addition to the Sustainability and Strategy Team meetings, Directors attend mandatory supervisory meetings and supervisory trainings such as a disability inclusion training on November 27, 2023. Executive Director Kalipeni testified that meetings and trainings are for “peer-to-peer learning and trainings, sharing of information and practices and best practices, which are separate from the other team meetings because “we needed a held supervisor space for -- particularly for training.”

Much of the documentary evidence demonstrates that these Directors refer to themselves as supervisors and are regarded as supervisors by others, colloquially, whether in emails, individual and team work plans, weekly priorities in Slack messages, Sustainability Team meeting notes, LinkedIn profiles, performance evaluations, or conversations. For instance, in a December 22, 2023 email, Director Garnder wrote to Director Barnard stating “I have had to endure [Specialist Stivi’s] insubordination and disrespectful tone, her insistence on isolating me and refusal to meet with me or properly update me on her availability for work, and her inconsistent performance which has resulted in error-filled and late work ... I am working in an environment with fractured trust, insubordination and aversion to problem-solving...I am also eager to learn more about (or to participate in developing a plan to improve) support for supervisors working with challenging direct-reports.”

Each Director testified to their ability to create, change, finalize, and monitor department and individual staff Work Plans. Each Director also has their own Work Plan. The department Work Plans set forth the annual goals and objectives for the department. The individual staff and Director Work Plans list duties and responsibilities. Most of the Work Plans entered into evidence, whether department or individual, utilize the DARCI model to provide roles to achieve the anticipated goals and objectives for the year. These roles are identified as Decision-Maker, Accountable, Responsible, Consulted, and Informed.

The Directors also evaluate staff through annual evaluations by using the BambooHR application. The overall testimony supports the inference that they get input from other staff to incorporate in each staff member’s annual evaluation. The record is not clear about whether

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<sup>10</sup> I note that various witnesses requested counsel to clarify or elaborate on ordinary terms when questioned about their duties and responsibilities, to which one witness was accused of being self-deprecating. Proceedings in a pre-election hearing are non-adversarial in nature and primarily fact finding, thus, credibility determinations are not made. *Morrison Healthcare*, 369 NLRB No. 76, slip op. at 2 (2020) (citing *Marian Manor for the Aged & Infirm, Inc.*, 333 NLRB 1084, 1084 (2001)). However, the bulk of the credible evidence in this matter comes from the substantial amount of corroborating and defining testimonial and documentary evidence.

performance evaluations *directly* lead to decisions affecting transfers, discipline, discharges, or promotions and/or pay increases.

The parties stipulated that all other staff, including the petitioned-for Human Resource and Operations Associate, are paid at compensation Levels 3 – 4 (\$55,000 – \$101,500). These staff members report to a Director to which they have individual and team weekly check-in meetings. Executive Director Kalipeni and Deputy Director Dean do not conduct individual check-in meetings with these staff members.

**i. Finance and Administration Director – Linda Garcia Barnard**

The Finance and Administration Director is the highest person in the Finance and Administration Department. As Finance and Administration Director, Barnard oversees the work of Human Resource and Operations Associate Kate Giannacopoulos and Accountant Jenny Martinez.

As Finance and Administration Director, she is responsible for keeping the Employer “operational, sustainable, and in compliance”. Director Barnard testified that she executes on business policies and she “likely has the highest level of expertise in business and financial matters” for the Employer. She is also responsible for administratively processing and maintaining confidential personnel and other files such as onboarding and offboarding, transfers, discipline, grievances and complaints, and reasonable accommodation requests.

Director Barnard created and finalized her individual 2024 Work Plan<sup>11</sup> which lists the following duties and responsibilities, among others: management of compliance and financial systems; oversee financial systems to ensure a streamlined grantmaking process; oversight and management of CAWF legal, financial and HR; maintain and implement systems for strategic budgeting, cash flow management, reporting and projections to support the Employer capacity and programs; finalize all policies and procedures for internal infrastructure and controls; ensure full compliance with GAAP, IRS C3 law and have clean audit; model best practices to ensure full integrity of internal controls and culture; identify investments and good returns that are aligned with Employer’s values and support resources;<sup>12</sup> development and management of HR processes; management of compensation, benefit, payroll; oversee hiring, onboarding and offboarding processes; oversee development of HR practices; oversee event planning processes (logistics/budget); fully implement/train Bamboo HR – evaluation and timesheet practice; fully implement/train Divvy; and fully implement The Management Center and other training tools.

Director Barnard testified that she absorbed duties previously performed by then-Deputy Director Moonsammy such as overseeing the transition of the new HR system and employees’ scope of work, managing the budget, and developing the new performance evaluation process. She also took on personnel policy projects such as handling all legal compliance issues to include drafting the Whistleblower and Conflicts of Interest policies for the Employee Handbook. On a rolling basis, Director Barnard works with the Executive Team and Director Morales to ensure that work plans align with organizational and department budgets, and grant

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<sup>11</sup> The Employer uses individual and team Work Plans to outline job duties and responsibilities, and annual plans and goals. Most of the Directors testified that employees create and draft their individual Work Plans, with collaborative input from other team members, and seek approval from the Executive Team, which are then finalized. However, Director Cassar testified that she did not need approval from anyone to finalize her individual Work Plan.

<sup>12</sup> The Annual Goals for Director Barnard’s individual Work Plan states, “Ensure clear understanding throughout org where we are with budget, make recommendations and look for savings where possible.”

deliverables. Director Barnard presents financial reports and makes recommendations to the Board of Directors where she most recently made two motions -- release \$250,000 from the reserve fund to cover investigation and process costs and to reinstate the reserve fund line item as part of the overall operating budget -- both of which were approved in June 2024.

In November 2023, when Director Barnard sought to hire a Grants Coordinator, she created a chart titled, "Operations and Accounting Team Division of Responsibilities for discussion on new hire job duties." In this chart, Director Barnard described and assigned each primary and backup duty for herself, Associate Jiannacopoulos, Accountant Martinez, and the new position. The chart lists out specific roles for operations, finances, events, HR, and general support. For instance, under "reviews/creates all financial reports," Director Barnard is listed as primary with Accountant Martinez as backup, and the new hire as part of the process, and under "approves all program expenditures," Director Barnard is primary with Accountant Martinez as backup, and Associate Jiannacopoulos as part of the process.

Director Barnard testified that she believes she could advocate for a promotion for Associate Jiannacopoulos and Accountant Martinez by stating, "I believe I have that ability to advocate for people that are working out of scope to ensure that we're in full compliance with our policies." In fact, she is frequently consulted by Directors about staff performance issues, staff transfer requests, modification to staff scopes of work and responsibilities, pay increases, promotions, and title changes. For instance, in December 2023, Director Barnard was involved with and advocated for a temporary wage increase for employee Kendall Masterson who was going to take on additional duties while transitioning to a new department. In 2023 and early 2024, she intimately handled former-employee Simone Stivi's employment matters to performance issues, workplace retaliation complaint, reasonable accommodations request and request to transfer to the Movement Learning & Culture Change Department. Director Barnard managed Stivi's employment through her communication with attorneys, and relayed pertinent information to Executive Director Kalipeni, and acted on advice and directives from legal counsel relating to Stivi's employment and ultimate discharge.

