**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**REGION 21**

**LINDEN OAKS**[1]

**Employer**

**and** **Case 21-RC-343347**

**COMMUNICATION WORKERS OF AMERICA, LOCAL 9510**

**Petitioner**

## DECISION AND DIRECTION OF ELECTION

On May 31, 2024, the Communication Workers of America, Local 9510 (Petitioner) filed the instant petition under Section 9(c) of the National Labor Relations Act (Act) seeking an election in a bargaining unit consisting of Teachers, Education Specialist Interns, Substitute Teachers, Teachers on Special Assignment, Speech Language Pathologists, Occupational Therapists, Adapted Physical Education Instructors, Counselors, and Payroll Managers employed by Linden Oaks (Employer) at its facilities located at 8699 Holder Street in Buena Park, California, and 43385 Business Park Drive, #140 in Temecula, California. The Employer contends that all of the employees in the petitioned-for classifications are supervisors within the meaning of Section 2(11) of the Act subject to the exclusion from the protections of the Act, and that the petitioned-for bargaining unit is therefore improper. The Employer further maintains that the unit sought by Petitioner is not appropriate because the Payroll Managers do not share a community of interest with the other petitioned-for classifications.

A hearing was held on June 13, 2024, before a Hearing Officer of the National Labor Relations Board (Board). At the conclusion of the hearing, the parties presented oral and written arguments in support of their respective positions. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated to the undersigned its authority in this proceeding to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.

## I. ISSUES AND POSITIONS OF THE PARTIES

The Employer maintains that Teachers, Education Specialist Interns, Substitute Teachers, Teachers on Special Assignment, Speech Language Pathologists, Occupational Therapists, Adapted Physical Education Instructors, Counselors, and Payroll Managers are supervisors as defined in Section 2(11) of the Act, given that they utilize independent judgment to responsibly

[1] After the close of the hearing, the parties in this matter stipulated and agreed: that effective by no later than November 2024, Speech and Language Development Center, Inc., the employer identified in the petition in this matter filed on May 31,2024, changed its name to Linden Oaks; that the correct name of the employer in this matter is Linden Oaks; and that Linden Oaks is the employer of the employees subject to the petition in this matter. The stipulation is hereby approved.

direct, assign tasks to, reward, transfer, and/or discipline employees, and effectively recommend such actions. The Employer further contends that the Payroll Manager classification lacks a community of interest with the other classifications in the petitioned-for unit. The Petitioner takes the position that the classifications in its petitioned-for unit are not supervisors, and they share a community of interest.

## II. DECISION

I have carefully reviewed and considered the record evidence and the arguments of the parties. As explained below, based on the record and relevant Board law, I find that the Employer has failed to meet its burden of establishing that Teachers, Education Specialist Interns, Substitute Teachers, Teachers on Special Assignment, Speech Language Pathologists, Occupational Therapists, Adapted Physical Education Instructors, Counselors, and Payroll Managers are supervisors within the meaning of the Act. However, I do find that the Employer has met its burden showing that Payroll Managers do not share a community of interest with the other classifications in the petitioned-for unit.[2]

## III. THE EMPLOYER'S OPERATION

The Employer operates two facilities located at 8699 Holder Street in Buena Park, California, and at 43385 Business Park Drive, #140, in Temecula, California, providing education and therapy to children and adults with special needs. Vice President of Admissions and Programs Jennifer O'Grady, Speech Department Supervisor Marissa Caccavale, and Director of Program Development Heather Smith all testified on behalf of the Employer, describing how Teachers, Education Specialist Interns, Substitute Teachers, Teachers on Special Assignment, Speech Language Pathologists, Occupational Therapists, Adapted Physical Education Instructors, and Counselors work with students to meet their needs and how the single Payroll Manager works in relation to these other classifications. There are approximately 32 employees in the petitioned-for unit.

The Principal, various administrative assistants, and the supervisors of each service department report to Vice President of Admissions and Programs O'Grady while she reports to the Employer's Chief Executive Officer. The service department consists of the Kinesiology Department, the Mental and Behavioral Department, the Speech Department, and the Adult Program. The Principal supervises the Teachers, who each have their own classroom. The Supervisor of Mental and Behavioral Health supervises the Counselors. Speech Department Supervisor Caccavale supervises the Speech and Language Pathologists. Occupational Therapists, Certified Occupational Therapist Assistants, and Adapted Physical Education Instructors report to the Physical Therapy and Kinesiology Supervisor. The Payroll Manager works in the Accounting Department.

[2] At the hearing, the Petitioner agreed to proceed to an election in any unit found appropriate.

Within the classrooms, the Teachers create goals within Individual Education Plans (IEPs) for students based on students' past and present levels of performance and generate lesson plans that relate to the IEPs. Teachers also manage students' schedules should they require the different types of therapy offered outside the classroom as described below. Anywhere from 5 to 12 Paraprofessionals support the students and Teachers within the classrooms. Paraprofessionals ensure that students can properly access their education and services to meet the goals in their IEPs, essentially acting as class aides. The Employer asserts that Teachers are the highest-ranking employees in the classroom and that Paraprofessionals report directly to the Teachers.

Education Specialist Interns (ESIs) are employees that are in the process of completing their teaching credential with the State of California, but they have the same duties and responsibilities as Teachers. Substitute Teachers substitute for a Teacher who may be absent from the classroom, assuming the duties and responsibilities of Teachers for that designated period of time, and implementing the plans the Teachers create. Long-term Substitute Teachers have the ability to create IEPs for students.

Teachers on Special Assignment (TOSAs) train Teachers and Paraprofessionals on best practices surrounding IEPs, such as assessing students, creating goals within IEPs, and modifying those goals if needed. TOSAs serve as the Employer's administrator during IEP meetings with the IEP team, which consists of the Teacher and necessary service providers, such as Speech Language Pathologists, Occupational Therapists, Counselors, and Adaptive Physical Education Instructors. During those meetings, the TOSA will run the meeting, provide feedback on the IEPs and support to the professionals, mentor junior members of the staff, and set deadlines for the IEPs.

