

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

MEOW WOLF, INC.

Employer/Petitioner

and

Case 28-RM-341292

**COMMUNICATIONS WORKERS OF AMERICA,
AFL-CIO**

Union

DECISION AND DIRECTION OF ELECTION

The above-captioned matter is before the National Labor Relations Board (the Board) upon a petition duly filed under Section 9(c) of the National Labor Relations Act (the Act), as amended. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I make the following findings and conclusions.

I. INTRODUCTION

On April 15, 2024, Communications Workers of America, AFL-CIO (the Union) demanded voluntary recognition for the proposed bargaining unit to include Creative Directors (CDs) in all classifications and Art Directors (ADs) in all classifications.¹

On April 29, 2024, Meow Wolf, Inc. (the Employer) filed the instant RM petition² questioning the appropriateness of the bargaining unit sought by the Union. The Employer seeks to exclude CDs and ADs in all classifications from the bargaining unit on the grounds that employees in those job classifications are managerial employees. Additionally, the Employer seeks to exclude the single Senior AD on the grounds that the classification does not share a community of interest with the proposed bargaining unit. As of the date of the May 13, 2024 hearing, there were approximately 14 employees in the bargaining unit, of which 12 employees worked at the Employer's Santa Fe, New Mexico locations and two others worked remotely, one located in Las Vegas, Nevada, and the other located in an unspecified location in New Mexico.³

¹ BX1(a); BX4. BX__ refers to National Labor Relations Board Exhibits followed by the exhibit number; ERX__ refers to Employer's Exhibit followed by exhibit number; UX__ refers to Union's Exhibit followed by exhibit number; and TR__ refers to the transcript followed by the corresponding transcript page(s).

² BX1(a).

³ BX3.

The Union contends that the bargaining unit is appropriate, that CDs and ADs in all classifications are not managerial employees, and that the lone Senior AD shares a community of interest with other job classifications in the proposed bargaining unit.

On May 13, 2024, a videoconference hearing was held before a Hearing Officer of the Board, during which the parties were afforded the opportunity to present evidence and to state their respective positions on the record. The parties submitted post-hearing briefs, which I have carefully considered.

Based on the parties' positions, evidence, and the entire record, and for the reasons described below, I find that the job classifications at issue are not managerial employees, that the Senior AD shares a community of interest with the proposed bargaining unit, and that the bargaining unit is an appropriate unit for collective-bargaining purposes. Therefore, I am directing an election to include CDs and ADs in all classifications, to include the Senior Art Director. As of the May 13, 2024 hearing, there were approximately 14 employees in the bargaining unit.⁴

II. ISSUES AND POSITION OF PARTIES

The primary issue before me is whether the Employer has met its burden to establish that the employees in the contested job classifications are managerial employees. *See Republican Co.*, 361 NLRB 93, 96 (2014); *LeMoyne-Owen College*, 345 NLRB 1123, 1128 (2005); *Waste Management de Puerto Rico*, 339 NLRB 262, 279 (2003). The secondary issue before me is whether the employee in the Senior AD classification shares a community of interest with the proposed bargaining unit.

The Union argues that the Employer failed to meet its burden to establish that the CDs and ADs in all classifications are managerial employees. Notably, the Union contends that evidence adduced at hearing demonstrates that the Employer's CDs and ADs are neither substantially involved in the Employer's labor policies nor do they possess the requisite discretion to effectuate the Employer's policies in the performance of their job duties. *See Westinghouse Broad. Co.*, 215 NLRB 123 (1974); *Post-Newsweek Stations of Fla., Inc.*, 217 N.L.R.B. 14 (1975); *Golden W. Broadcasters-KTLA*, 215 NLRB 760 (1974). Additionally, the Union contends that the Employer failed to meet its burden by presenting any material evidence to support the Employer's claim that the Senior AD does not share a community of interest with other employees in the proposed bargaining unit.

The Employer argues that CDs and ADs in all classifications are closely related or aligned with the Employer causing a potential conflict of interest between the Employer and fellow employees. Moreover, the Employer contends that CDs and ADs play a pivotal role in establishing the Employer's brand, and, as such, exercise discretion to effectively control or implement employer policy. *See The Republican Co.*, 361 NLRB 93, 96 (2014). The Employer maintains that the sole Senior AD holds a unique position as both an employee and a co-founder of the Employer, and as co-founder, has a voice in the formulation and determination of

⁴ The parties stipulated as to the Section 2(11) supervisory status of the Timekeeper/Time Worker, Dave Jazzman, and agreed to exclude Jazzman from the bargaining unit on that basis. TR205-207.

corporate policy. *See In Re Citywide Corp. Transp., Inc.*, 338 NLRB 444, 450 (2002). The Employer further contends that the Senior AD takes on roles in the Employer’s Creative Council and can seek funding directly from the Employer’s executive leadership.