As Director of Finance and Administration, Barnard signs contracts and does not need prior approval if the costs are in the budget. For example, she signed contracts for services with an auditing firm (RitzHolman), investment brokers, software platforms (BambooHR and Quorum), and training companies (The Management Center). She also selected and hired an investigator and mediator to help resolve Stivi's workplace issues with Director Gardner.

In March 2024, Executive Director Kalipeni, through documentation, held Director Barnard accountable for her miscommunication with Development Director Gardner, misrepresenting budget information and payroll, and leaking confidential HR information which were inappropriately accessible to staff. Executive Director Kalipeni wrote, "This is a step to correct current structures, situations, and events before a PIP or verbal written warning or other measures are pursued." A couple of months thereafter, Director Barnard was relieved of her duty to communicate with attorneys.

Executive Director Kalipeni testified that when bargaining with the CWA commences in August 2024, she will consult with Director Barnard, who "holds information about our current year-to-date spending, our overall financial information, our existing benefits, the potential implications to any changes in our benefits, any changes in our spending, any changes in our expenses and ... impacts with other compliance, compliance and financial and HR related issues." Much of the information that Director Barnard knows and/or has access to is not available to other staff such as grievances/complaints and reasonable accommodation requests.

Director Barnard testified that she has the authority to effectuate the above-mentioned duties and discretion to make financial and administrative decisions in her own “professional judgment...that judgment is based on experience and education in the field.” For when she makes recommendations to others, she testified that she provides her “professional opinion”.

## **ii. *Movement Learning & Culture Change Director – Jennifer Morales***

The Movement Learning & Culture Change Director is the highest person in the Movement Learning & Culture Change Department. As Movement Learning & Culture Change Director, Morales oversees the work of OASIS Director Liana Cassar, OASIS Program Coordinator Natalia Soler, Culture Change Manager Laura Collins, Instructional Designer & Documentarian Teena Lewis, and Social Media & Partnership Manager Kendall Masterson.

Director Morales is the only petitioned-for unit member who serves on both the Sustainability and Strategy Teams because of her institutional knowledge and “can provide advice on a lot...and how that impacts how we go forward.” She was on the Executive Team from 2021 until February 2023. And she testified that most recently that members of the petitioned-for unit recommended to the Board that she should be the Co-Executive Director.<sup>13</sup>

As Movement Learning & Culture Change Director, she is responsible for building movement power through learning and culture change for staff, network, and OASIS<sup>14</sup> community. Director Morales testified that she is responsible for being a “conduit of information between the department, leadership, and Executive Team.” She works with the Executive Team and Director Barnard to ensure that work plans align with organizational and department budgets and grant deliverables. When the Employer began using the BambooHR system, she testified that it was her role to make sure that staff met deadlines for things like filling out their time sheets, and she does this on a regular basis.

Her individual 2024 Work Plan<sup>15</sup> lists the following duties and responsibilities, among others: create and promote learning materials and opportunities for staff, network, and OASIS community; oversee the work of the Culture Change Manager, Instructional Designer/Documentarian, OASIS Director, and interns. Additional responsibilities include participating in organizational capacity-building and development activities, participating actively in meetings (team, staff, all-staff), connecting with movement-building partners, supervision including evaluation, helping coordinate supervisors’ meetings, and administration and miscellaneous tasks. Under the DARCI model for her 2024 Work Plan, Director Morales is accountable for the work of her team for the following key projects -- political education curriculum, FJN<sup>16</sup> co-convenor wind-down, supervisors’ meetings, and helping with the OASIS program, documentation protocols, storytelling events, narrative development, and merch store. She is also the decision-maker and accountable for staff and network trainings and care game development.

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<sup>13</sup> The record does not reflect whether the Board of Directors considered this recommendation and outcome, if any.

<sup>14</sup> OASIS is a program to build resilience and peer-to-peer learning across state-level elected women.

<sup>15</sup> Director Morales’ 2024 individual Work Plan was admitted into evidence as a business record, but she did not testify about it. She did testify about her 2023 individual Work Plan which she testified looked like a draft version.

<sup>16</sup> There is no testimony or documentary evidence for the definition of FJN.



Director Morales proposed hiring an Instructional Designer & Documentarian position, where she created the title and drafted the job description. She testified that job descriptions are often workshopped as a group but did not say whether this job description was one of those times. She testified that the Executive Team ultimately approved the job description, and she participated in the interviews and recommended hiring Documentarian Lewis. Director Morales also participated in interviews and recommended hiring Director Cassar who laid the groundwork for the OASIS program when she was a consultant.<sup>17</sup> Director Morales also participated in interviews and recommended hiring Coordinator Soler.

Director Morales supported the transfer of Managers Collins and Masterson to her department. For Manager Collins, Director Morales said “after reviewing her qualifications and looking at, you know, the work that she had done for us already as part of our bigger team, yeah, it was my opinion that she would be the right choice.” Manager Masterson proposed her own transitional timeline and duties from the Digital Department to the Movement Learning & Culture Change Department to Deputy Director Dean and Directors Barnard, Gardner, and Morales. After a few interactions between the parties, Director Morales stated, “timeline sounds great to me. I need to do some more thinking about the proposed job description and salary level.” She then testified that she agreed with the suggestions which were implemented.

Director Morales testified that she could provide guidance on which assignments to prioritize if Director Cassar and Manager Collins asked for her opinion. As for Manager Lewis, Director Morales testified, “Have I provided an opinion about priorities or, you know, what should be set aside so that something else could happen in the short term? Definitely.” She also testified that she gives “comments and advice on different aspects of [Cassar’s] work.”

### **iii. *Development Director – Rachel Mannino***

The Development Director is the highest person in the Development Department. As Development Director, Mannino oversees the work of Individual Giving Manager Tony Lovieno and Development Manager Alexis Jackson.

Director Mannino created and finalized her individual 2024 Work Plan which lists the following duties and responsibilities, among others: “leading the Development Team and consultants, prioritizing and managing individual prospect identification and outreach, develop strategy and opportunities to deepen institutional funder and major donor relationships, strengthen community of practice at [the Employer] and for the network around community centric fundraising principles, and picking up capacity for other Team members.” Under the DARCI model for key projects and measurable outcomes in the Work Plan, she is identified as being accountable for the team’s work, with the exception that she is the decision-maker for revising the sponsorship strategy process. In Manager Jackson’s individual Work Plan, Director Mannino is accountable for building a pipeline of new potential institutional funders.

