UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 4

TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA

Employer

and **Case 04-RC-364372**

RESEARCH ASSOCIATES AND POSTDOCS UNITED AT PENN, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA

Petitioner

DECISION AND DIRECTION OF ELECTION

I. PROCEDURAL BACKGROUND

This case concerns whether the petitioned-for unit of approximately 1,500 postdoctoral fellows and research assistants constitutes an appropriate unit. Research Associates and Postdocs United at Penn, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (RAPUP-UAW, or the Petitioner) filed the petition seeking to represent this unit of all postdoctoral researchers who provide services to the Trustees of the University of Pennsylvania[1] (the Employer), including Postdoctoral Researchers, Postdoctoral Fellows, National Research Service Award Postdoctoral Fellows (NRSA Fellows), and Research Associates. The Employer takes the position that the petition should be dismissed because (1) the Region does not have the authority to act because the Board lacks a quorum; (2) the employees are all temporary workers not eligible for collective-bargaining; (3) the petitioned-for unit of employees have a temporary, uncertain, varied, and constantly changing nature such that the National Labor Relations Board (the Board) should decline to exercise jurisdiction; and (4) even if the employees are found to be eligible for collective bargaining and that it is proper to exercise jurisdiction, the petitioned-for unit is inappropriate because (a) it contains groups of temporary workers who should be excluded; (b) NRSA Fellows are not employees under the Act; (c) postdoctoral trainees and research associates do not share a community of interest; and (d) certain categories of postdoctoral trainees do not share a community of interest with each other because: (*i*) Postdoctoral Trainees (Postdocs) and RAs do not share a community of interest with each other in part because Postdocs may be supervised by RAs; (*ii*) NRSA Fellows do not share a community of interest with other Postdocs; (*iii*) Postdocs in their final one to two years do not share a community of interest with

[1] By stipulation of the parties, the Petition and all formal papers were amended to reflect the Employer's correct legal name.

those in their earlier years; and (*iv*) Postdocs and RAs whose appointments have been terminated do not share a community of interest with others in the petitioned-for unit.

With respect to the Employer's first argument, as explained in more detail below, the National Labor Relations Board (Board) has delegated its authority to me under Section 3(b) of the National Labor Relations Act (Act). The Supreme Court, various Circuit Courts of Appeal, and the Board have already rejected the argument regarding the purported impact the lack of a quorum has on previously delegated authority. Given this abundant precedent, it is clear I have the authority to hear and decide these matters on behalf of the Board under Section 3(b) of the Act.

A hearing was held before a Hearing Officer of the Board on May 6, 2025,[2] and the parties subsequently submitted post-hearing briefs with me, which I duly considered. As explained below, based on the record and relevant Board law, I find that the petitioned-for unit of employees is an appropriate unit and I am therefore directing an election in that unit.

II. FACTUAL BACKGROUND

A. The Employer's Operation and Relevant Job Classifications

The Employer is a private, non-profit corporation and institution of higher education located in Philadelphia, Pennsylvania. The Employer operates twelve schools: the School of Arts and Sciences (SAS); the School of Engineering and Applied Science (SEAS); the Perelman School of Medicine; the School of Nursing; the Wharton School of Business (Wharton); the Graduate School of Education (Education); the Weitzman School of Design; the School of Dental Medicine; the School of Veterinary Medicine; the School of Social Policy and Practice (sometimes referred to as SP2); the Annenberg School for Communication (Annenberg); and the Penn Carey Law School. At these schools, the Employer employs Postdoctoral Trainees –comprised of Postdoctoral Researchers, Postdoctoral Fellows, and National Research Service Award Postdoctoral (NRSA) Fellows—and Research Associates. Generally speaking, Postdoctoral Trainees (Postdocs) and Research Associates (RAs) possess terminal degrees, such as a PhD, and have funding to engage in advanced research about topics in their fields (which are the lab sciences for most Postdocs and RAs).

Postdoctoral Trainees

Postdocs—whether Postdoctoral Researchers, Postdoctoral Fellows, or NRSA Fellows—are apprenticeship-like positions for individuals with terminal degrees, such as a PhD. Each Postdoc continues their training in a highly specialized area in their chosen discipline under the guidance of an assigned faculty member called a Principal Investigator (PI) or Mentor, who serves as the Postdoc's direct supervisor.[3] The overwhelming majority of Postdocs are in the lab sciences and therefore perform their work in labs. Broadly speaking, Postdocs perform research projects in support of their PIs' research goals and, particularly later in their tenures, Postdocs' own research goals and interests. On a day-to-day basis, Postdocs are in a lab doing research. Many labs have some combination of Postdoc Researchers, Postdoc Fellows, NRSA Fellows, and RAs (a position described more fully below), and they work side-by-side; share equipment, including, for instance,

[2] All dates referenced herein are in 2025 unless otherwise noted.

[3] Although there are instances where a Postdoc's PI and Mentor are not the same person, for instance if the Postdoc themself is the PI, the terms "PI" and "Mentor" were used interchangeably during the hearing.

microscopes, protocols, and model organisms; share materials; discuss their findings with one another; and share their work in regular formal lab meetings. Postdocs' and RAs' day-to-day work is virtually identical, the only difference being that they are working on different scientific questions. Postdocs also have access to voluntary training opportunities that RAs do not have access to.

Postdocs are appointed to one-year terms, which are renewable based on satisfactory performance and funding availability for up to five years, though most do not remain in their position that long.[4] Of the approximately 1,355 Postdocs employed by the Employer as of March 31, more than half were in their first or second year and only about 14% were in their fourth or fifth year.

The Employer considers the Postdoc program to be a "training" program, meaning that it is meant as an opportunity for Postdocs to prepare themselves for future employment, whether in academia or in industry. Nevertheless, Postdocs (like RAs) contribute to the Employer's work by virtue of their research.

The main difference between the three classifications of Postdoc Trainees is how they receive funding: Postdoc Researchers are typically funded by PIs, who use research grants to fund Postdoc Researchers in their labs. Postdoc Fellows are typically funded by private foundations, non-profits, other external sources, or internal University funding. NRSA Fellows are funded by National Research Service Awards, which can be individual or institutional grants provided by the National Institutes of Health (NIH).

Regardless of the funding source or the Postdoc's classification, the Employer's Vice Provost for Research, in consultation with the Council on Research, establishes a minimum stipend that Postdocs must receive annually. For Fiscal Year 2026, that minimum stipend ranges from $67,000 per year for first-year Postdocs to $69,864 for fifth-year Postdocs. PIs have discretion to pay more than the minimum if they have funding to do so, or if the funding source requires a higher minimum stipend. Likewise, if a funding source is inadequate to meet the Employer's minimum stipend, then the Employer itself will cover the difference.

NRSA Fellows differ from Postdoctoral Researchers and Postdoctoral Fellows in three other ways. First, NRSA Fellows are not considered employees under certain federal regulations, meaning that the Employer does not withhold FICA taxes from NRSA Fellows' paychecks, and NRSA Fellows are not permitted to participate in certain pre-tax benefits from the Employer. Nevertheless, NRSA Fellows receive W-2s, must pay their federal income taxes themselves, and are considered employees for state and local tax purposes. Second, NRSA Fellows are required to be U.S. citizens or permanent residents. And third, the NIH requires the completion of a Research Performance Progress Report annually with respect to each NRSA grant.