III. RECORD EVIDENCE

A. Overview of the Employer’s Operations

The Employer, a Delaware Corporation, is a multi-state arts exhibition and entertainment company. As of the May 13, 2024 hearing, the Employer had five locations in the States of Colorado, Nevada, two locations in Texas, and the locations at issue in the present case, in Santa Fe, New Mexico.⁵ Building experiential sites and exhibits that foment sensory experiences for its customers is the primary goal for the Employer in conducting its operations. To that end, the Employer relies on extensive design and production processes to create immersive art exhibitions and customer experiences.⁶

Operationally, the Employer uses a top-down approach to choose exhibitions, direct the creative processes of the exhibitions, and ultimately decide to proceed, rework, or terminate an exhibition.⁷ At the top of the Employer’s organization is its executive leadership, including its Chief Executive Officer Joe Tolosa (Tolosa), Chief Financial Officer Mike Kopelman (Kopelman), Co-Founder and Executive Caity Kennedy (Kennedy), Co-Founder and Executive Sean Dilanni (Dilanni), Co-Founder and Executive Emily Montoya (Montoya), Senior Vice President of Creative Design and Production Rich Staib (Staib), Executive Dale Sheehan (Sheehan), and Chief Creative Strategy Officer Anne Mullen (Mullen).⁸ Other Co-Founders include Matt King, Corvas Brinkerhoff, Vince Kadlubek, and Benjamin “Benji” Geary (Geary).⁹ The Employer’s executive leadership takes an active role in the Employer’s Controls Gate, Creative Council, and Capital Review Board, to direct and manage the Employer’s projects.¹⁰

The Employer’s Controls Gate is a group largely led by its executive leadership which meets to plan new projects.¹¹ Its members include Head of Exhibitions Development Amanda Clay (Clay), Senior Vice President of Operations Alex Bennet (Bennet), Tolosa, Kopelman, and Staib.¹² Initially, the Controls Gate meets before the beginning of the Employer’s new projects and provides the final approval for a project’s budget and timelines.¹³ Exhibitions are assigned

⁵ BX2; TR20-21; TR78.

⁶ EX4; EX9; TR20-21; TR77-79.

⁷ UX4; UX5; TR186-188.

⁸ UX5; TR95, 121-122, 158-159.

⁹ EX7.

¹⁰ UX5; TR92, 95-97.

¹¹ TR97-98.

¹² TR98-99.

¹³ TR97-98, 120.

to project teams and the project teams are given certain business parameters by the Employer's executive leadership.¹⁴

After such business parameters are meted out, the Employer's project or production moves on to the Blue Sky phase, where its creative intent and vision for a project or exhibition are devised.¹⁵ Examples of such business parameters include the Employer's overall budget, location, and square footage for an exhibition and could also include creative elements to ensure the creative integrity of the project or exhibition.¹⁶ The Employer's project teams are given a creative brief at the concept phase of the process to craft proposals for higher review.¹⁷ This creative brief contains specified business parameters, the potential market, and the creative strategy.¹⁸ Typically, Chief Creative Strategy Officer Mullen or the Senior Creative Producer communicates such business parameters to the project team.¹⁹ The Senior Creative Producer and producing team are in charge of managing the project team, schedule, budget, and staffing.²⁰

As a functional team manager, the Employer employs Senior Director of Creative Elissa Logoizo (Logoizo).²¹ Logoizo supervises 10 employees at the Employer's Santa Fe, New Mexico location: six CDs – Caitlin Lemoine (Lemoine), Danielle "Dani" Herrera, Daniel "Danny" Bazo, Lucian Connole, Olivia Brown, and Shakti Howeth; one Senior CD – Sarah Bradley; two Principal CDs – Sandra Wang (Wang) and Spencer Olsen; and one Senior AD – Geary.²² Logoizo helped inform the development of the job descriptions for CDs in all classifications and for the Senior AD.²³ The record reflects that project teams meet with the Creative Council to ensure that a project is progressing according to leadership's parameters.

The Employer's Creative Council, or "Braintrust," implemented about January 13, 2023,²⁴ is a committee comprised of certain members of its executive leadership and core members, such as Tolosa, Kennedy, Dilanni, Montoya, Mullen, Sheehan, Staib, and Geary.²⁵ In addition to these core members, the Creative Council also has contributing leadership which

¹⁴ TR131, 164.