Director Mannino testified that she drafted and revised the five-year fundraising strategy that is currently in effect. She also testified that her work as Development Director is part of her 17 years of experience in program management which is “coordinating and collaborating with colleagues to accomplish a set goal or task, keeping timeline, making sure submitting things on time.”

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<sup>17</sup> Director Morales testified that she signed the contract for Cassar’s consultant services from January 2022 through June 2022.

Director Mannino was involved with hiring staff for her department. She drafted a position description for the Individual Giving Manager, which was reviewed by the Executive Team, and there is no evidence to the contrary that the description was approved “as is.” Manager Jackson did the first round of interviews and recommended three candidates to the next interview committee, who then recommended two candidates to Director Mannino, who then did the final interviews. There is testimony that Director Mannino talked with Executive Director Kalipeni about offering the position to Lovieno, which was successful as Director Mannino made the call to offer him the position.

Director Mannino recommended promotions and raises for others. In early 2023, Director Mannino sent an email to then-Deputy Director Dean recommending a promotion for Jackson, which was approved by the Executive Team. In June 2023, she sent an email to the Executive Team and Director Barnard requesting a salary increase for Jackson because she was taking on more work than the previous year which was approved by the Executive Team. In March 2024, Director Mannino sent an email to the Executive Team and Director Barnard proposing a title change for Jackson from Development Manager to Deputy Director of Development with a salary increase. The Executive Team and Director Barnard suggested the title of Associate Director of Development because Deputy insinuated that the department was large, and it only had three people.<sup>18</sup> There was no raise because the Employer instituted no raises across the board for 2024. Director Mannino also recommended Deputy Director Dean as part of the Executive Team.

Director Mannino testified that she sometimes assigns tasks but avoided giving any specifics other than everyone assigns tasks to each other. She said she provides feedback for those in the Development Department through BambooHR. Director Mannino testified that she meets with Manager Lovieno and “he tells me what he needs from me and I tell him, you know, work projects that need to get completed.” She also stated, “I coach a lot of people on staff with how to prioritize and time management and mentoring...[Lovieno] and I have talked about some time management skills and how he can order and sequence things, yes.”

Director Mannino testified that she doesn’t approve time off requests and sends notifications to the Executive Team for awareness. However, she sent an email to Executive Director Kalipeni and Director Barnard, dated September 10, 2023, which unambiguously states, “Please see attached time off request from [Jackson]. I approved the request, reminded her to block off her calendar and set up her OOO message.” When Director Mannino testified about this email, she stated, “Requests for time off for medical purposes are automatically approved as far as I understand from our policies. So that was perfunctory in nature.”

Director Mannino has the authority to sign contracts on behalf of the Employer. For instance, she signed the consulting contract with Purpose Possible for fundraising strategy and administration support in the amount of \$40,000. She recommended to the Executive Team her preference to continue working with Purpose Possible which was approved. She also signed vendor contracts for their gala event. Director Mannino trains staff on fundraising at all-staff meetings and individually. She recommended to the Board of Directors, which was approved, that the Employer add a tandem Non-Governing Board to help with donations. Then around halfway through 2023, Executive Director Kalipeni decided to cease using the Non-Governing Board.

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<sup>18</sup> The record is not clear about whether Jackson’s position officially changed to Associate Director of Development.

#### ***iv. Digital Strategy Director – Suzette Gardner***

The Digital Strategy Director is the highest person in the Digital Department. As Digital Strategy Director, Gardner oversaw the work of Social Media & Partnership Manager Kendall Masterson who transferred to the Movement Learning & Culture Change Department. She also oversaw the work of former Digital Communications Specialist Simone Stivi. The record did not reflect whether there are any current employees or contractors in the department.

As identified in her individual 2024 Work Plan, Director Gardner is responsible for “leading efforts to meet [] base-building and influencing goals through digital media and partnerships; providing technical support to the organization and network; supporting the network with digital organizing strategies, tactics, and digital communications support and training.” She is also responsible for maintaining responsiveness to IT and cybersecurity, risk management, disaster recovery, and digital forensics.

On June 8, 2023, Director Gardner prepared a performance evaluation for Specialist Stivi and identified areas for Specialist Stivi to improve -- attitude, communication, timeliness, and knowledge. She stated that Specialist Stivi “needs to demonstrative ownership of responsibilities” and recommended that she do project management and time management trainings. Director Gardner testified, “My practice is if someone on our team is doing poor work that I support that person with training. That is part of my job at [the Employer] over the past nine years is to provide training and support to communication staff across the network. So my first step would be to help that person to improve, not to terminate that person.”

At some unknown date thereafter, Specialist Stivi filed a retaliation complaint about Director Gardner. Director Barnard hired an investigator, who likely issued a report in fall 2023, which was shared with Director Gardner. At some other unknown date, there was an unsuccessful mediation between the parties. Then on December 14, 2023, Director Gardner issued a document to Specialist Stivi about her performance and project management issues when Specialist Stivi failed to notify team and/or management staff of uncertainty of correct email list for their November newsletter. The stated reason for documenting the issue was to “document a lapse in professional judgment that compromised a costly project plan and to ensure additional steps are put in place to avoid this type of mistake from happening again.” The document described that the incident occurred even though “a written directive was in place by the Digital Director to not send to the new file.” The end of the document states that any new errors in Specialist Stivi’s professional judgment may lead to disciplinary action.

On December 17, 2023, Specialist Stivi requested a transfer to the Movement Learning & Culture Change Department. On December 22, 2023, Director Gardner wrote an email to Director Barnard stating,

I have had to endure [Stivi’s] **insubordination** and disrespectful tone, her insistence on isolating me and refusal to meet with me or properly update me on her availability for work, and her **inconsistent performance** which has resulted in error-filled and late work. [Stivi’s] circumvention of accountability processes established by the team, missed deadlines which resulted in work unfairly shifting to other team members, and her flatout falsehoods have negatively affected my morale (to say the least), undermined our team’s work, and made my work environment challenging if not hostile.

...

Further, I would like to know **what it takes to remove someone** from this team/organization that has levied accusations **at their supervisor** that have been found to be untrue and experienced as retaliatory...Secondly, I am **recommending/requesting [Stivi] be assigned to another team or supervisor**. Although she is scheduled to **report directly to [Masterson]** with the rollout of our team's reorganization (work which began in late 2022 to early 2023), I am concerned that unaddressed issues with [Stivi's] **overall performance** and her retracted accusation of [Masterson's] hostility towards her will lead to further erosion of morale and the functioning of our team.

...

I am working in an environment with fractured trust, **insubordination** and aversion to problem-solving...I am also eager to learn more about (or to participate in developing a plan to improve) **support for supervisors working with challenging direct-reports**.

On January 22, 2024, the Employer discharged Specialist Stivi for "ongoing performance issues, concerns regarding your misrepresentation of conversations with the Learning & Culture Change Department, and our discovery of your misuse of [the Employer's] Instagram account."