Postdocs' funding source can change during their tenure with the Employer, which is to say that their classification can change, too. Still, Postdocs typically remain with the same PI and in the same lab regardless of their funding source and job classification. For instance, one witness was a Postdoc Researcher for two years and an NRSA Fellow for the next two years, all for the same PI. Another was an NRSA Fellow for three years before becoming a Postdoc Researcher for two more years, also all for the same PI. A Postdoc's day-to-day work does not change based on their funding source; they continue to spend their days in the lab doing research.

[4] Postdocs can be extended for a sixth year under exceptional circumstances. This occurs roughly a handful of times per year.

The Employer's Policy for Postdoctoral Trainees (the Postdoc Policy) governs all Postdocs. The Postdoc Policy includes a grievance process unique to Postdocs and establishes the Employer's right to fire Postdocs for any reason at any time. The Employer also maintains the Policy for the Appointment of Foreign Nationals Under the Postdoctoral Training Program, which requires foreign national Postdocs to have a J-1 visa, absent compelling circumstances that would warrant the Employer sponsoring the Postdoc's H-1B visa. The Office of Postdoctoral Affairs oversees Postdocs.

With respect to evaluation, Postdocs are generally required to complete individual development plans (IDPs) annually with their PIs.

Research Associates

Research Associates (RAs), like Postdocs, are individuals with terminal degrees who are conducting research under a PI or Mentor who has received funding.[5] An RA's primary function is to do research, though they assist their PI's academic mission as well. The day-to-day work of RAs is virtually identical to that of Postdocs, as described above. In fact, the RA position was created as a way for Postdocs to extend their tenure with the Employer beyond the five-year cap that Postdocs are subject to. Still, the Employer attempts to differentiate these positions, in part based on the purported goals of the different positions. Unlike Postdocs—whom the Employer considers trainees—the Employer expects RAs to have completed their training and to contribute to the work of the Employer. RAs are considered part of the Employer's Academic Support Staff (Staff), which includes instructors and lecturers, but not Postdocs.

Like Postdoc positions, RA positions are generally one-year terms that can be renewed. RAs are capped after three years, absent a rare exception being granted. RAs' appointments can only be renewed based on satisfactory performance, funding availability, and the Faculty Handbook's terms and policies applicable to RAs. As of March 31, the Employer employed 160 RAs: 74 in their first year, 56 in their second year, and 30 in their third year.

Like Postdocs, RAs can receive their funding in a variety of ways, including from federal grants, external grants, or directly from the Employer's school's general funds. Like Postdocs, regardless of their funding source, RAs have a minimum pay rate. Unlike Postdocs, the RAs' minimum pay rate is $50,000. Also, that minimum is set by the Employer's Human Resources department, as opposed to the Office of Postdoctoral Affairs, but individual schools have discretion to determine each RA's pay. RAs are entitled to benefits and leave entitlements largely consistent with other members of the Employer's Staff, which does not include Postdocs.

The Employer's Faculty Handbook—and not the Postdoc Policy—governs RAs. The Handbook includes a grievance procedure distinct from the one Postdocs are subject to and includes a policy for identifying and resolving potential conflicts of interest.

RAs are not required to participate in any standardized evaluation process, unlike Postdocs.

III. ANALYSIS

The Employer makes several arguments as to why some or all of the classifications in the petitioned-for unit should be excluded. Because the Employer seeks to exclude the employees from

[5] Associate Vice Provost for Human Resources Ufuoma Pela testified that RAs "should be" working under the grant of a PI, but that some of the Employer's schools do not "use the Research Associate job profile as intended." RAs in those schools might be working for a vice dean or "someone else on the academic side of the house." Pela testified that RAs in situations such as these are improperly classified as RAs.

the Act's coverage, it bears the burden of establishing that the employees in question should be excluded. *See, e.g.*, *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711–12 (2001).

1. The Region has the authority to act despite the Board lacking a quorum

First, the Employer argues that the Region does not have the authority to act because the Board lacks a quorum. I reject this argument.

Section 3(a) of the Act establishes the Board, which is composed of five members appointed by the President by and with the advice and consent of the Senate. Ordinarily a vacancy in a Board seat "shall not impair the right of the remaining members to exercise all of the powers of the Board." Section 3(b). This provision, however, is subject to the caveat that "three members of the Board shall, at all times, constitute a quorum." *Id.* The Supreme Court in *New Process Steel, LP v. NLRB*, 560 U.S. 674 (2010), determined that the statutory language requires the Board to have at least three members in order to act.

Sections 9(b) and (c) of the Act reserve to the Board the statutory authority to make bargaining unit determinations and resolve questions concerning representation. In 1959, Congress passed, and the President signed, the Landrum-Griffin amendments to the Act which, among other things, added Section 3(b) permitting the Board to delegate its authority over representation cases to Regional Directors. The Board subsequently delegated this authority in 1961. *See* 26 Fed. Reg. 3889 (1961), which was upheld by the Supreme Court in *Magnesium Casting Co., v. NLRB*, 402 U.S. 925 (1971). The delegated authority of Regional Directors to process representation cases has never been withdrawn. In 2017, following the Court's decision in *New Process Steel*, the Board adopted regulations which, in part, clarify that "representation cases may continue to be processed, and the appropriate certification should be issued by the Regional Director notwithstanding the pendency of a request for review," during any time when the Board lacks a quorum. 29 CFR 102.182. This regulation did not modify the underlying 60-year-old delegation of authority.

On January 27, 2025, the President removed Board Member Gwynne Wilcox, thus reducing the number of Senate-confirmed Board Members from three to two. Under *New Process Steel*, the Board therefore no longer has a quorum and is unable to issue decisions until a quorum is restored.

The Employer's argument concerning the Board quorum is unavailing. NLRB Board Rule and Regulation 29 C.F.R. 102.182 states that representation cases should be processed to certification in the absence of a quorum. Moreover, this authority has been upheld by the D. C. Circuit Court. That Court held that Regional Directors have the authority to conduct representation proceedings, despite the absence of a quorum. *UC Health v. NLRB*, 803 F.3d 669 (D.C. Cir. 2015); *SSC Mystic Operating Co., LLC, v. NLRB*, 801 F.3d 302, 308 (D.C. Cir. 2015), cert. denied, 580 U.S. 986 (2016). As the *SSC Mystic* Court explained: "[W]e must defer to the Board's reasonable interpretation that the lack of a quorum at the Board does not prevent Regional Directors from continuing to exercise delegated authority that is not final because it is subject to eventual review by the Board." 801 F.3d at 308.

Additionally, the Employer's argument is not new. Indeed, in the wake of *New Process Steel*, numerous parties claimed that Regional Directors lack the ability to exercise their delegated authority when the Board loses a quorum. This argument has been explicitly rejected by the Board. *See Brentwood Assisted Living Community*, 355 NLRB No. 149 (2010) enfd. 675 F.3d 999 (6th Cir. 2012) (explaining the Regional Director "properly processed the underlying representation proceeding by virtue of the authority delegated to him" notwithstanding the fact that the Board lacked a quorum). The Board's conclusion that the ability of the Regional Directors, and the

General Counsel, to exercise delegated authority does not cease when the Board lacks a quorum has been routinely upheld by the Circuit Courts of Appeal. *UC Health v. NLRB*, 803 F.3d 669; *NLRB v. Bluefield Hospital Co., LLC*, 821 F.3d 534 (4th Cir. 2016); *Overstreet v. El Paso Disposal LP*, 625 F.3d 844, 853 (5th Cir. 2010); *Osthus v. Whitesell Corp.*, 639 F.3d 841, 844 (8th Cir. 2011); *Frankl v. HTH Corp.*, 650 F.3d 1334,1354 (9th Cir. 2011). The Supreme Court's decision in *New Process Steel* compels a similar result. As the Court explained, "our conclusion that the delegee group ceases to exist once there are no longer three Board members to constitute the group does not cast doubt on the prior delegations of authority to nongroup members, such as the regional directors or the general counsel. The latter implicates a separate question that our decision does not address." *New Process Steel*, 560 U.S. at n.4.