Outside of the classrooms, students receive specific therapies from Speech Language Pathologists, Occupational Therapists, Counselors, and Adapted Physical Education Instructors. Speech Language Pathologists (SLPs) provide individual, group, and consultative speech and language services with the SLP deciding the level of service that each student will receive in their IEP. SLPs are responsible for all documentation pertaining to IEPs and for record keeping. SLPs will review a student's progress and modify the plan as necessary. In these duties, SLPs are supported by Speech Language Pathologist Assistants (SLPAs). The SLPAs collaborate with the SLPs, providing speech and language therapy services based on the IEP developed by the SLP. Each SLPA must be attached to the license of a SLP in order to work, but SLPAs report directly to Speech Department Supervisor Caccavale. While SLPs will review the progress of SLPAs in a student's therapy plan, the SLPAs' performance reviews are completed by Speech Department Supervisor Caccavale. SLPs do not have any direct reports.

Occupational Therapists (OTs) provide occupational therapy services to students and clients to develop motor skills. OTs create goals for students based on a student's previous IEPs, previous assessments, and current assessments. OTs are aided by Certified Occupational Therapy Assistants (COTAs) to continue the work of an OT with a student while the OTs oversee and monitor progress reports and alter goals, if necessary. COTAs do not have the

independent ability to practice without an OT, and they have a coaching dynamic. OTs do not have any direct reports.

Adaptive Physical Education Instructors (APEs) provide physical education to students, which is adapted and modified so students can participate. APEs develop the section of the IEP involving different physical skills and then model and provide directions, instructions, training, and feedback to other individuals working with the students, such as Paraprofessionals, interns, and volunteers. APEs do not have any direct reports.

Counselors provide school-based therapy through social and emotional intervention to students based on IEPs, creating goals after assessing a student's emotional regulation. Counselors do not have any direct reports.

Currently, the Employer has one Payroll Manager who acts in an administrative support role completing clerical work pertaining to payroll processing or other related actions, such as deductions, garnishments, and monitoring state and federal compliance regulations. The Payroll Manager does not have any direct reports.

## IV. SUPERVISORY STATUS OF PETITIONED-FOR EMPLOYEES

### 1. BOARD LAW

Section 2(3) of the Act excludes from the definition of the term employee "any individual employed as a supervisor." Section 2(11) of the Act defines a "supervisor" as:

> [A]ny 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 of a merely routine or clerical nature, but requires the use of independent judgment.

29 U.S.C. § 152(11). The statutory criteria or "primary indicia" for supervisory status set forth in Section 2(11) are read in the disjunctive, making possession of any one of the indicia sufficient to establish an individual as a supervisor.

Therefore, individuals are statutory supervisors if: 1) they hold the authority to engage in any one of the 12 primary indicia 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. See *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 712-713 (2001); *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-574 (1994); *Shaw, Inc.*, 350 NLRB 354, 355 (2007).

The Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions; between effective recommendation and forceful suggestions; and between the appearance of supervision and supervision in fact. The exercise of some supervisory authority in a merely routine, clerical, or perfunctory manner does not confer supervisory status on an employee. See *Oakwood Healthcare, Inc.*, 348 NLRB 686, 693 (2006); *J. C. Brock Corp.*, 314 NLRB 157, 158 (1994).

The authority effectively to recommend an action means that the recommended action is taken without independent investigation by supervisors, not simply that the recommendation is ultimately followed. See *DirecTV U.S. DirecTV Holdings LLC*, 357 NLRB 1747, 1748-1749 (2011); *Children's Farm Home*, 324 NLRB 61 (1997); see also *Veolia Transportation Services, Inc.*, 363 NLRB 902, 905-906 (2016); *Ryder Truck Rental, Inc.*, 326 NLRB 1386 (1998). The Board has an obligation not to construe the statutory language too broadly because the individual found to be a supervisor is denied the employee rights protected by the Act. *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006); *Oakwood Healthcare*, 348 NLRB at 687.

Nonstatutory indicia or "secondary indicia" can be used as background evidence to support a finding of supervisory status but are not dispositive without evidence demonstrating the existence of one of the primary or statutory indications of supervisory status. See *Training School at Vineland*, 332 NLRB 1412, 1412 fn. 3 (2000); *Chrome Deposit Corp.*, 323 NLRB 961, 963 fn. 9 (1997). Compare *K.G. Knitting Mills, Inc.*, 320 NLRB 374 (1995) (Board found no primary indicia were present, where individual opened facility in the morning, "watche[d] everything" before the manager arrived, and processed trucks arriving at plant). Four types of secondary indicia commonly mentioned by the Board are the ratio of putative supervisors to employees, differences in terms and conditions of employment, attending management meetings, and how the individual in question is held out to (or perceived by) other employees. Because I have found that the Employer has not met its burden of establishing that the employees in the petitioned-for unit possess any of the primary indicia necessary to demonstrate supervisory status, any potentially relevant secondary indicia will not be reviewed.

**Burden and Evidence**

The burden of establishing supervisory status rests on the party asserting that such status exists. *NLRB v. Kentucky River*, 532 U.S. 706, 711; *Shaw, Inc.*, 350 NLRB at 355; *Croft Metals, Inc.*, 348 NLRB 717, 721 (2006). The party seeking to prove supervisory status must establish it by a preponderance of the evidence. *Croft Metals*, above; *Oakwood Healthcare*, above. As the Board stated in *Veolia Transportation*, cited above, "Purely conclusory evidence does not satisfy that burden. Lack of evidence is construed against the party asserting supervisory status." 363 NLRB at 908 (citing *Lynwood Manor*, 350 NLRB 489, 490 (2007); *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1048 (2003)).