Director Gardner testified that she helped Manager Masterson with prioritization of her work when she was in her department. She also reviewed Manager Masterson's work "because that is my professional expertise." For example, Masterson designed a graphic to promote paid leave and it was Director Gardner's professional experience and expertise when she told her to perhaps "make this bolder or make this smaller, use an image that demonstrates better diversity." In February 2024, when Manager Masterson requested a transfer to the Movement Learning & Culture Change Department, Director Gardner's response was that "I commend and agree with [Masterson's] thoughtful transition timeline...I support any salary increase the organization can bear and that aligns with our values."

Director Gardner testified that "I have all of the authority that a manager would have. . . ." Notably, in October 2023, she provided her "professional opinion" in a meeting with Executive Director Kalipeni, Deputy Director Dean, and Directors Barnard and Morales about her department's budget. As Digital Strategy Director, she chose and signed contracts with vendors such as Community IT (cybersecurity and technical support) and Monday.com (software), and contractors where she agreed to contractor bill rates and was the timecard authorizer for purposes of invoicing for services rendered.

#### ***v. Programs and Advocacy Director – Marianne Bellesorte***

The Programs and Advocacy Director is the highest person in the States/Programs and Advocacy Department. As Programs and Advocacy Director, Bellesorte oversees the full-time work of State Organizer Wakisha Newton and Senior State Organizer Preston Van Vliet, and part-time work of Federal Advocacy Coordinator Jaida Jenkins-Curtis and Voter Engagement Coordinator Staci Bryant from the Federal Department. She also oversees the work of contractors such as Senior State Organizer Luis Larin, Network Assessment Kedren Jackson, and Brittany Gray.

The Programs and Advocacy Director is responsible for developing and effectuating policies for how the Employer meets the needs of its network partners for state legislative efforts,

develops and refines state strategy to be most advantageous to legislative change at the national level, and strategically tiers funding to network partners. Director Bellesorte created and finalized her individual 2024 Work Plan which lists the following duties and responsibilities, among others: Determine key engagement moments, set standard operating procedures based on key engagement moments, develop and hold regional meetings, staff trainings, supervision, State Leads meetings, Strategy Team meeting and Sustainability, strategic planning, development and funder meetings, and organizational “strat”<sup>19</sup> planning.

Director Bellesorte was involved with hiring State Organizers Van Vliet and Larin. She was on the hiring committee for each position being hired and ultimately recommended hiring State Organizers Van Vliet and Larin.

During one on one weekly meetings, Director Bellesorte provides “critical feedback”. She testified that she uses her independent judgment when assessing staff performance such as when she assesses Senior State Organizer Van Vliet. For instance, in Senior State Organizer Van Vliet’s performance evaluation, she wrote “I would like to see [Van Vliet] continue to work on his time management and prioritization of tasks, although I think he has made progress here.” When asked if she trained State Organizer Newton, she stated, “I helped orient her when she joined the state leads team, and we’ve all trained together on certain items like Submittable” (software that the network members use to apply for grants and the state leads use that to review the grants).

Director Bellesorte testified that when reviewing work assignments for the next year, Senior State Organizers Van Vliet and Larin took on additional states and responsibilities. She advocated and recommended changes in titles and wage increases for them and stated that she felt like it was a good step to take with them. Director Bellesorte testified that she can recommend an increase for State Organizer Newton “in the sense that anyone on our team can” even though she has not done so.

#### ***vi. Federal Strategy Director – Sammy Chavin Grant***

The Federal Strategy Director is the highest person in the Federal Department. As Federal Strategy Director, Grant oversees the work of Federal Advocacy Coordinator Jaida Jenkins-Curtis and Voter Engagement Coordinator Bryant.

Director Grant testified that as Federal Strategy Director, she makes recommendations, based on policy priorities, for which federal legislation the Employer endorses. When asked if she sets the federal strategy for the Employer, she testified that she “implements day to day features like who to meet with, what bill we might endorse, but overall priorities are set in partnership with the Executive Team. I make professional recommendations but they set our agenda.” She testified that she reviews guidelines and makes recommendations based on her professional expertise for endorsing federal legislation such as paid family and medical leave and paid sick and safe days. Director Grant said her recommendations have been broadly accepted including the recommendation to endorse the Pro Act.

Director Grant created and finalized her individual 2024 Work Plan which lists the following duties and responsibilities, among others: setting and executing the Employer’s federal agenda and programs, managing the Federal team, and supporting the Federal working group. She also participates in funding calls and meetings to support development and organizational capacity-building and development activities. Under the DARCI model in her 2024 Work Plan,

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<sup>19</sup> There is no definition of “strat” on the record.

Director Grant is accountable for supervising the Federal Team, federal campaign development, and direct advocacy with Congress & Administration. She identified herself as the decision-maker for work performed by the department such the DIVE program, trainings and materials, and other programs for the department. In Coordinators Jenkins-Curtis's and Bryant's 2024 Work Plans, Director Grant is the decision-maker with managing the Federal Working Group, direct advocacy with Congress and Administration, cultivating and managing DIVE program, and building organizational relationships in priority states.

Director Grant has one on one meetings with Coordinators Jenkins-Curtis and Bryant where they share priorities for the week. When asked how Coordinators Jenkins-Curtis and Bryant know what work to prioritize, she said, "mainly based on their work plans, but we talk about it." When asked if she prioritizes which Congresspersons to lobby, she said "Yes. There's 535 members of Congress and two of us on our team."

Director Grant testified that she could advocate for wage increases and promotions. She testified that she advocated for changes to titles and job descriptions for Jenkins-Curtis (from Federal Organizer and State Lead to Federal Advocacy Coordinator) and Bryant (from DIVE Lead/State Lead to Voter Engagement Coordinator). She sent an email to Deputy Director Dean and explained they were already doing the work outlined in the proposed job description, thereby working outside of any approved team and/or individual work plans. Deputy Director Dean checked in with Executive Director Kalipeni and Directors Barnard and Bellesorte, and the staff members were granted the changes.

Director Grant testified that she trains staff and network partners, and specifically taught Coordinators Jenkins-Curtis and Bryant, how to use the Quorum which is a government relation software that keeps track of public sentiment – statement and social media posts by elected officials and staff. She recommended the program immediately upon being hired with the Employer.

#### **vii. *Strategic Communications Director – Safiyah Simmons***

The Strategic Communications Director is the highest person in the Communications Department. As Strategic Communications Director, Simmons oversees the work of Communications Associate MaKeda Scott and contractor Editor Writer Kimberly Alleyne.

The Strategic Communications Director is responsible for the Employer's communication strategy to establish itself as a subject matter expert in national conversations about issues important to the Employer. The position is also responsible for getting press coverage by pitching and managing relationships with reporters.