To the extent the Employer cites *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) as standing for the proposition that Courts' prior analysis is now suspect, the Supreme Court in *Loper Bright* made clear that a holding's "[m]ere reliance on *Chevron* cannot constitute a special justification for overruling such a holding, because to say a precedent relied on *Chevron* is, at best, just an argument that the precedent was wrongly decided." 603 U.S. 369, 375 (2024). In any event, the D.C. Circuit in *UC Health* found the Board's interpretation persuasive on its own terms:

> [A]llowing the Regional Director to continue to operate regardless of the Board's quorum is fully in line with the policy behind Congress's decision to allow for the delegation in the first place. Congress explained that the amendment to the NLRA that permitted the Board to delegate authority to the Regional Directors was "designed to expedite final disposition of cases by the Board." See 105 Cong. Rec. 19,770 (1959) (statement of Sen. Barry Goldwater). Permitting Regional Directors to continue overseeing elections and certifying the results while waiting for new Board members to be confirmed allows representation elections to proceed and tees up potential objections for the Board, which can then exercise the power the NLRA preserves for it to review the Regional Director's decisions once a quorum is restored. And at least those unions and companies that have no objections to the conduct or result of an election can agree to accept its outcome without any Board intervention at all. The Board's interpretation thus avoids unnecessarily halting representation elections any time a quorum lapses due to gridlock elsewhere.

803 F.3d at 675–76.

Additionally, *Loper Bright* is inapplicable here because it involves only a standard of review to be applied by the courts. I am bound by existing precedent.

Given this clear precedent, I reject the Employer's claim that Regional Directors lose the authority to process representation cases when the Board lacks a quorum. Instead, as the Board and the Courts have routinely explained, the authority delegated to them in 1961 by a Board acting with a quorum survives any subsequent loss of a quorum.

Thus, I reiterate that I have the authority to hear and decide these matters on behalf of the Board under Section 3(b) of the Act.

2. The Postdoctoral Trainees and Research Associates are not temporary employees who should be excluded from the petitioned-for unit

The Employer argues that Postdocs and RAs are temporary employees who should be subject to exclusion from the Act. I reject this argument because it mischaracterizes the analysis at hand. Temporary workers are not excluded from the Act as a matter of law; rather, they are

subject to being excluded from bargaining units when they lack a community of interest with the rest of the unit by virtue of their finite tenure of employment. In this case, the finite tenure of Postdocs' and RAs' tenure of employment does not undermine their community of interest.

A. Legal standard

"[A]s a general rule, employees of a defined, short tenure are 'likely' to have divergent interests from the rest of the unit." *Columbia University*, 364 NLRB 1080, 1099 (2016) (quoting *Marian Med. Ctr.*, 339 NLRB 127, 128 (2003)). But to look only at whether the employees in question are temporary is to miss the forest for the trees. Instead, "the Board focuses on 'the critical nexus between an employee's temporary tenure and the determination whether he shares a community of interest with the unit employees.'" *Id.* (quoting *Marian Med. Ctr.*, 339 NLRB 127, 128 (2003)). This "determination is not based on the nature of an employee's tenure in a vacuum; rather, the nature of the alleged temporary employees' employment must be considered relative to the interests of the unit as a whole." *Id.* Therefore, the Board "must look beyond the finite tenure of the [employees] at issue and consider whether and to what extent their tenure affects their community of interest with the unit or their ability to engage in meaningful bargaining." *Id.* In cases where the "alleged temporary employees possess a sufficient interest in bargaining over terms and conditions of employment to allow for successful and stable collective bargaining on their behalf, they are permitted to bargain collectively within an appropriate unit." *Id.* at 1100.

In *Columbia*, the Board was faced with a pool of workers similarly situated to the employees here. The employees at issue in *Columbia*—undergraduate and terminal Master's student assistants—were "employed for relatively short, finite periods of time, averaging only about two (not necessarily continuous) semesters of work." *Id.* at 1099. Some served longer terms than others, but "all the classifications perform[ed] similar duties in (not necessarily continuous) semester increments." *Id.* "Thus," the Board continued, "one could argue that all the student assistants here are temporary." *Id.* Nevertheless, their temporary status did "not suggest a divergence of interests that would frustrate collective bargaining." *Id.* Instead, the Board noted that all employees typically served more than one semester, and that a semester "is not some insignificant or arbitrary period of time spent performing a task, but rather it constitutes a recurring, fundamental unit of the instructional and research operations of the university." *Id.* at 1100. Additionally, irrespective of the tenure of appointments, "the university [would] continuously employ groups of . . . student assistants" semester after semester, some of whom will typically "carr[y] over from one semester to another." *Id.* In the end, the Board held that, "[b]ecause the university's employment of . . . student assistants is regularly recurring, with some carryover between semesters, and their individual tenures are neither negligible nor ad hoc, we believe that as a group, they . . . form a stable unit capable of engaging in meaningful collective bargaining." *Id.*

B. Analysis

In its post-hearing brief, the Employer cites numerous Board decisions for the proposition that the employees at issue here are temporary. But the cases the Employer cites are largely inapposite because, in those cases, the Board was ruling on the eligibility of temporary workers to be included in a bargaining unit that also included non-temporary workers. By virtue of their temporary employment, the temporary employees in those cases lacked a community of interest with the non-temporary unit employees. Therefore, the Board ruled to exclude those temporary workers from the units.

The Employer also argues that *Columbia* is distinguishable from this case because the Board there held that PhD student assistants were not temporary employees. The Employer points out that those employees received guaranteed funding for their first five years, unlike the Postdocs and RAs here, who are on year-to-year appointments. This Employer argument fails, too, for two main reasons. First, the employer in *Columbia* only argued that undergraduate and terminal Master's student assistants—not PhD student assistants—were temporary employees who should be excluded from the petitioned-for unit. *See id.* at 1099. Thus, the issue of the PhD student assistants' temporary status was not before the Board, and the Board made no explicit finding as to their temporary status. Second, the Employer's argument completely ignores the fact that the *Columbia* undergraduate and terminal Master's student assistants, like the Postdocs and RAs here, did not have guaranteed future funding like the PhD student assistants did. Nevertheless, the Board found that they were not temporary employees who should be excluded from the unit because of their finite tenure of employment. *Id.* at 1100. Therefore, the Employer's attempt to differentiate the workers in *Columbia* from those in this case is unconvincing.[6]

C. Conclusion

I find that the evidence in this case is even stronger than in *Columbia* to support that the temporary nature of the employees' employment does not, in and of itself, undermine their community of interest. First, like the employees in *Columbia*, one could argue that all Postdocs and RAs are temporary, since nearly 70% of them only work for two years in their roles, and there is an absolute cut-off of no more than five years for Postdocs and three years for RAs (absent a rare exception). This is even longer and less temporary than in *Columbia*, where the average employee only worked two semesters (i.e., less than one year). So, Postdocs and RAs are, like the *Columbia* employees, "employed for relatively short, finite periods of time." *Id.* at 1099.