It is an individual's duties—not job title—that determines status. *Dole Fresh Vegetables*, 339 NLRB 785 (2003). Where the evidence is in conflict or otherwise inconclusive on particular

indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. *Ibid*. (citing *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989)). See also *G4S Regulated Security Solutions*, 362 NLRB 1072, 1072-1073 (2014); *Dole Fresh Vegetables, Inc.*, 339 NLRB 785, 792 (2003). Finally, the sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. See *Shaw, Inc.*, 350 NLRB at 357 fn. 21; *Oakwood Healthcare*, 348 NLRB at 693; *Kanawha Stone Co., Inc.*, 334 NLRB 235, 237 (2001).

## 2. APPLICATION OF BOARD LAW TO THIS CASE

Of the 12 primary indicia for supervisor status, the Employer does not contend that Teachers, ESIs, Substitute Teachers, TOSAs, SPLs, OTs, APEs, or Counselors suspend, lay off, recall, promote, hire, discharge, or adjust the grievances of employees by virtue of their independent judgment. The Employer maintains that employees in these classifications possess the authority to responsibly direct, assign, and/or effectively recommend transfer, reward, discipline, hire, and/or discharge. The Employer does not make any specific arguments regarding the Payroll Manager's supervisory authority.

Neither the Employer nor the Petitioner called any employees in these classifications to testify as witnesses. However, the Petitioner submitted surveys completed by employees in the petitioned-for classifications in which they answered questions related to their job duties. While incumbent petitioned-for employees have direct firsthand knowledge of their job duties, functions, responsibilities, and authority, and are generally considered the best witnesses, those surveys will not be considered in this decision as the employees completing them did not testify under oath and the Employer was not afforded the opportunity to cross-examine and question their testimony.

The record is replete with details on how employees in the petitioned-for classifications exercise independent judgment in their own duties, such as creating and altering IEP goals for students. However, in the instant case, whether an employee exercises independent judgment is only relevant if it is done in connection to one or more of the primary indicia of supervisory status.

### A. Teachers, Education Specialist Interns, and Substitute Teachers

The record is unambiguous that Teachers, ESIs, and Substitute Teachers share the same duties and responsibilities. The Employer argues that testimonial and documentary evidence support its assertion that Teachers, ESIs, and Substitute Teachers all have the same supervisory relationship over Paraprofessionals.

1. Authority to Responsibly Direct

In *Oakwood Healthcare*, the Board defined the term "responsibly to direct" to mean that a person is a supervisor when the person decides what job will be undertaken next by the employees "under" that person and who should do it, provided that the direction is both "responsible" and carried out with independent judgment. 348 NLRB at 691. In determining whether the direction is "responsible," the person directing and performing the oversight of the employees must be accountable for the performance of the task by the other, such that the person may face some adverse consequence if the tasks performed by the employee are not performed properly. *Id.* at 691-692. To establish accountability for the purposes of responsible direction, it must be shown that the employer delegated to the putative supervisor the authority to take corrective action, if necessary, and that there is a prospect of adverse consequences for the putative supervisor for not taking these steps. *Id.* at 692.

The Employer argues that Teachers have authority to responsibly direct the Paraprofessionals in their classrooms as they instruct Paraprofessionals to undertake tasks, such as escorting students to transportations, working with students on learning assignments, and collecting data to implement IEP goals. The record confirms that this is done on a daily basis in the morning and throughout the day. Teachers also provide and model teaching methods for the Paraprofessionals. However, the record is silent on whether Teachers are accountable for the performance of Paraprofessionals, including whether Teachers suffer adverse consequences based on a Paraprofessional's poor performance or lack of performance, and it has been found below that Teachers do not have the authority to take corrective action, or effectively recommend such action, against Paraprofessionals. Accordingly, the Employer has not met its evidentiary burden to support the conclusion that Teachers, ESIs, and Substitute Teachers responsibly direct Paraprofessionals or any other employees.

2. Authority to Assign

In order to clarify the differences between the terms "assign" and "responsibly to direct," the Board construes the term "assign" 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 a significant overall duties, i.e. tasks, to an employee." *Oakwood Healthcare*, 348 NLRB at 688-689. While the assignment of an employee to a certain department on a certain shift or to significant overall tasks generally qualify as "assign" within the Board's construction, choosing the order in which an employee will perform discrete tasks or ad hoc instructions do not constitute an assignment. *Id*. at 689.

The established case law is unequivocal that when 2(11) status is asserted, it must be shown that any assignment is undertaken using independent judgment, as opposed to judgment that is clerical or routine. *Oakwood Healthcare*, 348 NLRB at 693; see also *Cook Inlet Tug & Barge, Inc.*, 362 NLRB 1153 (2015). Cf. *Brusco Tug & Barge Co.*, 359 NLRB 486, 492 (2012), incorporated by reference at 362 NLRB 257 (2015) (independent judgment not shown in absence

of detailed specific evidence on putative supervisor selecting one employee over another to perform a particular task), enfd. 696 Fed. Appx. 519 (D.C. Cir. 2017); *Springfield Terrace LTD*, 355 NLRB 937, 943 (2010) (assignments based on employee availability do not involve independent judgment); *NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury*, 372 NLRB No. 35, slip op. at 9-10 (2022) (making assignments to employees who are able to perform all assignment options, and none of whom have special training or education that make them qualified for any particular assignment, does not involve independent judgment).

While Teachers have some authority to make and adjust assignments and to direct the work of Paraprofessionals, the record does not support the assertion that Teachers do so with any independent judgment. A worker does not utilize independent judgment where assignments were controlled by detailed instructions and putative supervisors did not take into account the relative skills of team members when making assignments. *Pacific Coast M.S. Industries*, 355 NLRB 1422, 1424 (2010). The Employer's witnesses described what types of tasks a Teacher will direct a Paraprofessional to perform but the record lacks any evidence demonstrating how a Teacher decides which Paraprofessional will perform a particular task, including whether certain Paraprofessionals are more qualified than others for various tasks, or whether the Teacher deviates from the specific IEP plan when doing so.