¹⁵ TR35-36, 41, 101.

¹⁶ TR35, 132-133, 164.

¹⁷ TR186.

¹⁸ TR187.

¹⁹ TR165-166, 187.

²⁰ TR129, 166.

²¹ TR21.

²² TR21-22; BX3.

²³ TR23-24 (EX1); TR31-32 (EX2); TR37 (EX3); TR54 (EX6)

²⁴ See UX5.

²⁵ UX5; TR121-122.

typically includes other executives such as Didi Bethurum, Julie Heinrich, John Lee, and Kelly Schoeffel.²⁶

The Creative Council’s primary roles include, leading, managing, and focusing the creative process, reviewing project proposals, reviewing project progress, providing feedback and direction to project teams, and “arriv[ing] at a ‘go’ or ‘no go’ approval point” on projects.²⁷ The Creative Council also determines the number of check-in meetings with leadership that a project team must have during production.²⁸ Chief Creative Strategy Officer Mullen organizes the Creative Council and sets the agendas for meetings.²⁹ Mullen and her team synthesize and deliver the notes, feedback, and directions to the project teams.³⁰ On top of the authority that Mullen holds over the Creative Council, Mullen also leads the Employer’s Studio team which is responsible for creative development.³¹

Typically, project teams will meet with the Creative Council at least twice – once at the 50% check-in, which is halfway through the project, and at the final 100% or Controls Gate check-in.³² After a project team meets with the Creative Council, Mullen and her team will provide the project team with feedback and direction.³³ Feedback and direction may be verbal at the time of the check-in meeting, but feedback and direction is also provided in written form after the check-in meeting.³⁴ The written feedback and direction can come in several formats and include “dictate[s]” of what a project team must implement on a particular project.³⁵ While the Creative Council and individuals on the Creative Council have “full decision-making ability,”³⁶ and the final approval status on a project comes from the Creative Council,³⁷ the Controls Gate issues the final “Go” or “No Go” determination on a project.³⁸

In the event a project runs into an unplanned expenditure during production costing over \$5,000, the Employer convenes a Capital Review Board.³⁹ The Capital Review Board receives all capital authorization requests from any part of the Employer.⁴⁰ It is composed of members

²⁶ UX5; TR123.

²⁷ UX5; TR124-128, 138-141.

²⁸ TR129.

²⁹ TR112-113.

³⁰ TR112-113.

³¹ TR119-120, 158-159.

³² TR129-130, 156.

³³ TR112-113; see e.g. UX4 and UX5.

³⁴ TR109-110, 125-126, 156-157; see e.g. UX4 and UX5.

³⁵ TR157-158.

³⁶ TR157.

³⁷ TR141.

³⁸ TR120, 123, 156-157; UX5.

³⁹ TR85-88, 94-96.

⁴⁰ TR95.

from the Employer's Controls Gate, as well as individuals such as Kopelman's direct report Ken Maneki.⁴¹ Once a capital authorization request receives approval by the Capital Review Board, then the requestor may go ahead with the expenditure. However, the Capital Review Board has the authority to deny capital authorization requests, and as a result, the idea behind the request does not come to fruition.⁴²

B. Classifications of Creative Directors

1. Principal CD Sandra Wang

Wang is one of two Principal CDs (PCDs) in the proposed bargaining unit at the Employer's Santa Fe, New Mexico locations.⁴³ Wang reports directly to Senior Director of Creative Logoizo.⁴⁴ Wang has been employed by the Employer since January 2017, and has also previously held the positions of Senior CD, CD, and AD.⁴⁵ Wang has been a PCD since 2024 when the position was created by the Employer.⁴⁶ The record reflects the PCD job description was issued to employees about April 12, 2024.⁴⁷

As PCD, Wang's decisions on a project are reached in partnership with team members such as the Creative Producer.⁴⁸ Notwithstanding the collaborative effort at the team level, Wang's decisions are all subject to approval and overseen by leadership, i.e., the members of the Employer's Creative Council and Studio.⁴⁹ PCDs are not able to add staffing, but rather would need to make the request for additional people to Creative Producers.⁵⁰

The PCD job description notes that "[t]he Principal Creative Director identifies the creative priorities for an entire project, guides the creative strategy as artistic choices are made, and serves as the project supervisor and primary mentor for Senior Creative Directors, Creative Directors, and Artists throughout the lifecycle of the project."⁵¹ Additionally, the job description defines the three "Main Areas of Scope" to be: Project Mentorship, Creative Strategy, and Meow Wolf Brand Advocate. Regarding project mentorship, the PCD is "the primary mentor and project supervisor for Senior Creative Directors and Creative Directors on a project." A requirement to be a PCD includes to have "proven long-term expertise with communicating and driving creative priorities with all team members" in a

⁴¹ TR95-100.