Similarly, the Postdocs and RAs here typically serve at least a full year. The *Columbia* Board noted that a single semester—less than even half of one year—"is not some insignificant or arbitrary period of time spent performing a task, but rather it constitutes a recurring, fundamental unit of the . . . research operations of the university." *Id.* at 1100. If that can be said about a single semester, then it can be said with even more confidence about an entire year.

Finally, like in *Columbia*, the Employer's employment of Postdocs and RAs "is regularly recurring, with some carryover between" years. *Id.* The Employer will "continuously employ" Postdocs and RAs, "and, although the precise composition of these groups will differ from [year] to [year], there will typically be some individual [Postdocs and RAs] who are carried over from one [year] to another." *Id.*

I therefore conclude that, like in *Columbia*, "none of the petitioned-for classifications consists of temporary employees who should be excluded from the unit by virtue of their finite tenure of employment." *Id.*

3. Exercising jurisdiction is proper in this case

The Employer argues that the Region and/or the Board should decline to exercise jurisdiction over this case because exercising jurisdiction would not effectuate the policies of the Act. The Region will not decline to exercise jurisdiction here for the reasons set forth below.

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[6] The Employer also argues that *Columbia* was wrongly decided. As I am unable to overrule Board precedent, I am not addressing that argument here.

A. Legal standard

The Board has discretion to decline to exercise jurisdiction if "the policies of the Act would not be effectuated by its assertion of jurisdiction in that case." *E.g.*, *NLRB v. Denver Bldg. & Const. Trades Council*, 341 U.S. 675, 683–84 (1951). There are many different examples of the Board doing this, including to avoid adversely affecting diplomatic relations with another country, *Contract Servs., Inc.*, 202 NLRB 862 (1973), and to avoid "abrogat[ing] treaty rights" of the Chickasaw Nation, *Chickasaw Nation*, 362 NLRB 942, 945 (2015).

In *Management Training Corp.*, the Board held: "[I]n deciding whether [to] assert jurisdiction over an employer with close ties to an exempt government agency, . . . the Board will only consider whether the employer meets the definition of 'employer' under Section 2(2) of the Act, and whether such employer meets the applicable monetary jurisdictional standards." 317 NLRB 1355, 1355–58 (1995). The *Management Training* Board overruled *Res-Care, Inc.*, 280 NLRB 670 (1986), which held that the Board should "examine the control over essential terms and conditions of employment retained by both the employer and the exempt entity to determine whether the employer in issue is capable of engaging in meaningful collective bargaining." *See Management Training*, 317 NLRB at 1355 (citing *Res-Care*, 280 NLRB 670 (1986)).

B. Analysis

The Employer puts forth three principal reasons in support of its argument that exercising jurisdiction here would not effectuate the policies of the Act or promote stability in labor relations. First, it argues that Postdocs' and RAs' funding sources' "varied and uncertain future . . . does not lend itself to stability in collective bargaining." The Employer particularly focuses on its own lack of control over the funding, which it receives from a variety of federal agencies. As the Employer points out, the federal government has complete discretion over whether to issue funding and whether to issue stop-work orders that affect funding. "The role of the federal government in all aspects of the funding process and issuing of stop-work orders," the Employer argues, "underscores how inappropriate it would be for the Board to assert jurisdiction in this case." The Employer indirectly cites *Res-Care* in making this argument.[7]

Second, the Employer argues that "[t]he temporary and constantly changing nature of the petitioned-for unit likewise demonstrates that the exercise of jurisdiction is not appropriate here." This argument merely rehashes the above-analyzed argument regarding the employees' temporary status. I reject it for the same reasons as discussed above.

Finally, the Employer argues that some Postdocs and RAs serve as supervisors. This argument does not implicate the Board's discretion with respect to exercising jurisdiction because statutory supervisors are statutorily precluded from being in a bargaining unit. The Board has no discretion in such a situation. Therefore, I reject this as a basis that the Board should decline to exercise jurisdiction here.[8]

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[7] In support of this argument, the Employer cites an unpublished D.C. Circuit Court case that applied *Res-Care*. *See Int'l Brotherhood of Elec. Workers, AFL-CIO, Local Union 1141 v. NLRB*, 52 F.3d 1122 (1995) (citing *Res-Care*, 280 NLRB 670, overruled by *Management Training*, 317 NLRB at 1355).

[8] I also reject the Employer's argument that there are any statutory supervisors in the petitioned-for unit for the reasons explained later in this Decision.

C. Conclusion

I find that it is not appropriate for the Board to decline to exercise jurisdiction in this case. As noted above, the Employer's second and third arguments are unconvincing. That leaves just the Employer's first argument, which too is unavailing. The Employer essentially argues that various government agencies' control over Postdocs' and RAs' funding—and, in turn, their wages—makes it inappropriate to exercise jurisdiction here. This is what *Res-Care* stood for. But that case has been overruled, and now the only relevant factors for deciding whether to exercise jurisdiction are whether the Employer is an employer under the Act and meets the applicable monetary jurisdictional standards required under the Act. There is no dispute here that the Employer meets those requirements. Therefore, under *Management Training*, it is not appropriate for the Board to decline to exercise jurisdiction in this case, despite the Employer's "close ties" to various federal agencies.

4. The petitioned-for unit is appropriate

The Employer argues that, even if I deem that Postdocs and RAs are eligible for collective bargaining and that it is proper to exercise jurisdiction, the petitioned-for unit is inappropriate for three main reasons: (a) because those Postdocs and RAs whose terms will not be renewed for a subsequent term or who are in their final one to two years are temporary workers and therefore should be excluded; (b) because NRSA Fellows are not employees and should therefore be excluded; and (c) because the petitioned-for unit contains groups that do not share a community of interest with each other because: (*i*) Postdocs and RAs do not share a community of interest with each other in part because Postdocs may be supervised by RAs; (*ii*) NRSA Fellows do not share a community of interest with other Postdocs; (*iii*) Postdocs in their final one to two years do not share a community of interest with those in their earlier years; and (*iv*) Postdocs and RAs whose appointments have been terminated do not share a community of interest with others in the petitioned-for unit.

I reject each argument for the reasons herein.

a. Postdocs and RAs whose appointments have not been renewed or who are in their final one to two years are not temporary workers who should be excluded from the unit

The Employer's first argument—that Postdocs and RAs whose appointments have not been renewed or who are in their final one to two years are temporary employees who should be excluded from the unit—restates its earlier argument that the unit is made up of temporary workers who should be excluded from the unit. For the same reasons as explained above, I reject this argument. The Employer has not established that the fact that these workers have an end date undermines their community of interest with the rest of the unit.

b. NRSA Fellows are employees under the Act

The Employer argues that NRSA Fellows are not employees under the Act and therefore must be excluded from the unit.

A. Legal standard

Because the Act does not specifically define the term "employee," the Board applies common-law agency doctrine to determine whether individuals are employees under the Act. *See NLRB v. Town & Country Electric, Inc.*, 516 U.S. 85, 94 (1995). The Board has explained that a common-law employment relationship "generally requires" that the employee performs services

for the employer, "that the employer have the right to control the employee's work, and that the work be performed in exchange for compensation." *See Columbia*, 364 NLRB at 1081, 1094. To that end, the Board has held that the payment of compensation—even if "comparatively slight, relative to other aspects of the relationship between the worker and employer"—together with the employer's right to control the work, suffice to establish an employment relationship for purposes of the Act. *Id.* at 1085.