The Employer's witnesses further testified that Teachers review the Paraprofessionals' timecards, approve time off requests from Paraprofessionals, and direct their breaks. Teachers are also able to grant Paraprofessionals time off if the request is for a few days, but anything longer than that will be approved by an employee above a teacher. These tasks are done with clerical or routine judgment rather than independent judgment, especially given that Teachers do not make the decision to grant time off if it exceeds a certain number of days. Accordingly, the Employer has not met its evidentiary burden to establish that Teachers, ESIs, and Substitute Teachers possess the authority to assign.

3. Authority to Effectively Recommend Transfer

The authority to effectively recommend generally means that "the recommended action is taken without independent investigation by superiors, not simply that the recommendation is ultimately followed." *Children's Farm Home*, 324 NLRB at 61; see also *Veolia Transportation Services, Inc.*, 363 NLRB at 905-906; *DirecTV U.S. DirecTV Holdings LLC*, 357 NLRB at 1748–1749; *Ryder Truck Rental*, 326 NLRB at 1386; *ITT Lighting Fixtures*, 265 NLRB 1480, 1481 (1982), enf. denied on other grounds 712 F.2d 40 (2d Cir. 1991).

According to the record, the decision to transfer a Paraprofessional either from one student to another or from one classroom to another is a collaborative decision made with the Principal, but the Teacher's recommendation is "heavily weighted" when making that decision. (Tr. 60). This testimony is clear that the Teacher's recommendation is significantly considered but it is not simply adopted. Accordingly, the Employer has not established that Teachers, ESIs,

and Substitute Teachers have the authority to effectively recommend the transfer of Paraprofessionals.

4. Authority to Discipline, Evaluate, Reward, and Discharge

To establish the supervisory authority to discipline, asserted disciplinary authority "must lead to personnel action without independent investigation by upper management." *Veolia Transportation Services*, above at 908 (citing *Sheraton Universal Hotel*, 350 NLRB 1114, 1116 (2007), and *Beverly Health & Rehabilitation Services*, 335 NLRB 635, 669 (2001), enfd. in pertinent part 317 F.3d 316 (D.C. Cir. 2003)); see *Lucky Cab Co.*, 360 NLRB 271 (2014) (quoting *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002)); *Pepsi-Cola Bottling Co.*, 154 NLRB 490, 493–494 (1965).

The record indicates that Teachers can decide the consequences for a Paraprofessional depending on the underlying infraction, but that Teachers will work with human resources when deciding the next steps. This alone does not establish that Teachers have the authority to discipline or the authority to effectively recommend discipline. Initially, no evidence was presented on whether punishments decided by Teachers affect the job status or tenure of Paraprofessionals. "[T]he mere factual reporting of oral reprimands and the issuance of written warnings that do not alone affect job status or tenure do not constitute supervisory authority." *Passavant Health Center*, 284 NLRB 887, 889 (1987) (citations omitted). Most significantly, in order to find that Teachers possess the authority to discipline or effectively recommend discipline, Teachers must utilize independent judgment when exercising this authority. Testimony that discipline may be a collaborative effort, without specificity as to what the collaboration entails or how often it occurs, may suggest that putative supervisors do not exercise independent judgment. *Veolia Transportation*, 363 NLRB 1879, 1885-1886 (2016), enfd. sub nom. *Transdev Services, Inc. v. NLRB*, 991 F.3d 889 (8th Cir. 2021); *Shaw, Inc.*, 350 NLRB at 356–357; *Tree-Free Fiber Co.*, 328 NLRB 389, 391–392 (1999). The record does not delve into how Teachers collaborate with the Employer's human resources department when determining discipline for the Paraprofessionals, so it cannot be found that Teachers possess the authority to discipline or effectively recommend discipline based on this evidence.

The record evidence also tends to support the Employer's assertion that Teachers evaluate the Paraprofessionals' job performance, provide feedback, and hold informal meetings with Paraprofessionals. Thus, according to the Employer, imbuing them with the authority to reward or effectively reward Paraprofessionals. However, the authority to evaluate is not a supervisory indicium under Section 2(11). *Modesto Radiology Imaging, Inc.*, 361 NLRB 888, 889 (2014); *Elmhurst Extended Care Facilities*, 329 NLRB 535, 536 (1999). Even so, the Board analyzes the authority to evaluate to determine whether it is an "effective recommendation" of promotion, reward, or discipline. See *Phelps Community Medical Center*, 295 NLRB at 490; see also *Empress Casino Joliet Corp. v. NLRB*, 204 F.3d 719, 723 (7th Cir. 2000).

According to the record, a Teacher's performance review of a Paraprofessional is tied to whether a Paraprofessional receives a wage increase, but Teachers do not directly or unilaterally decide whether a Paraprofessional will receive a raise. Thus, while related in some manner, it is unclear what weight a Teacher's evaluation of a Paraprofessional carries when a Paraprofessional is granted a wage increase. Because the evidence does not establish that a teacher's evaluation is adopted without an independent investigation, Teachers do not have the authority to reward or effectively reward Paraprofessionals.

Finally, the Employer argues that Teachers can recommend the termination of Paraprofessionals. The authority to discharge has not been established where such a recommendation is independently investigated, or where facts are merely reported to a higher authority without a recommendation. See *DirecTV U.S. DirecTV Holdings, LLC*, above at 1750 (absence of independent investigation not established); *Spentonbush/Red Star Cos.*, 319 NLRB 988 (1995). "Bare testimony to the effect" that a putative supervisor has the authority to discharge does not establish independent judgment, because such testimony does not show whether such action was undertaken at the direction of management. *Dean & Deluca New York, Inc.*, 338 NLRB at 1047–1048.

Teachers are involved in the termination of Paraprofessionals in that their feedback is heavily weighted and they can make such recommendations, but the Employer's witnesses were clear that Teachers do not make the final decision to discharge Paraprofessionals. Testimony indicates that the Principal ultimately makes this decision, in collaboration with the Employer's human resources department, leadership, and input from Teachers and others working with the individual in question. A Teacher is just one voice among many in higher management's ultimate decision to terminate a Paraprofessional, illustrating the Teachers' lack of authority to discharge or effectively recommend discharge.