Director Simmons created and finalized her individual 2024 Work Plan which lists the following duties and responsibilities, among others: Develop and execute cross-team strategies with Digital, Learning & Culture Change, Programs and Advocacy Departments; establish and disseminate Employer's messaging; "supervise [Scott] and Consultants" to which she testified that "supervision" is a weekly priority; increase number of press hits across all platforms; content planning and creation; and develop and execute an org-wide communications plan. She also participates in organizational capacity-building, development activities, and actively in meetings (team, staff, all-staff), and develops and execute trainings for network partners and staff. She testified that she could deviate from individual and teamwork plans as they are living documents. Under the DARCI model in her Work Plan, she is the decision-maker for writing annual narrative, developing annual communications plan, identifying and training spokespeople, meeting with DIVE/Programs to identify first target states and key initiatives to push, and

meeting with Digital Department to identify opportunities to align. Also under the DARCI model, she is accountable for developing and updating core “care on the ballot” messaging, and writing and disseminating statements based on election results.

Director Simmons stated that her proposals to the Executive Team are often approved including her successful proposal to train network partners “to share our messaging and that those training members then be pitched for press interviews.” She also proposed hiring an associate for the Communications Department which was initially comprised of just her. She created the job description and researched and proposed a salary to which she did not take into consideration the salary bans in the Employee Handbook because she did not know about them. The then-Deputy Director Moonsammy approved the proposal. Director Simmons compiled a panel to do initial interviews who made their recommendation to Director Simmons, who testified that she “interviewed [Scott] myself and I made a recommendation to the executive team that we hire her.” Her recommendation was approved. Director Simmons also sought approval to hire a consultant for writing and editorial work. Her and Associate Scott interviewed multiple candidates, and they made the decision to hire Alleyne.

She testified that she has one-on-one meetings with Associate Scott and the content of their meetings are reflected in Associate Scott’s check-in document -- another living document. In this check-in document are tasks and assignments such as draft newsletter and review media meet and greet with Director Simmons, along with manager feedback for Associate Scott to include one success and one area for improvement. There are also notes for “next steps for supervisors” which include “give feedback and updates” and “schedule feedback conversation.” Director Simmons testified that she offers feedback on Associate Scott’s drafts for press releases, talking points and statements, and blog posts. She also gives feedback on the priorities for Associate Scott’s work.

She has the authority to sign contracts and hire consultants. For instance, Director Simmons chose and signed a consulting agreement with Camino PR to provide public relations and media support. She also chose and signed a service contract with Muck Rack Database Services to provide access to its database of reporter contact information.

Director Simmons conducts media training where she teaches staff, and network partners, how to leverage media opportunities, how to engage with reporters, and how to present ideas clearly and articulately. She recently trained Director Grant who began doing press interviews and gave tips on how to best communicate her messaging to the media.

#### **viii. *OASIS Director – Liana Cassar***

The OASIS Director is the highest person in the OASIS Program in the Movement Learning & Culture Change Department. Director Cassar testified that no one oversees her work. As OASIS Director, Cassar oversees the work of Program Coordinator Natalia Soler.

Director Cassar developed the OASIS Program which aims to build resilience and peer-to-peer learning across state-level elected women. Director Cassar testified that she developed and implemented the framework and built an infrastructure to support the program. She is responsible for promoting the work to potential partners and aligned organizations.

Director Cassar created and finalized her individual 2024 Work Plan, without having to submit it for review or approval. Her 2024 Work Plan, which looks different than all the other employees, lists her key projects and measurable outcomes, to include hiring and onboarding

project coordination staff. Under the DARCI model in staff member Manager Lewis's individual Work Plan, Director Cassar is the decision-maker and accountable for designing, strategizing, and facilitating four OASIS retreats.

Director Cassar was involved in hiring Coordinator Soler by contributing to the job description posted for hire and conducting the first round of interviews for the position. Then Director Morales and Documentarian Lewis did the next round of interviews, and they with Director Cassar collectively chose Soler for the position. Director Cassar made the offer to Soler in January 2024. The Hiring and Onboarding Process document for the position states that Director Cassar is the "hiring manager".

During her one-on-one weekly check-ins with Coordinator Soler, Director Cassar testified that they talk about work in progress and she "gives feedback on [Soler's] performance on how she's doing on projects." Director Cassar can state her preference about advocating for a raise for Coordinator Soler, but her salary (and apparently Director Cassar's salary) is bound by the OASIS grant. Coordinator Soler has not had a performance evaluation since she has not been with the Employer for a year. Director Cassar stated that she and Coordinator Soler put in their vacation time in BambooHR for notations and not approval/denial, and that she gets notifications for when Coordinator Soler puts in time for vacation.

She testified that she signed contracts and hired contractors under the conditions and grant monies for the OASIS Program.<sup>20</sup> She vetted (with Director Morales, Documentarian Lewis, and Coordinator Soler) and chose three project-based contractors – (1) logo and style guide branding, (2) website development, and (3) expanding design.

#### **ix. *Human Resource and Operations Associate – Kate Jiannacopoulos***

The Human Resources and Operations Associate works in the Finance and Administration Department with Director Barnard and Accountant Martinez. Her duties include but are not limited to, (1) serving as the primary contact for day-to-day HR responsibilities, which include coordination of recruitment, hiring, onboarding/offboarding; (2) supporting staff members by providing them with understanding of and access to benefits; (3) leading the annual enrollment of benefits for all employees; (4) answering employee and Executive Team questions regarding benefits and company policies; (5) maintaining and updating confidential personnel files; and (6) preparing annual benefits and compensation reports. There is testimony, albeit none from Associate Jiannacopoulos who did not testify at the hearing, that she works with the Executive Team about performance evaluations.

## **II. LEGAL ANALYSIS**

### **A. Directors are Managerial Employees**

Although the Act makes no specific provision for managerial employees, under Board policy, this category of personnel has been excluded from the protection of the Act. See *NLRB v. Yeshiva University*, 444 U.S. 672, 682 (1980). "Managerial employees" are defined as employees who formulate and effectuate high-level employer policies or "who have discretion in the

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<sup>20</sup> When Director Cassar worked as a contractor for the Employer, she prepared and submitted a proposal for the OASIS Program to be funded for two cycles with her as the person running the program.



performance of their jobs independent of their employer's established policy." *Republican Co.*, 361 NLRB No. 15, slip op. at 3 (2014) (quoting *General Dynamics Corp.*, 213 NLRB 851, 857 (1974)). The party asserting managerial status bears the burden of proof. *Republican Co.*, 361 NLRB No. 15 (slip op. at 4 (2014)).

In *NLRB v. Yeshiva University*, the Supreme Court established a standard for evaluating when faculty members are managerial employees excluded from the Act. 444 U.S. at 683-86. More specifically,

Managerial employees are defined as those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer." . . . These employees are "much higher in the managerial structure" than those explicitly mentioned by Congress which "regarded [them] as so clearly outside the Act that no specific exclusionary provision was found necessary." . . . Managerial employees must exercise discretion within, or even independently of, established employer policy and must be aligned with management... Although the Board has established no firm criteria for determining when an employee is so aligned, normally an employee may be excluded as managerial only if he represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy.