B. Analysis and Conclusion

The Employer argues that NRSA Fellows do not qualify as employees because "they do not perform work in exchange for compensation under the [Employer's] control." The Employer relies heavily on the Board's unpublished Order denying a Request for Review of the Regional Director's Decision and Order in NLRB Case No. 01-RC-304042. *See Massachusetts Institute of Technology*, 2024 WL 3455477, slip op at n.1 (NLRB July 17, 2024). The issue in that case was whether graduate fellows were employees under the Act. *See id.*[9] The Employer attempts to draw similarities between those nonemployees and NRSA Fellows. The Employer also argues that NRSA Fellows are not employees "because their externally funded grants from the federal government do not permit the [Employer] to classify them as employees."

I reject the Employer's argument that NRSA Fellows are not employees under the Act. The record evidence clearly establishes that (1) NRSA Fellows perform services for the Employer over which the Employer has control; and (2) NRSA Fellows are compensated for those services.

First, NRSA Fellows provide services for the Employer over which the Employer has control. The Employer does not dispute that Postdoc Researchers and Postdoc Fellows are employees under the Act. NRSA Fellows share many relevant similarities with those employees. For instance, they are all governed by the same policies; their work is guided, directed, and supervised by PIs who are members of the Employer's faculty; their research benefits those PIs, which, in turn, benefits the Employer; they often work side-by-side for the same PI; and their day-to-day responsibilities do not change whether they are designated as an NRSA Fellow or a different Postdoc classification. Given the overwhelmingly similar nature of their work, it would defy logic to conclude that NRSA Fellows do not provide services for the Employer over which the Employer has control while simultaneously conceding that Postdoc Researchers and Postdoc fellows do. NRSA Fellows also differ from the graduate fellows at issue in *MIT*. Most importantly, the MIT fellows were students enrolled at MIT, while NRSA Fellows are not students enrolled at the Employer. Therefore, while NRSA Fellows are doing "academic work" in the sense that their research is academic in nature, they are not doing it in the sense that it is a part of their academic requirements, as was the case for the MIT fellows. These facts distinguish NRSA Fellows from the MIT fellows at issue in that case. In sum, the evidence shows that NRSA Fellows perform services for the Employer over which the Employer has control.

Second, the Employer compensates NRSA Fellows for their services: the Employer pays NRSA Fellows annual stipends, which are funded (at least in part) by outside grants that are paid directly to the Employer. The fact that the Employer cannot classify NRSA Fellows as employees

[9] The Employer argues that the Board's *MIT* Order constituted an overruling of the Board's holding in *Columbia* that "graduate students who received federal training grants were employees performing services of the university in exchange for compensation." This egregiously mischaracterizes the *MIT* Order. In fact, the *MIT* Order approvingly cited the Board's reasoning in *Columbia*, which stated that individuals that "simply pursue their educational goals at their own discretion, subject only to the general requirement that they make academic progress" are not employees under the Act. *MIT*, 2024 WL 3455477, slip op. at n.1.

under certain circumstances—and therefore cannot withhold taxes or pre-tax contributions to certain benefits—is not relevant here because it does not bear on the common-law agency doctrine. NRSA Fellows are compensated for their services by the Employer, whether or not the Employer withholds any money for taxes or pre-tax benefits from each paycheck.

Therefore, in applying the common-law principles of employment, I find that NRSA Fellows are statutory employees of the Employer under the Act.

c. The petitioned-for classifications share a community of interest with each other

The Employer argues the petitioned-for unit contains groups that do not share a community of interest with each other because: (*i*) Postdocs and RAs do not share a community of interest with each other, in part because Postdocs may be supervised by RAs; (*ii*) NRSA Fellows do not share a community of interest with other Postdocs; (*iii*) Postdocs in their final one to two years do not share a community of interest with those in their earlier years; and (*iv*) Postdocs and RAs whose appointments have been terminated do not share a community of interest with others in the petitioned-for unit. Below, I will address the legal standards and then I will provide an analysis and conclusion for each of these four prongs of the Employer's position.

A. Legal standards

Community of interest

"In making the determination of whether the proposed unit is an appropriate unit, the Board's 'focus is on whether the employees share a "community of interest."'" *Specialty Healthcare*, 357 NLRB 934, 942 (2011) (quoting *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 491 (1985)). The Board considers the following factors when "determining whether employees in a proposed unit share a community of interest":

> [W]hether 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 Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

Id. (quoting *United Operations, Inc.*, 338 NLRB 123, 123 (2002)).

Several of the above factors can reasonably be considered collectively.

Employee skills/training and job functions

The skills and training and job functions factors examine whether disputed employees can be distinguished from one another on the basis of job functions, duties or skills. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one 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, support 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. Penny Company, Inc.*, 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*, 308 NLRB 826.

Interchangeability and contact among employees

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).

Functional integration

Functional integration refers to 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 as a group provides a service. Another example of functional integration is when the employer's work flow 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.

Terms and conditions of employment

The terms and conditions of employment factor includes whether employees receive similar wage ranges and are paid in a similar fashion (for example hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies and other terms of employment that might be described in an employee handbook. However, facts that 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, Inc.*, 342 NLRB 215 (2004); *Overnite Transportation Company*, 322 NLRB 347 (1996).

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 providing guidance on a day-to-day basis. *Executive Resources Associates*, 301 NLRB 400, 402 (1991); *NCR Corporation*, 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*, 338 NLRB at 125. Similarly, the fact that two groups of employees are separately supervised weighs in favor of finding against their inclusion in the same unit. However, separate supervision does not mandate separate units. *Casino Aztar*, 349 NLRB at 607 n.11 (2007). Rather, more important is the degree of interchange, contact and functional integration.

Supervisory status

As part of its argument that Postdocs and RAs do not share a community of interest, the Employer argues that RAs are or can be statutory supervisors. It is well settled that the party

asserting supervisory status bears the burden of establishing it by a preponderance of the evidence. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711–12 (2001); *Shaw Inc.*, 350 NLRB 354, 355 (2007); *Croft Metals, Inc.*, 348 NLRB 717, 721 (2006); *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006). Any lack of evidence is construed against the party asserting supervisory status. *Elmhurst Extended Care Facilities*, 329 NLRB 535, n.8 (1999); *The Wackenhut Corp*., 345 NLRB 850, 854 (2005).

Under the three-prong test set forth in Section 2(11) of the Act, an individual is a supervisor if: (1) they hold the authority to engage in any one of the twelve supervisory functions listed in Section 2(11), including having the authority to "assign" or "responsibly to direct" other employees;[10] (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 Kentucky River Community Care*, 532 U.S. at 712–13. Because an employee who is deemed to be a supervisor loses the protection of the Act, the Board is reluctant to confer supervisory status too broadly. *Oakwood*, 348 NLRB at 688; *Chevron Shipping Co*., 317 NLRB 379, 380–81 (1995). Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to confer supervisory authority. *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004); *Sears Roebuck & Co.*, 304 NLRB 193, 199 (1991).

"[T]o 'assign' for the purposes of Section 2(11) refers to the [alleged supervisor]'s designation of significant overall duties to an employee, not to the [alleged supervisor]'s ad hoc instruction that the employee perform a discrete task." *In re Oakwood Healthcare, Inc.*, 348 NLRB 686, 689 (2006). With respect to having the authority "responsibly to direct" other employees, "it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. It also must be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps." *Id.* at 692.