Consequently, Teachers, ESIs, and Substitute Teachers do not possess the authority to discipline, reward, or discharge Paraprofessionals or effectively discipline, reward, or discharge Paraprofessionals.

5. Authority to Hire

As with all supervisory functions, a hiring recommendation is not effective in the absence of a contention or finding that such recommendation is relied on without further inquiries. *Adco Electric*, 307 NLRB 1113, 1124 (1992), enfd. 6 F.3d 1110 (5th Cir. 1993); *Waverly-Cedar Falls Health Care*, 297 NLRB 390, 392 (1989). Likewise, a hiring recommendation has not been shown to be effective where the influence of the recommendation on the ultimate decision is not known. *Pacific Coast M.S. Industries*, 355 NLRB at 1425–1426; *Third Coast Emergency Physicians, P.A.*, 330 NLRB 756, 759 (2000); *F.A. Bartlett Tree Expert Co.*, 325 NLRB 243, 245 (1997).

According to the evidence in the record, Teachers are involved in the hiring of Paraprofessionals. Specifically, they are part of the interview process, along with the Principal, the TOSA, and others, including the Director of Education and the Vice President of Admissions and Programs. Teachers can also recommend candidates to be interviewed. However, "[m]ere participation in the hiring process, absent the authority to effectively recommend hire, is insufficient to establish Section 2(11) supervisory authority." *North General Hospital*, 314 NLRB 14, 16 (1994). While the Employer's hiring process is a joint decision, the record only contains generalized testimony that Teachers are part of the interview process without establishing either that their recommendations are relied upon without further questioning or their specific influence on a hiring decision. As such, the evidence fails to establish that Teachers, ESIs, and Substitute Teacher possess the authority to hire Paraprofessionals or effectively recommend hiring.

Given the above, the Employer has not fulfilled its burden to establish that Teachers, ESIs, and Substitute Teachers are supervisors under Section 2(11) of the Act.

## B. Teachers on Special Assignment

The Employer contends that TOSAs supervise Teachers, ESIs,[3] and Paraprofessionals.

### 1. Authority to Responsibly Direct and Authority to Assign

As part of their duties running the annual IEP meetings on behalf of the Employer with Teachers and other involved service providers, TOSAs set the agendas and deadlines and provide feedback, support, and mentoring services for more junior members of staff. With ESIs specifically, the TOSAs will assign them tasks in anticipation of the IEP meetings. For example, instructing ESIs to independently complete sections of the IEP after providing training to review together at their next meeting. However, this evidence does not show that TOSAs are responsible for any of the staff they work with, as there is no evidence that they are accountable for any of the tasks completed pursuant to their directions or that they are utilizing independent judgment outside of IEP requirements and guidelines. *Oakwood Healthcare*, 348 NLRB at 691-692. The evidence further does not demonstrate that any of the tasks that TOSAs assign to the ESIs, or any other professional staff, rise above discrete tasks or ad hoc instructions related to IEPs. *Id*. at 688-389.

Accordingly, the evidence fails to establish that TOSAs have the authority to responsibly direct or to assign.

### 2. Authority to Hire

According to the record, TOSAs are involved in the hiring of professional staff. They are part of the interview panel, asking questions of a candidate, and giving the candidate a tour of the

[3] ESIs are also referred to as "Interns."

facilities. The interview panel debriefs after the interview and a TOSA has input as a panel member into whether the candidate will be hired, but ultimately, hiring is a joint decision of the panel. While the Employer argues that TOSAs possess the authority to hire, this evidence lacks the specificity to establish either that a TOSA's hiring recommendation is relied upon without further inquiries or the level of influence a TOSA's recommendation has on the eventual hiring decision. *Adco Electric*, above; *Waverly-Cedar Falls Health Care*, above; *Pacific Coast M.S. Industries*, above at 1424; *Third Coast Emergency Physicians, P.A.*, above; *F.A. Bartlett Tree Expert Co.*, above. As such, the evidence fails to establish that TOSAs possess the authority to hire or effectively recommend hiring.

2. Authority to Evaluate

According to the record, the TOSAs' input is heavily weighted in the performance evaluations, feedback, and coachings given to Teachers. They also provide feedback on IEPs during IEP meetings and to ESIs during mentorship and training. However, this evidence does not elevate a TOSA's ability to evaluate employees to the level of effectively recommending promotion, reward, or discipline necessary to find that TOSAs are supervisors under Section 2(11) of the Act. No evidence was provided that any of the TOSAs' feedback or evaluations lead to the recommended action or that a recommended action is even included in their evaluations and feedback. See *Phelps Community Medical Center*, above. Accordingly, it has not been shown that TOSAs possess the supervisory authority to evaluate to the level of effectively recommending the reward or discipline of employees.

Given the above, the Employer has not fulfilled its burden to establish that TOSAs are supervisors under Section 2(11) of the Act.

## C. Speech Language Pathologists

While the official job description for SLPs states that SLPs supervise Teachers, Paraprofessionals, Therapy Assistants,[4] and Interns, the Employer's witnesses largely limited their testimonial evidence to SLPs' relationships with SLPAs, with the exception of Director of Program Development Smith generally noting in her testimony that the Employer's various professionals, which presumably include the SPLs, oversee the Paraprofessional when they are present during therapy sessions without further explanation. No further evidence was provided to show that SPLs supervise any other employees. The Employer contends that SLPs supervise SLPAs.

1. Authority to Responsibly Direct and the Authority to Assign

According to testimony on the record, an SLP is technically the supervisor of an SLPA if the SLPA is attached to the SLP's license. While the record clarified that SLPs are not the direct supervisors of SLPAs, the Employer argues that they still exert some supervisory duties over the

[4] The record does not clarify which job classifications qualify as "therapy assistants."

SLPAs, outside of disciplining them. While SLPAs cannot write assessments, reports, or the IEPs themselves, they can choose and make their materials for their sessions and collaborate with the SLPs on how students are progressing through their IEPs. SLPs control SLPAs' schedules, assigning students to SLPAs in open time slots and attempting to consider the best time slots for students depending on the students' particular needs. If SLPAs are not coming into work or are requesting time off, they contact either the Speech Department Supervisor or the Employer's human resources department.