444 U.S. at 683.

Here, the Employer met its burden of showing that the Directors who serve on the Sustainability and/or Strategy Teams exercise managerial control by formulating and effectuating high-level employer policies and represent management interests by taking or recommending discretionary actions that implement those policies. While some Directors testified that the Executive Team makes the final decisions based on the Sustainability and Strategy Teams' recommendations and advice, there is no evidence that these recommendations and advice are based on established employer policy. In fact, the Sustainability and Strategy Teams are the bodies who make the Employer's policies and decisions both internally and externally. Likewise, there is no evidence that the decision making abilities as part of either or both teams fall within the routine discharge of their professional duties. Executive Director Kalipeni testified that she leans heavily on the Sustainability and Strategy Teams because she does not have time to handle these issues while also managing other high-level operational concerns. There is a clear connection between management's priority to strategize operations while keeping the sustainability of the Employer balanced and controlled.

The record evidence demonstrates that Directors on the Sustainability Team represent management interests by proposing, researching, recommending, and exercising discretion and control over policies and procedures implemented in the Employee Handbook. Such policies include the four-day work week, two extra floating paid days for religious observance, and updated parental and medical leave policy to include six months paid parental leave and fourteen weeks of paid family leave, including for purposes of bereavement, paid sick leave, and paid safe leave for all staff. Throughout the documentary and testimonial evidence, Directors on the Sustainability Team conduct reviews and recommend changes to various budgets for the overall well-being and financial sustainability of the Employer, which are collectively accomplished and effectuated.

Similarly, Directors on the Strategy Team exercise management control and represent management interests by recommending and effectuating decisions about strategic growth and development plans. During a Strategy Team meeting in 2024, Director Bellesorte recommended the allocation of an unplanned, unbudgeted amount of \$100,000 for an Election and Emergencies Fund to which the Strategy Team adopted a plan to split the money towards any network partner's rapid response and election purposes or emergencies, which went into effect for the year. During the same meeting, the Directors discussed and Director Simmons advised Executive Director Kalipeni not to make a comment on behalf of the Employer on the issues of "DIVE [program] on abortion, Palestine, and Biden", and that recommendation was followed.

As for Director Cassar, who is not on either the Sustainability or Strategy Team, she explicitly testified that she developed and implemented the framework and built an infrastructure to support the OASIS Program. She also testified that no one oversees her work as OASIS Director. Although there is evidence that the OASIS Program is bound by the terms of a grant, such parameters are insubstantial given her direct testimony that she is the only one who exercises control over the OASIS Program.

In support of its position, the Petitioner cites to *Suburban Newspaper Publications, Inc.*, 226 NLRB 154 (1976), a case in which the Board found newspaper editors were not managerial employees. In that case, the editors wrote unsigned editorials on behalf of the newspaper. However, those editors routinely submitted the proposed editorials to the publisher or executive editor for approval before printing, and often discussed the editorials with the executive editor before writing them. The Petitioner argues that the Directors in this case are akin to the editors, and that they merely collaborate and discuss organizational policy with the Director and Deputy Director. However, the facts in *Suburban Newspaper* are distinguishable from the current case, as the record evidence demonstrates that the Directors play a substantial role in the formulation of high-level Employer policies and are not merely drafting policies on behalf of the Executive Team.

The Petitioner further argues that the Directors on the Sustainability Team and/or Strategy Team are not managerial because Director Kalipeni, Deputy Director Dean, and the Employer's Board of Directors hold higher authority and are not required to implement the policies formulated by the Sustainability or Strategy Teams. However, this argument misconstrues the standard for managerial status. There is no case precedent that requires that managerial employees have unreviewable authority to implement policies without any oversight. Such a holding could theoretically limit managerial authority to the single highest ranking person in an organization.<sup>21</sup>

The Board has issued a number of decisions analyzing managerial bodies in the context of college and university faculty. Although not strictly controlling to this case, as its holding is specific to faculty, in *Elon University*, 370 NLRB No. 91 (2021), the Board held that when looking at whether members of a group are managerial, the question does not turn on whether a particular subgroup has a mathematical majority in some relevant part of the employer's decision-making apparatus, but rather whether the subgroup has an "effective voice in the

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<sup>21</sup> As noted above, even Director Kalipeni is responsible to the Board of Directors, so while it is undisputed that she is a managerial employee, her decision-making authority is likewise not unreviewable.

formulation and determination of [the university's] policy” Elon Univ., Id. slip op at 12, quoting *USC*, 918 F.3d at 139 (2019).

Based on the foregoing, I find that the Directors are managerial employees pursuant to Board policy.<sup>22</sup>

## **B. Directors are Supervisory Employees**

Although I find that the Directors are managerial employees, and thus are not employees within the meaning of Section 2(3) of the Act, I will address the Employer’s argument that they are also supervisors, so that those issues have been decided in the event any reviewing authority disagrees with my finding of managerial status. The Employer contends that some Directors have certain authorities that others may not, as demonstrated by the record evidence. However, I will only address the supervisory indicia that affect all or most of the Directors, that are clearly supported on the record to support my affirmative findings, below.<sup>23</sup>

Section 2(11) of the Act defines a “supervisor” as:

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 to recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

Individuals are statutory supervisors if: 1) they hold the authority to engage in any one of the 12 listed supervisory functions, 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.” *NLRB v. Kentucky River Community Care*, 532 U. S. 706, 713 (2001). Supervisory status may be shown if the putative supervisor has the authority either to perform a supervisory function or to effectively recommend the same.

In applying this three-part test, the Board continues to follow certain established principles. First, the party asserting supervisory status bears the burden of proof. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006); *NLRB v. Kentucky River Community Care*, 532 U.S. at 711-712. Second, any lack of evidence is construed against the party asserting supervisory status. *Elmhurst Extended Care Facilities, Inc.*, 329 NLRB 535, 536 fn. 8 (1999).<sup>24</sup> Third, the Board’s long-standing recognition that purely conclusory evidence is not sufficient to establish supervisory status remains viable. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006); *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004); *Sears, Roebuck & Co.*, 304 NLRB 193, 194 (1991).

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<sup>22</sup> Anecdotally speaking, if these Directors were determined *not* to be managerial, there could be implications with them making high-level decisions and compromising bargaining objectives.

<sup>23</sup> While there is ample evidence to support a finding that certain Directors possess supervisory indicia as it relates to transferring and promoting employees, at a minimum, I will not decide indicia that only affects a few Directors.