B. Analysis and Conclusions

i. Postdocs and RAs share a community of interest

In the first prong of its argument, the Employer argues that Postdocs and RAs do not share a community of interest, in part because Postdocs may be supervised by RAs. Applying the *Specialty Healthcare* factors, I find that Postdocs and RAs do share a community of interest, as explained below.

Departmental organization

The Employer concedes that both Postdocs and RAs work throughout the Employer's twelve schools. However, the Employer argues that the two groups' terms and conditions of employment are largely managed by distinct departments of the Employer: the Office of Postdoctoral Affairs for Postdocs, and the Employer's HR department and individual schools and departments for RAs. The Petitioner did not directly address this factor.

[10] The twelve enumerated primary indicia of supervisory status include whether an individual, in the interest of the employer, has the authority to either: 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. 29 U.S.C.A. § 152(11).

I agree with the Employer that many of the Postdocs' and RAs' fundamental terms and conditions of employment are managed by different departments, which cuts against a finding of a community of interest. However, it is also true that Postdocs and RAs all work or can work at any of the Employer's twelve schools and many of them have the same direct supervisor (their PI) regardless of their classification. In balancing those realities, I find that this factor weighs slightly against a finding of a community of interest between Postdocs and RAs.

Employee skills/training and job functions

The Employer argues that Postdocs and RAs have different skills and training for three reasons. First, because Postdocs have access to various voluntary training opportunities to which RAs do not have access. Second, because Postdocs' PIs are expected to assist in their training while RAs' are not. And third, because RAs have experience as Postdocs prior to becoming RAs, whereas Postdocs are not required to have RA experience. With respect to job functions, the Employer concedes that Postdocs and RAs both perform research but argues that they do so with "vastly different goals" because Postdocs are focused on personal development while RAs are focused on "performing job duties that advanced sponsored research programs at the [Employer]." RAs also sometimes teach or assist with other academic duties, which Postdocs do not do.

The Petitioner argues that the positions all require the same skills and training, namely a terminal degree. The Petitioner argues that Postdocs' and RAs' job functions "overlap to an extraordinary extent," pointing out that the RA position was created as an extension of the Postdoc position and that there was uncontested testimony that the positions were practically identical in practice.

The record evidence shows that Postdocs and RAs cannot readily be distinguished from one another on the basis of job functions, duties, or skills and training. There is a high degree of overlap in their job functions—multiple witness testified that their day-to-day activities are the same, though they often work on different projects. They use the same equipment. They have similar employment requirements—namely funding and a terminal degree such as a PhD. The Employer's arguments to the contrary are unconvincing. Particularly, access to voluntary training opportunities does not mean the employees in fact have different skills and training, so that argument is unconvincing. Also, there is no *requirement* that RAs have Postdoc experience, as the Employer implies. All that is required of an RA is that they have a terminal degree—just like Postdocs. Moreover, the Employer appears to put too much weight on the fact that RAs are ostensibly not expected to focus on personal development since they have already advanced to the next step of their careers—an unreasonable assertion to make given that RAs, like Postdocs, have finite employment with the Employer and therefore are also routinely preoccupied with preparing themselves for their next job.

Therefore, I find that these factors weigh strongly in favor of finding that Postdocs and RAs share a community of interest.

Interchangeability and contact among employees

The Employer argues that there is minimal interchange between Postdocs and RAs, and to the extent that there is, its relevance to this analysis is diminished by the fact that it is one-way and voluntary, insofar as Postdocs sometimes later voluntarily decide to become RAs, but not the other way around. The Employer concedes that Postdocs and RAs have frequent contact with one another in certain circumstances but argues that there is no evidence that this type of contact exists on an Employer-wide scale.

The Petitioner did not directly address the interchangeability between Postdocs and RAs. It argued, though, that Postdocs and RAs have regular contact with one another, particularly insofar as they often work side-by-side in labs and share information with one another.

The record reflects that there are seldom, if ever, temporary work assignments or transfers between Postdocs and RAs. However, there are sometimes permanent transfers, since some Postdocs become RAs. Additionally, there is substantial contact between both classifications, as they work side-by-side in the same labs, share their research with each other, have weekly meetings as a group, and sometimes publish research together. Based on those considerations, I find that the interchangeability factor is neutral, while the contact factor supports a finding of a community of interest.

Functional integration

The Employer argues that Postdocs and RAs are not functionally integrated with one another because there is no evidence that they must work together and depend on one another to accomplish their tasks.

The Petitioner argues that Postdocs and RAs often work side-by-side in the same lab, sharing equipment and lab space.

There is ample evidence that Postdocs and RAs are functionally integrated. They work together on the same matters generally (that is, their PIs' research projects), they have frequent contact with each other as explained above, and they perform similar functions as explained above. Though the Employer is mostly correct that they are not required to work together on the same projects, and they do not generally depend on one another to accomplish their tasks, this paints too narrow a description of what functional integration is. Moreover, Postdocs and RAs are oftentimes required to work together in the very physical sense, sharing a workspace and information with one another. Therefore, I find that this factor supports a finding of a community of interest.

Terms and conditions of employment

The Employer argues that Postdocs and RAs have five "stark" differences in their terms and conditions of employment. First, they are not governed by the same policies. Second, they have different maximum terms with the Employer. Third, they have different pay ranges set by different decisionmakers using different processes. Fourth, they are eligible for different benefits and leave entitlements, which different decisionmakers establish. And fifth, they are subject to different expectations insofar as Postdocs are expected to focus on training while RAs are expected to already be capable of performing work on the Employer's behalf.

The Petitioner concedes that this factor does not support a finding of a community of interest because Postdocs are governed by the Postdoc Policy and RAs are governed by the Employer handbook.

I agree with the parties that this factor weighs against a finding that Postdocs and RAs share a community of interest.

Supervision and statutory supervisor status of some RAs

The Employer argues that Postdocs and RAs differ in how they are supervised, though it concedes that by and large both are assigned to and supervised by faculty member PIs. The Employer asserts that Postdocs' PIs are expected to train them and complete an annual review with them, while RAs' PIs are not. Separately, the Employer argues that sometimes RAs are statutory supervisors of Postdocs.

The Petitioner argues that Postdocs and RAs who work in the same lab are supervised by the same PI. The Petitioner also argues that RAs are not statutory supervisors under the Act.

Before turning to the statutory supervisor analysis, I generally find this factor to be neutral. RAs and Postdocs are spread across numerous schools and countless more labs, but are generally subject to the same supervisory structure in that they are assigned individual PIs. Sometimes RAs and Postdocs will have the same PI as their direct supervisor. So, although there are general similarities between how RAs and Postdocs are supervised, there are also some distinctions. Therefore, I find this factor to be neutral.

Next, I find that the Employer has not met its relatively high burden of proving that any—let alone all—RAs are statutory supervisors under the Act. The Employer explicitly argues that Dr. Estela Noguera-Ortega is a statutory supervisor because she "trained, mentored, and directed the work of two" other employees. Of the twelve supervisory functions listed in Section 2(11), only two are conceivably at issue here: the authority to assign and the authority responsibly to direct. The evidence in this case shows at most that Noguera-Ortega sometimes independently gives other employees assignments to complete, based on the research she is doing. But there is no evidence that she "designat[es] significant overall duties" to those employees; rather she merely gives "ad hoc instruction that the employee perform a discrete task." *Oakwood Healthcare*, 348 NLRB at 689. Therefore, the Employer has not met its burden of proving that Noguera-Ortega (or any other RA) "assigns" work within the meaning of Section 2(11) of the Act.