The evidence does not support the position that SLPs have the authority to responsibly direct SLPAs, as the record is silent on SLPs' accountability for SLPAs performance, and the testimony was unequivocal that SLPs do not discipline or take corrective action against SLPAs. *Oakwood Healthcare*, 348 NLRB at 691-692. As for an SLP's authority to assign, the record does not support the position that SLPs utilize independent judgment when directing or assigning tasks to SLPAs, as SLPs only take the students' needs into account, rather than the skills of the SLPAs, when creating a schedule for the SLPAs. Moreover, SLPAs have discretion within their sessions when working with students. Accordingly, SLPs do not utilize independent judgment. See *Pacific Coast M.S. Industries*, above.

Given the above, the Employer has not fulfilled its burden to establish that SLPs are supervisors under Section 2(11) of the Act.

## D. Occupational Therapists

While the official job description for the OTs states that OTs supervise Teachers, Paraprofessionals, Therapy Assistants, and Interns, the Employer's witnesses limited their testimony to the OTs' relationship with COTAs. Like the SPLs, all professionals, which would include OTs, oversee Paraprofessionals during student therapy sessions but the only relevant evidence indicated that OTs sometimes model task efficiency. The Employer maintains that OTs supervise COTAs.

### 1. Authority to Responsibly Direct and Authority to Assign

Overall, a COTA cannot work independently unless they are overseen by an OT. After OTs spend a certain amount of time working on their caseload of students and/or clients, COTAs then step in to help continue that work and progress, in addition to the OT, with the OT overseeing progress reports and monitoring daily or weekly progress of the goals to evaluate whether the plans need altering. If a COTA puts a report or plan together, it is reviewed directly by the OT. The head of the department oversees time clock issues and overall performance reviews.

The evidence does not show that OTs are responsible for any of the staff they work with as there is no evidence that they are accountable for any of the tasks completed at their direction or that they are utilizing independent judgment outside of IEP requirements and guidelines.

*Oakwood Healthcare*, 348 NLRB at 691-692. As such, the record does not support the assertion that OTs possess the ability to responsibly direct and assign.

2. Ability to Evaluate

While the OTs do not oversee COTAs' attendance and punctuality, they do provide feedback and evaluation on the COTAs' performance. No further evidence was provided concerning how this feedback or the evaluations are utilized by the Employer. Therefore, it has not been shown that OTs possess the supervisory authority to evaluate to the level of effectively recommending the reward or discipline of employees.

Given the above, the Employer has not fulfilled its burden to establish that OTs are supervisors under Section 2(11) of the Act.

## E. Adapted Physical Education Instructors

The Employer argues that the testimonial and documentary evidence on the record support the finding that APEs supervise Paraprofessionals, Interns, and Volunteers.[5]

1. Authority to Responsibly Direct and Authority to Assign

After creating their aspects of an IEP for their students, APEs will then model and provide instruction, training, and feedback to other individuals working with students, such as Paraprofessionals and Interns. When working with students on physical activities involving the APEs, Paraprofessionals take direction from the APEs. The record, however, lacks the evidence necessary to show that APEs are either accountable for any of their dictated tasks performed by staff or that they use independent judgment outside of IEP requirements and guidelines when assigning tasks. *Oakwood Healthcare*, above. Accordingly, the evidence does not support the Employer's position that the APEs possess the ability to responsibly direct and assign.

Given the above, the Employer has not fulfilled its burden to establish that APEs are supervisors under Section 2(11) of the Act.

## F. Counselors

While the Employer's witnesses limited their testimony to Counselors' alleged supervisory relationship with Paraprofessionals, the Counselors' job description expands those duties to overseeing Teachers, Interns, and Therapy Assistants. All professionals, including Counselors, oversee Paraprofessionals during student therapy sessions, but no other evidence was provided to show that Counselors supervise Teachers, Interns, and Therapy Assistants. The

[5] Whether Adapted Physical Education Instructors can exert supervisory authority over volunteers is irrelevant to this decision as volunteers are not employees.

Employer alleges that the Counselors supervise Paraprofessionals, Teachers, Interns, and other service providers.

1. Authority to Responsibly Direct and Authority to Assign

According to the record, Counselors can give instructions to Paraprofessionals in situations when intervention is needed with a student. This alone is insufficient to establish either that Counselors possess the authority to responsibly direct employees or possess the authority to assign. This evidence does not show that Counselors are accountable for any of their instructions to staff and it lacks the specificity required to illustrate that they use independent judgment outside of professional requirements and guidelines when providing those instructions. *Oakwood Healthcare*, above.

2. Authority to Effectively Recommend Transfer

The authority to effectively recommend generally means that "the recommended action is taken without independent investigation by superiors, not simply that the recommendation is ultimately followed." *Children's Farm Home*, above; see also *Veolia Transportation Services, Inc.*, above; *DirecTV U.S. DirecTV Holdings LLC*, above; *Ryder Truck Rental*, above; *ITT Lighting Fixtures*, above. As with Teachers, the record states that a Counselor's decision is heavily weighted when deciding when to transfer a Paraprofessional from his or her current assignment, signifying that the Counselor's recommendation is considered but not simply adopted. Accordingly, the evidence fails to establish that Counselors have the authority to effectively recommend the transfer of Paraprofessionals.

3. Ability to Evaluate

Counselors provide feedback to Teachers and other service providers, including Paraprofessionals, and Interns, who are working with Counselors on their caseloads. No further evidence was provided concerning how the feedback or evaluations are utilized by the Employer. Therefore, it has not been shown that Counselors possess the supervisory authority to evaluate to the level of effectively recommending the reward or discipline of employees.

Given the above, the Employer has not fulfilled its burden to establish that Counselors are supervisors under Section 2(11) of the Act.

## G. Payroll Managers

Any evidence speaking to the supervisory duties of Payroll Managers is absent from the record. Accordingly, the Employer has not met its burden to show that Payroll Managers are supervisors under Section 2(11) of the Act.