<sup>24</sup> Similarly, supervisory status is not established where the record evidence is “in conflict or otherwise inconclusive.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

The Board has determined that individuals who possess Section 2(11) supervisory authority may be held to be supervisors even if the authority has not been exercised. *Fred Meyer Alaska, Inc.*, 334 NLRB 646 (2001). Although the Act demands only the possession of Section 2(11) authority, not its exercise, the evidence still must be persuasive that such authority exists. *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006). To exercise independent judgment, an individual must “at a 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, Inc.*, 348 NLRB at 693.

The record evidence contains abundant evidence of several indicia of supervisory status and secondary indicia to support the finding that Directors are supervisory employees.

#### Authority to Assign and Responsibly Direct Work

The Board has construed the term assignment “to refer to the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee.” *Oakwood Healthcare, Inc.*, supra, at 688. The Board has further elaborated that although “the assignment of an employee to a certain department (e.g., housewares) or to a certain shift (e.g., night) or to certain significant overall tasks (e.g., restocking shelves) would generally qualify as ‘assign’ within our construction,” “choosing the order in which the employee will perform discrete tasks within those assignments (e.g., restocking toasters before coffeemakers) would not be indicative of exercising the authority to ‘assign.’” Id.

Similar to all of the supervisory functions, the purported supervisor must utilize independent judgment when making assignments. Id. at 692-693. In this regard, it is well-established that “[i]f the assignment is made solely on the basis of equalizing workloads, then the assignment is routine or clerical in nature and does not implicate independent judgment.” Id. at 694; see also *Lynwood Manor*, 350 NLRB 489, 490 (2007). Furthermore, the Board will not find independent judgment where there is no clear testimony about what factors the putative supervisor considers in assigning employees, or where such testimony is vague or hypothetical. See *Brusco Tug & Barge, Inc.*, 359 NLRB 486, 491-492 (2012), incorporated by reference at 362 NLRB 257 (2015); *Cook Inlet Tug & Barge, Inc.*, 362 NLRB 1153, 1153 (2015).

As for responsibly directing work, a purported supervisor directs when he “has ‘men under him,’ and if the purported supervisor decides ‘what job shall be undertaken next or who shall do it.’” *Oakwood Healthcare, Inc.*, 348 NLRB at 691-692. To establish accountability, it must be shown that the putative supervisor is empowered to take corrective action, and that there is a “prospect of adverse consequences” for others’ deficiencies. *Community Education Centers, Inc.*, 360 NLRB 85-86 (2014); *Oakwood*, 348 NLRB at 691-692, 695.

Here, the record demonstrates that the Directors possess authority to assign tasks to employees and consultants in their departments and use their independent judgment to make these assignments. While the record does not clearly describe any factors these Directors consider in making assignments, other than their professional judgment or experience, there is no evidence that such assignments are dictated or controlled by detailed instructions, whether set forth in company policies or rules, or the verbal instructions of a higher authority. *Oakwood Healthcare, Inc.*, 348 NLRB at 693. Additionally, the Directors are held accountable for the performance of employees in their departments based on the roles provided in team and

individual Work Plans, and as recognized in their day-to-day oversight and accountability for making sure their department reaches the programmatic initiatives.

The evidence establishes that these Directors set the agenda for their department and assign tasks based on time, talent, and abilities, which would require use of independent judgement. They spend the bulk of their time conducting one-on-one weekly check-in meetings with individuals in their departments, organizing team meetings, and arranging and rearranging tasks to ensure that everything is accomplished under the roles and tasks in team and individual Work Plans. It is apparent, both on the record and through documentary evidence, that the Directors discuss roles and tasks set forth in the team and individual Work Plans in these meetings, and address and coach individuals about any hurdles in their day to day work. The record is abundantly clear that Executive Director Kalipeni does not conduct any one-on-one weekly check-ins with the same individuals.

There is ample evidence that these Directors are tasked with being decision-makers and are accountable for the responsibilities provided under the DARCI system in team and individual Work Plans, including their own. However, as for Director Cassar, who does not utilize the DARCI system in any Work Plan on the record, the roles and tasks for the OASIS program are being carried out in a similar approach. It is apparent, both on the record and through documentary evidence, that the Directors organize and lead weekly team meetings, and conduct one-on-one weekly check-in meetings with individuals in their departments, where they discuss the roles and tasks set forth in the team and individual Work Plans.

When Directors testified about meetings with individuals in their departments, they testified as follows:

- Director Barnard testified that she reviews prioritization of individual work plans during meetings. More specifically, in November 2023, when she sought to hire a Grants Coordinator, she described and assigned each primary and backup duty for everyone in the department, including the new position, listing out specific roles for operations, finances, events, HR, and general support.
- Director Morales testified that she has the authority to provide guidance on assignments to prioritize. She testified that she gave “comments and advice on different aspects of [Cassar’s] work” and provided her opinion about Manager Lewis’ priorities.
- Director Mannino testified that she coaches employees on how to prioritize and time manage. During her meetings with Manager Lovieno, they talk about “time management skills and how he can order and sequence things” and tells him what projects to complete. She also reviews and provides feedback on Manager Jackson’s work.
- Director Gardner testified that when Manager Masterson was in her department, she helped her prioritize and reviewed her work “because that is my professional expertise.”
- Director Bellesorte testified that she provides “critical feedback” and uses her independent judgment when assessing staff performance. For instance, she wrote in Senior State Organizer Van Vliet’s performance evaluation, “I would like to see [Van Vliet] continue to work on his time management and prioritization of tasks, although I

think he has made progress here.” She testified that when reviewing work assignments for the next year, she gave Senior State Organizers Van Vliet and Larin additional states and responsibilities.

- Director Grant testified that she discusses priorities for the week with employees in her department. When asked how Coordinators Jenkins-Curtis and Bryant know what work to prioritize, she said, “mainly based on their work plans, but we talk about it.” An example was when she prioritized which Congresspersons each was responsible to lobby.
- Director Simmons testified that she discusses tasks and assignments with Associate Scott, along with feedback on her work priorities, drafts for press releases, talking points and statements, and blog posts. Director Simmons said with her feedback, she usually includes one success and one area for improvement.
- Director Cassar testified that she “gives feedback on [Soler’s] performance on how she’s doing on projects”.

Accordingly, I find that the Employer has met its burden as the record evidence is sufficient to establish that all Directors had the authority and effectively recommended and used independent judgment with respect to making work assignments and responsibly directing work.

#### Authority to Hire Employees and Consultants

The Board analyzes supervisory status by determining whether an individual’s hiring recommendations are in fact *effective*. Accordingly, the Board examines the amount of weight the employer affords the recommendation. See, *USF Reddaway, Inc.*, 349 NLRB 329, 340 (2007). An individual does not “effectively recommend hiring” unless there was “delegated authority to participate in the hiring process” and not merely an employer’s respect for an individual’s opinion on an applicant. See, *Plumbers Local 195*, 237 NLRB 1099, 1102 (1978).