Furthermore, while the evidence may support a finding that the Employer has given Noguera-Ortega "the authority to direct the work" of other workers, the Employer has failed to proffer any evidence to show that it has delegated to Noguera-Ortega "the authority to take corrective action, if necessary." *Id.* at 692. Nor has the Employer proven "that there is a prospect of adverse consequences for" Noguera-Ortega if "she does not take these steps." *Id.* Therefore, the Employer has not met its burden of proving that Noguera-Ortega has the authority "responsibly to direct" other employees as defined in the Act.

Therefore, I find that the Employer has not met its burden of proving that any RAs are statutory supervisors under the Act. This analysis does not change my finding that this *Specialty Healthcare* factor is neutral.

Based on all the above, I find that RAs and Postdocs share a community of interest. In sum, I find that two *Specialty Healthcare* factors (employee skills/training and job function) strongly support this finding, two (functional integration and contacts with other employees) support it, one (departmental organization) weighs slightly against it, one (terms and conditions of employment) weigh against it, and two (interchangeability and supervision) are neutral. All told, I find that more of the factors that support of a finding of a community of interest between RAs and Postdocs considerably outweigh those that oppose such a finding.

ii. NRSA Fellows share a community of interest with other Postdocs

In the second prong of its argument, the Employer argues that NRSA Fellows—who fall under the Postdoc classification generally—do not share a community of interest with Postdoc Researchers and Postdoc Fellows. I find that they do.

Departmental organization

The Employer argues that this factor is neutral because Postdocs are spread across various schools and departments. The Petitioner does not directly address this factor.

I disagree with the Employer's argument. As discussed above, Postdocs of all classifications are governed by the Office of Postdoctoral Affairs and sometimes share direct supervisors. Therefore, I find that this factor supports a finding of a community of interest among all Postdocs.

Employee skills/training and job functions

The Employer argues that the employee skills and training factor is neutral because each Postdoc is under individualized training and guidance of their faculty mentor and because the skills they utilize vary based on their area of study. It argues that NRSA Fellows differ from Postdoc Researchers and Postdoc Fellows with respect to job functions because, in essence, NRSA Fellows are not employees of the Employer—an argument which I had addressed herein.

The Petitioner reiterates its argument that NRSA Fellows are employees of the Employer and that their work and job responsibilities are identical to the other Postdocs'.

I find that these factors strongly support a finding of a community of interest among all Postdocs. The record evidence shows that NRSA Fellows cannot readily be distinguished from Postdoc Researchers and Postdoc fellows on the basis of job functions, duties, or skills and training. There is a high degree of overlap in their job functions—witness testimony demonstrated that their day-to-day activities are the same, though they often work on different projects. They use the same equipment. They have similar employment requirements—namely funding and a terminal degree such as a PhD. Moreover, all Postdocs have access to the same voluntary training programs. The Employer's attempt to rehash its argument that NRSA Fellows are not employees of the Employer is unconvincing here.

Interchangeability, functional integration, and contact among employees

The Employer does not address the interchangeability factor directly. It argues that the functional integration and contact among employees factors weigh against a finding of a community of interest because there is no evidence that NRSA Fellows must work together with and depend on Postdoc Researchers and Postdoc Fellows, nor that NRSA Fellows have significant contact with Postdoc Researchers and Postdoc Fellows.

The Petitioner cursorily argues that these factors support a finding of a community of interest.

I find the interchangeability factor to be neutral here. There is evidence that some Postdocs move between the classifications, including from Postdoc Researcher or Postdoc Fellow to NRSA Fellow, but those changes are permanent rather than temporary.

I find that the functional integration and contact among employees factors both support a finding of a community of interest. The evidence shows that there is substantial contact between Postdocs regardless of their classifications, as they work side-by-side in the same labs, share their research with each other, have weekly meetings as a group, and sometimes publish research together. It also shows that there is functional integration. As noted in the analysis of whether Postdocs and RAs share a community of interest, the Employer's parameters of what is required for functional integration are too narrow. Here, the fact that Postdocs of all classifications have

regular contact with each other, work on similar projects, share tools and workspaces, and perform similar functions supports a finding of a community of interest.

Terms and conditions of employment

The Employer argues that NRSA Fellows' terms and conditions of employment are substantially different from those of Postdoc Researchers and Postdoc Fellows for four reasons. First, because NRSA Fellows are taxed differently and eligible for fewer benefits. Second, because NRSA Fellows are required to be U.S. citizens or permanent residents and are therefore not subject to the Employer's Policy for the Appointment of Foreign Nationals Under the Postdoctoral Training Program. Third, because NRSA Fellows can generally only be in that role for three years and cannot have outside employment. And fourth, because of differences in their funding, which is granted directly to NRSA Fellows, rather than to PIs.[11]

The Petitioner concedes that NRSA Fellows have different terms and conditions of employment insofar as they do not have federal payroll taxes deducted from their pay and are therefore not eligible for certain benefits. However, the Petitioner argues that all Postdocs are otherwise subject to the same work policies, including the Postdoc Policy and the grievance procedure.

I agree with the parties that NRSA Fellows' tax treatment and benefits eligibility supports a finding that they lack a community interest with the other Postdocs. However, I find that difference to be outweighed by the ways in which their terms and conditions of employment are the same, including that they have to do annual evaluations, their pay scales are identical, and they are subject to the same policies. The Employer's argument that NRSA Fellows are not subject to the Foreign Nationals policy is irrelevant, since the same is true for many other Postdocs who are not foreign nationals themselves. The limitation on NRSA Fellows' tenures and their distinct funding source is also insignificant compared to the other similarities.

Therefore, I find that this factor slightly supports a finding of a community of interest.

Supervision

The Employer argues that this factor is neutral. The Petitioner argues that it supports a finding of a community of interest.

I find this factor to be neutral. Generally speaking, all Postdocs are subject to the same supervisory structure: their PIs are their direct supervisors, and the Office of Postdoctoral Affairs supervises them more generally. Sometimes multiple Postdocs—regardless of classification—will have the same PI. But for the most part, Postdocs do not have the same direct supervisor. Those facts lead me to conclude that this factor is neutral.

In sum, I find that six of the *Specialty Healthcare* factors support a finding that NRSA Fellows share a community of interest with Postdoc Researchers and Postdoc Fellows, while two (interchangeability and supervision) are neutral. Therefore, I conclude that NRSA Fellows share a community of interest with Postdoc Researchers and Postdoc Fellows.

[11] This is not always true. Sometimes NRSA Fellows receive the funding directly. They can also be supported by NRSA funds granted to institutions, though, much like other Postdocs.

iii. Postdocs in their final one to two years share a community of interest with those in their earlier years

In the penultimate prong of its argument, the Employer argues that Postdocs in their final one to two years do not share a community of interest with those in their earlier years.[12] I reject this argument.[13]

Departmental organization

The Employer argues that this factor is neutral.

Though Postdocs work in various labs and schools at the Employer, they are all broadly managed by the Office of Postdoctoral Affairs, regardless of their seniority. Therefore, this factor favors a finding that all Postdocs share a community of interest regardless of their tenure.

Employee skills/training and job functions

The Employer argues that Postdocs in their final two years have received more training and have more expertise than their more junior colleagues. The Employer argues that more senior Postdocs are expected to delegate work to more junior ones. This is not supported by the record evidence the Employer cites: Dr. Noguera-Ortega simply testified that more senior Postdocs "can"—not "must"—delegate some tasks. There is no requirement to do so. Additionally, the Employer argues that the focus of Postdocs' jobs changes as they get to be more senior.