## V. COMMUNITY OF INTEREST

The Employer contends that the single Payroll Manager does not share a community of interest with the remaining employees in the petitioned-for unit. Specifically, the Employer alleges that the Payroll Manager does not serve a clinical function; does not provide therapy services, teach students, or interact with students; does not set patient goals and is not involved in treatment planning; has no background, training, or education in providing teaching or therapy services; and performs clerical duties in a separate building on campus from the other employees in the petitioned-for unit.

The Petitioner argues that the Payroll Manager shares the same administrative structure as the other employees in the petitioned-for unit, such as the same Chief Executive Officer, the same management, and the same human resources department, as well as sharing a geographic location. The Petitioner further contends that, because the Payroll Manager's main duty concerns the payroll, without the Payroll Manager, the other employees in the petitioned-for unit could not perform their duties if they are not paid properly.

### 1. BOARD LAW

The Board considers the following factors in determining whether employees share a community of interest:

> whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the [e]mployer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

*Walt Disney Parks & Resorts, U.S., Inc.*, 373 NLRB No. 99 (2024), slip op. at 8, citing *United Operations, Inc.*, 338 NLRB 123, 123 (2002). In a given case other factors may be relevant as well; thus, from time to time work situs is discussed as a separate factor or consideration. See, e.g., *R-N Market*, 190 NLRB 292 (1971); *Bank of America*, 196 NLRB 591 (1972); *Kendall Co.*, 184 NLRB 847 (1970).

### 2. APPLICATION OF BOARD LAW TO THIS CASE

#### A. Separate Departments

In addition to administrative delineations, the Board will also consider whether a proposed unit tracks other lines drawn by the employer, such as classification, function, or supervision. See, e.g., *K&N Engineering*, supra, slip op. at 3 (finding petitioned-for unit inappropriate because, inter alia, it was not drawn along departmental, functional, or supervisory

lines); *Odwalla, Inc.*, 357 NLRB 1608, 1612 (2011) (same where proposed unit did not track employee classification, department, or function).

While the Payroll Manager works in the Accounting Department, a separate department from the rest of the employees in the petitioned-for unit, the other employees in the petitioned-for unit similarly work in separate departments. For example, the Speech Language Pathologists work in the Speech Department and the Counselors work in the Mental and Behavioral Department. However, as delineated below, despite the fact that they work in separate departments, the remaining employees in the petitioned-for unit work in departments that share functional and supervisory lines, unlike the Payroll Manager whose function and supervision is separate and distinct from the remaining employees.

Accordingly, I find that this factor weighs against the assertion of a shared community of interest between the Payroll Manager and the remainder of the employees in the petitioned-for unit.

**B. Distinct Skills and Training**

Employees with similar skills and training are more likely to share a community of interest. See *WideOpenWest Illinois, LLC*, 371 NLRB No. 107, slip op. at 6 (2022) (finding unit appropriate where employees had similar skills and job qualifications), versus *Casino Aztar*, 349 NLRB 603, 604 (2007) (rejecting proposed unit where included and excluded employees had the same skills and educational requirements). Evidence that disputed employees have similar job descriptions or licensure requirements, or that they participate in the same employer training programs, supports finding a similarity of skills.

The Payroll Manger does not share the same skills, training, or educational requirements as the employees in the rest of the petitioned-for unit. Teachers, ESIs, Substitute Teachers, TOSAs, SLPs, OTs, APEs, and Counselors all provide educational and therapeutic services to students, which require skills, training, and education that are completely distinct and separate from those required for the Payroll Manager, who performs clerical accounting duties.

Given the above, I find that this factor weighs against the assertion of a shared community of interest between the Payroll Manager and the remainder of the employees in the petitioned-for unit.

**C. Job Functions and Work Performed**

This factor examines whether disputed employees can be distinguished from one another based on job functions, duties, or skills. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in the unit. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another's work, or that disputed employees work together as a

crew, supports a finding of similarity of functions. Evidence that disputed employees have similar requirements to obtain employment; that they have similar job descriptions or licensure requirements; that they participate in the same employer training programs; and/or that they use similar equipment supports a finding of similarity of skills. *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penney*, 328 NLRB 766 (1999); *Brand Precision Services*, 313 NLRB 657 (1994). *Phoenician*, 308 NLRB 826 (1992). Where there is also evidence of similar terms and conditions of employment and some functional integration, evidence of similar skills and functions can lead to a conclusion that disputed employees must be in the same unit, in spite of lack of common supervision or evidence of interchange. *Phoenician*, above.

The only evidence presented concerning whether the Payroll Manager's job functions and duties overlap with the other classifications in the petitioned-for unit is that the other employees cannot get paid without the Payroll Manager. This is not convincing evidence that the Payroll Manager cannot be distinguished from or has a high degree of overlap with the job functions of the other employees in the petitioned-for unit. As described below, simply because the Payroll Manager has the crucial role of ensuring that the other employees are paid for their services does not equate with functional integration between the classifications. Instead, the Payroll Manager's job functions and the work the Payroll Manager performs are distinct and separate from that of the rest of the petitioned-for unit, especially as the Payroll Manager does not have similar licensure requirements, training, or equipment, or a similar job description, as the remainder of the petitioned-for unit.

Accordingly, I find that this factor weighs against the assertion of a shared community of interest between the Payroll Manager and the remainder of the employees in the petitioned-for unit.

**D. Degree of Functional Integration**

Functional integration is when employees' work constitutes integral elements of an employer's production process or business. Thus, for example, functional integration exists when employees in a unit sought by a union work on different phases of the same product or provide a service as a group. Another example of functional integration is when the Employer's workflow involves all employees in a unit sought by a union. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. *Transerv Systems*, 311 NLRB 766 (1993). On the other hand, if functional integration does not result in contact among employees in the unit sought by a union, the existence of functional integration has less weight.