Here, the overall evidence demonstrates that Directors are key participants in the hiring process. The record reflects that Directors Barnard, Morales, Mannino, Bellesorte, Simmons, and Cassar used independent judgment when they effectively recommend the hiring of employees for their own and other departments. However, the record is not clear whether Directors Gardner and Grant had the authority to hire employees.<sup>25</sup>

Based on the evidence, Directors Barnard, Morales, Mannino, Bellesorte, Simmons, and Cassar have broad autonomy in crafting job descriptions, reviewing and interviewing applicants independently and collectively as a hiring committee, and selecting preferred candidates and hiring them as hiring managers. The record also reflects that, although these specific Directors may consult with each other as a committee and/or the Executive Team, there is no evidence that they have to seek approval to do so or whether the Executive Team denied their request to hire a specific candidate over their objection or selection.

The undisputed evidence specifically supports the following:

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<sup>25</sup> Being that I am finding that all Directors are managerial employees, it is not necessary to further analyze whether I could or should impute hiring authority on to these two Directors based on other’s authority on the record.

- Director Barnard drafted or assisted with drafting the job posting for an HR and Operations Associate, conducted interviews for the position, and advocated for the successful hiring of Jiannacopoulos. Director Barnard also interviewed applicants for the Accountant position and recommended the successful hiring of Martinez. Although the interview committee, not the Leadership Team, decided to offer the position to another applicant, who quit after two weeks while on the job, Martinez was ultimately hired.
- Director Morales created and drafted the title and job description for the Instructional Designer & Documentarian position, participated in interviews, and recommended the successful hiring of Lewis. Director Morales also testified that she signed *then*-consultant Cassar's services contract and thereafter participated in interviews and recommended the successful hiring of Cassar as the OASIS Director.
- Director Mannino drafted the job description for the Individual Giving Manager position, which was reviewed by the Executive Team, but there is no evidence to the contrary that the description was approved "as is". Director Mannino conducted the final round of interviews and recommended the successful hiring of Lovieno. Director Bellesorte also interviewed for State Organizer positions and recommended the successful hirings of Van Vliet and Larin.
- Director Simmons created the job description for a Communications Department Associate where she researched and proposed a salary to which she did not take into consideration the salary bans in the Employee Handbook. Director Simmons conducted the final round of interviews and recommended the successful hiring of Scott. Director Simmons also sought approval to hire an Editor Writer, where she and Associate Scott interviewed multiple candidates, and together made the decision to successfully hire Alleyne.
- Director Cassar drafted job description and conducted the first round of interviews for the OASIS Program Coordinator position. Director Morales and Documentarian Lewis conducted the next round of interviews. All three made the decision to successfully hire Soler.

Accordingly, I find that the Employer has met its burden, as the record evidence is sufficient to establish that the above-mentioned Directors had the authority and effectively recommended and used independent judgment with respect to hiring employees and consultants.

### Secondary Indicia

In addition to the Directors' duties, above, the ample evidence of secondary indicia also weighs towards a finding of supervisory status.

One such secondary indicia is the substantial difference in terms and conditions of employment between putative supervisory and nonsupervisory employees. *American Commercial Barge Line Co.*, 337 NLRB 1070 (2002). Here, the record indicates that the seven Directors who are on the Sustainability and/or Strategy Teams are paid at compensation Level EB 2 (\$104,000 – \$156,000) and report directly to Executive Director Kalipeni and/or Deputy Director Dean, and the OASIS Director is paid at compensation Level 5 (\$87,000 – \$131,000) and reports to Director Morales (EB2). Notably, all other employees are paid at compensation Levels 3 – 4 (\$55,000 – \$101,500).

Another secondary indicia of supervisory status is the Directors' attendance at supervisory meetings and trainings such as the disability inclusion training on November 27, 2023. *Dean & Deluca New York, Inc.*, 338 NLRB 1046 (2003). An additional secondary indicia of supervisory status is that these Directors refer to and hold themselves out as supervisors and are regarded as supervisors by others. Both testimony and documentary evidence support this assertion through various medium such as emails, Slack messages, and conversations, and on documents like Work Plans, employee performance evaluations, and meeting notes.

Accordingly, based on the above, I find that the Directors are supervisors within the meaning of the Act.

### **C. HR & Operations Administrator Coordinator is Not a Confidential Employee**

"Confidential employees" are defined as employees who (1) share a confidential relationship with managers who "formulate, determine, and effectuate management policies in the field of labor relations," and (2) assist and act in a confidential capacity to such persons. *Waste Management de Puerto Rico*, 339 NLRB 262, 262 fn. 2 (2003). Confidential employees are those who assist and act in a confidential capacity to persons who formulate, determine and effectuate management policies with regard to labor relations or regularly substitute for employees having such duties. *NLRB v. Hendricks County Rural Electric Membership Corp.*, 454 U.S. 170 (1981); *Associated Day Care Services*, 269 NLRB 178 (1984); *B.F. Goodrich Co.*, 115 NLRB 722 (1956). This is known as the "labor nexus" test. Mere access to confidential labor relations material is not sufficient to confer confidential status. *Greyhound Lines, Inc.*, 257 NLRB 477, 480 (1981). Employees who have access to confidential, financial, or business information or personnel records are not considered confidential employees. *Fairfax Family Fund*, 195 NLRB 306, 307 (1972); *Brodart, Inc.*, 257 NLRB 380, 384, fn.10 (1981). As with establishing supervisory status, the party asserting confidential status has the burden of providing evidence to support its assertion. *Crest Mark Packing Co.*, 283 NLRB 999, 999 (1987).

Here, the Employer did not meet its burden of showing that HR & Operations Administrator Coordinator is a confidential employee. The record reflects that the HR & Operations Administrator Coordinator has access to confidential information and *likely* shares a confidential relationship with managers but fails to provide any evidence as to whether this position assists and acts in a confidential capacity with managers who "formulate, determine, and effectuate management policies in the field of labor relations." The mere access to confidential business or labor relations information, including personnel or financial records, is insufficient by itself to render an employee "confidential."

Accordingly, I find that the HR & Operations Administrator Coordinator is not a confidential employee.

## **III. CONCLUSION**

The evidence establishes that eight of nine petitioned-for unit members are managerial and supervisory employees, and I conclude that the Employer has met its burden of establishing that all Directors are managerial employees under Board policy and are supervisors within the meaning of Section 2(11) of the Act. The remaining petitioned-for unit member is an employee;



however, the Board does not certify stable one-person bargaining units. Accordingly, I am dismissing the petition.

## ORDER

**IT IS HEREBY ORDERED** that the petition filed herein be, and it hereby is, dismissed.

### RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

***Procedures for Filing Request for Review:*** Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site ([www.nlrb.gov](http://www.nlrb.gov)), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#).

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5 p.m. Eastern Time**) on **March 4, 2025**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on March 4, 2025**.

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at [www.nlrb.gov](http://www.nlrb.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was offline or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of

the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Director and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Dated: February 18, 2025



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