It is obviously true that, in most cases, the longer one does a job, the better they get at it. But this does not reflect a lack of a community of interest among more junior and more senior employees. By and large, the skills and training required of all Postdocs are the same. The same is true for their job functions. The evidence reflects that Postdocs' job functions and work were largely identical regardless of their seniority.

Therefore, these factors strongly favor a finding of a community of interest.

Interchangeability and contact among employees

The Employer argues that there is no evidence of any significant contact between more junior and more senior Postdocs. The Employer also argues that while there is some permanent interchange between more junior and more senior Postdocs, that interchange only moves in one direction and is never temporary.

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[12] I am assuming that when the Employer alludes to Postdocs in their final one to two years, it in facts means Postdocs in their fourth or fifth years. I point this out because many Postdocs only stay in their positions for one or two years, so they would always be "in their final one to two years." Therefore, the Employer's distinction between Postdocs in their final one to two years and Postdocs in their earlier years only makes sense if the former category in fact alludes to Postdocs in their fourth or fifth years. The Employer's arguments about this support my assumption. For instance, the Employer also refers to these categories as "more senior" and "more junior" Postdocs, respectively. A Postdoc in his first and only year is certainly no more senior than a Postdoc in her first of five years.

[13] The Petitioner essentially interprets the Employer's assertion that Postdocs in their final one to two years do not share a community of interest with those in their earlier years as another way of arguing that the more senior Postdocs are temporary employees. In response, the Petitioner's sole argument on this subject is to reiterate that more senior Postdocs' temporary employment does not, in and of itself, mean that they cannot share a community of interest with more junior Postdocs.

The evidence shows that Postdocs regularly engage with one another in a number of ways, including by sharing materials, discussing research findings, and having weekly lab meetings together with their PI. Therefore, I find that the contact among employees factor supports a finding of a community of interest. I find the interchangeability factor to be irrelevant here because the core distinguishing factor between more junior and more senior Postdocs is the passage of time, which of course is not subject to the whims of any employer or employee.

Functional integration

The Employer argues that this factor is neutral.

I find that more junior and more senior Postdocs are functionally integrated for the same general reasons that I found that NRSA Fellows and Postdocs are functionally integrated and Postdocs and RAs are functionally integrated. That is to say, more junior and more senior Postdocs work side-by-side in labs, share their research findings with one another, share their work in regular lab meetings, and perform similar general functions despite working on different projects. Though the Employer is mostly correct that they are not required to work together on the same projects, and they do not generally depend on one another to accomplish their tasks, this is too narrow a description of what functional integration is. Therefore, I find that this factor supports a finding of a community of interest.

Conditions of employment

The Employer argues that these groups have distinct terms and conditions of employment because the more senior Postdocs are guaranteed a higher minimum stipend, more senior Postdocs are ineligible for certain funding sources that their more junior peers are eligible for, and their respective priorities are different.

The evidence establishes that all Postdocs are subject to the same general terms and conditions of employment regardless of their seniority—namely the Postdoc Policy. Their pay ranges are slightly different, but they are determined by the same policies and administrators, which also determine their benefits, their grievance procedures, and other terms and conditions of employment. The Employer's other arguments fall far short of outweighing this reality. Therefore, I find that this fact supports a finding of a shared community of interest.

Supervision

Finally, the Employer argues that, because more senior Postdocs sometimes mentor more junior postdocs, they are subject to separate supervision.[14]

I reject the Employer's argument that a more senior employee mentoring a more junior employee, for instance by showing them new techniques, suggests that the employees are subject to separate supervision. In fact, Postdocs are all subject to the same general supervision structure as explained above, regardless of their seniority: their PIs directly supervise them, and the Office of Postdoctoral Affairs supervises them more generally. However, for the most part, Postdocs all have different direct supervisors. Therefore, I find that this factor to be neutral.

[14] The Employer also argues that more senior Postdocs sometimes supervise more junior postdocs, but does not provide evidentiary support for this assertion.

Based on the above analysis, the Employer's argument fails. Six of the *Specialty Healthcare* factors support a finding that Postdocs in their final one to two years and Postdocs in their earlier years share a community of interest, while two factors (interchangeability and supervision) are neutral. Therefore, I conclude that Postdocs in their final one to two years and Postdocs in their earlier years share a community of interest.

iv. Postdocs and RAs whose appointments have been terminated do not lack a community of interest with the unit, though they may be ineligible to vote for other reasons

Finally, the Employer argues that Postdocs and RAs whose appointments have been terminated do not share a community of interest with others in the unit.

To be sure, Postdocs and RAs who are not employed by the Employer as of the date of the representation election will be ineligible to vote in it, absent circumstances not contemplated here, just like in any other election. This is not a question of community of interest, but one of employment status.

The Employer also seems to be including in this category Postdocs and RAs whose funding has been terminated but whose employment has not yet ended—for instance due to loss of federal funding or a stop-work order. The only practical difference between these employees and their peers is that they know that their employment will be ending soon. (And, in fact, many of their peers likely know this too, since their employment could be nearing its end for any number of reasons.) Therefore, I reject the Employer's argument that the termination of these Postdocs' and RAs' funding undermines their community of interest with the rest of the unit.

To the extent that the Employer will furlough Postdocs and RAs, for instance because of funding being cancelled or work-stop orders, I find that the Employer has not presented sufficient evidence to establish that furloughed Postdocs and RAs lack a community of interest with the rest of the unit. However, those employees' eligibility to vote will be dependent on their reasonable expectation of recall, as in any other election. Prior to the election, the Employer will provide a list of eligible voters, and if the parties cannot agree on whether a furloughed employee should be included on that list, then that employee will have the option to vote subject to challenge. That employee's eligibility to vote—again based on their employment status, not their community of interest with the rest of the unit—will be determined after the election as needed.

In sum, I reject the Employer's argument that Postdocs and RAs whose appointments have been terminated lack a community of interest with the rest of the unit. However, those employees may be ineligible to vote due to their employment status, which will be determined at a later date if necessary.

IV. CONCLUSIONS AND FINDINGS

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is an employer engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[15]

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act. The Petitioner claims to represent certain employees of the Employer, and the Employer declines to recognize the Petitioner as the employees' representative.

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 concerning commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 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 postdoctoral researchers who provide services to the University of Pennsylvania, including Postdoctoral Researchers, Postdoctoral Fellows, NRSA Postdoctoral Fellows, and Research Associates.
>
> **Excluded**: All other employees including managers, guards, and supervisors as defined in the Act.

V. 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 Research Associates and Postdocs United at Penn—International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (RAPUP-UAW).

a. Election Details

The election will be held on **Wednesday, July 16 and Thursday, July 17, 2025, from 10:00am to 7:00pm**. The election will take place **on the Employer's campus in the Bodek Lounge in Houston Hall, located at 3417 Spruce Street, Philadelphia, PA**.

b. Voting Eligibility

Eligible to vote are those employees in the unit who were employed during the payroll period ending **May 31, 2025**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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

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[15] The Employer stipulated at hearing that it is an employer engaged in commerce within the meaning of Sections 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated eligibility date; (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 July 1, 2025. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list**.

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

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

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

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

d. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election.

For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting, and likewise shall be estopped from objecting to the non-distribution of notices if it is responsible for the non-distribution. 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: June 27, 2025

/s/ Kimberly Andrews
Kimberly Andrews
Regional Director
National Labor Relations Board
Region 04
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Suite 403
Philadelphia, PA 19107