The Petitioner argues that, because the Payroll Manager has the vital role of ensuring that the other employees in the petitioned-for unit are paid, the Employer's workflow involves all the employees in the sought-after unit. However, the Payroll Manager does not work with the other employees on the same matters, nor does the Payroll Manager perform similar functions as the

remaining employees. Instead, the Payroll Manager focuses on accounting duties while the rest of the employees in the petitioned-for unit provide educational and therapeutic services to students. Moreover, the Payroll Manager has limited contact with the remaining employees, diminishing the existence of functional integration.

Given the above, I find that this factor weighs against the assertion of a shared community of interest between the Payroll Manager and the remainder of the employees in the petitioned-for unit.

**E. Contact With Other Employees**

As described above, the record does not demonstrate that the Payroll Manager has frequent contact with the employees in the sought-after unit.

Accordingly, I find that this factor weighs against the assertion of a shared community of interest between the Payroll Manager and the remainder of the employees in the petitioned-for unit.

**F. Employee 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 at fn. 10 (1991), citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1081). The record denotes that there are stark lines between both the Payroll Manager's department and skills and that of the rest of the employees in the petitioned-for unit, with no evidence that there is any transfer or fluidity between the two groups of employees.

Accordingly, I find that this factor weighs against the assertion of a shared community of interest between the Payroll Manager and the remainder of the employees in the petitioned-for unit.

**G. Distinct Terms and Conditions of Employment**

While this is a factor to consider, whether employees share common wage ranges and benefits or are subject to common work rules does not warrant a conclusion that a community of interest exists where employees are separately supervised, do not interchange, and/or work in a physically separate area. *Bradley Steel*, 342 NLRB 215 (2004); *Overnight Transportation*, 322 NLRB 347 (1996). Similarly, sharing a common personnel system for hiring, background checks, and training, as well as the same package of benefits, does not warrant a conclusion that

a community of interest exists where two classifications of employees have little else in common. *American Security*, 321 NLRB 1145 (1996).

The record is silent regarding the Payroll Manager's wages and benefits. However, the other factors assessed when considering a community of interest between employees, such as supervision, interchange, and work areas, indicate a lack of community of interest.

Consequently, I find that this factor weighs against the assertion of a shared community of interest between the Payroll Manager and the remainder of the employees in the petitioned-for unit.

## H. Supervision

In examining supervision, most important is the identity of employees' supervisors who have the authority to hire, to fire, or to discipline employees (or effectively recommend those actions) or to supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work, and providing guidance on a day-to-day basis. *Executive Resource Associates*, above, at 402; *NCR Corp*., 236 NLRB 215 (1978). Common supervision weighs in favor of placing the employees in dispute in one unit. However, the fact that two groups are commonly supervised does not mandate that they be included in the same unit, particularly where there is no evidence of interchange, contact, or functional integration. *United Operations, Inc.*, 338 NLRB 123, 125 (2002) Similarly, the fact that two groups of employees are separately supervised weighs against their inclusion in the same unit. However, separate supervision does not mandate separate units. Rather, the degree of interchange, contact, and functional integration is more important. *Casino Aztar*, 349 NLRB 603, 607 (2007)

The only evidence in the record relating to this factor indicates separate immediate supervision of the Payroll Manager and the rest of the petitioned-for unit. The Payroll Manager reports to the Controller while the remaining employees in the petitioned-for unit report to the Principal.

Accordingly, I find that this factor weighs against a shared community of interest between the Payroll Manager and the remainder of the employees in the petitioned-for unit

## I. Bargaining History

Any evidence relating to bargaining history is absent from the record.

Therefore, I find that this factor weighs against the assertion of a shared community of interest between the Payroll Manager and the remainder of the employees in the petitioned-for unit.

### 3. Insufficient Community of Interest

After examining the record as a whole and weighing the factors above, I find that the Payroll Manager does not share a sufficient community of interest to warrant their inclusion in the petitioned-for unit.

## VI. CONCLUSION

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

1. The rulings 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.[6]

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. There is no collective-bargaining agreement covering any of the employees in the unit, and there is no contract bar or other bar to an election in this matter.

5. 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.

6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

   Included: All full-time and regular part-time Teachers, Education Specialist Interns, Substitute Teachers, Teachers on Special Assignment, Speech Language Pathologists, Occupational Therapists, Adapted Physical Education Instructors, and Counselors employed by the Employer at its facilities currently located at 8699 Holder Street, Buena Park, CA 90620 and 43385 Business Park Drive, #140, Temecula, CA 92590.

[6] The parties stipulated to the following commerce facts: The Employer, Speech and Language Development Center, Inc., a California non-profit organization, with facilities located at 8699 Holder Street, Buena Park, California 90620 and 43385 Business Park Drive, #140, Temecula, California 92590, the only facilities involved in this matter, is engaged in the business of providing education and therapy to children and adults with special needs. During the past 12 months, a representative period, the Employer, in providing educational services, derived gross revenues in excess of $1 million. During the same period, the Employer purchased and received at its Buena Park and Temecula, California facilities, good valued in excess of $5,000 directly from points outside the State of California.

Excluded: All other employees, Payroll Managers, office clerical employees, confidential employees, managerial employees, guards, and supervisors as defined in the Act.

## 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 **Communication Workers of America, Local 9510**.

### A. Election Details

The election will be held on **Thursday, November 6, 2025, from 7:00 a.m. to 8:00 a.m. and 3:00 p.m. to 4:00 p.m., at the Employer's facility located at 8699 Holder Street, Buena Park, CA 90620**.

### B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending, **Sunday, September 28, 2025**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board's designated office.

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

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.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Thursday, October 2, 2025**.[7] The list must be accompanied by a certificate of service showing service on all parties.

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

The list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list must be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

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

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

### D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election in English in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted.[8] 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**

[7] The Petitioner did not agree to waive any of its 10 days with the voter list.
[8] The Notice of Election will be transmitted separately from this Decision and Direction of Election.

**the day of the election and copies must remain posted until the end of the election.** For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

**RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: September 30, 2025

David Selder, Acting Regional Director
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