⁴² TR96.

⁴³ BX3.

⁴⁴ TR22, 130.

⁴⁵ TR118.

⁴⁶ TR118.

⁴⁷ TR22-23; see EX1.

⁴⁸ TR119-120.

⁴⁹ *Id.*

⁵⁰ TR137.

⁵¹ EX1, emphasis in original.

supervisory capacity.⁵² PCDs must have exceptional leadership and team management skills.⁵³ Additionally, PCDs are also required to “uphold the Meow Wolf brand,” “elevate brand concerns,” collaborate with leadership, and “help communicate ideas” about the Meow Wolf brand.⁵⁴

Wang’s April 2024 job description also notes that she is to discuss creative strategy with executives, however, the record reflects that Wang had not been required to hold regular meetings with executives since she started her position.⁵⁵ Additionally, while Wang’s job description also calls for high level creative priorities, the record shows that her decisions are still subject to the Employer’s Creative Council and she must follow the parameters set out by leadership.⁵⁶ As a PCD, Wang has a broader scope of work, more mentorship responsibilities, and more brand knowledge requirements than Creative Directors, yet the record evidence indicates that every aspect of her work is still subject to the budgetary and scheduling constraints set out by the Creative Council and the Controls Gate.⁵⁷ Although Wang’s position is PCD, at the May 13, 2024 hearing, Wang described her current job as a Senior Creative Director with the intent to slowly transition to PCD.⁵⁸ Wang further noted that while there are pay differences, all the separate positions of Creative Directors have the same responsibilities, just at different levels.⁵⁹

2. Senior CD Tristan Love

Tristan Love (Love) is one of two Senior CDs (SCDs) in the proposed bargaining unit at the Employer’s Santa Fe, New Mexico location.⁶⁰ Love has been an SCD since June 2017.⁶¹ The record reflects that the SCD job description was updated about April 12, 2024.⁶²

SCDs work collaboratively with PCDs regarding creative development.⁶³ As SCD, Love is allowed to use his judgment “within predetermined set parameters and aesthetics, and always subject to approval” from the Employer’s leadership.⁶⁴ Love testified that since he began working for the Employer in 2017, the PCD, SCD, and CD positions have experienced

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ TR135; EX1.

⁵⁶ TR152.

⁵⁷ TR152-153.

⁵⁸ TR151.

⁵⁹ TR153.

⁶⁰ BX3.

⁶¹ TR71-72.

⁶² TR32-33; UX2; see EX2.

⁶³ TR137.

⁶⁴ TR180-181, 183.

diminishing autonomy at work and have experienced an increase in processes and check-ins instituted by the Employer.⁶⁵

The April 2024 SCD job description states the purpose of the SCD is “[t]o lead and bring to life the creative vision for a portion of Meow Wolf’s new exhibition space.”⁶⁶ Unlike the PCD, SAD, or the CD positions, discussed below, the SCD job description does not reference any supervisory role.⁶⁷ The primary roles for the SCD are to lead and manage a team of CDs, artists, and “creative leaders,” as well as take a role in decisions involving team resources, budgets, and vendors.⁶⁸ The SCD must also serve as a “creative expert” and must oversee an exhibitions entire creative experience.⁶⁹ Ultimately, the requirements for being an SCD are as follows:

You have a passion for pushing the boundaries of traditional art forms and creating transformative experiences for audiences. You will lead your team in establishing the overall creative vision of Meow Wolf’s new exhibition and make it “out of this world,” thereby aweing and captivating our guests.⁷⁰

The SCD position is required to explore the Employer’s origins, as well as attend the Employer’s “Immersiversity,” in order to learn the “Meow Wolf way.”⁷¹

3. *CD Caitlin Lemoine*

Lemoine is one of nine CDs in the proposed bargaining unit, seven of which work at the Employer’s Santa Fe, New Mexico locations, one works remotely from Las Vegas, Nevada, and one works remotely from an unspecified location in New Mexico.⁷² Lemoine has been a CD since late 2022.⁷³ Lemoine, like PCD Wang, reports directly to Senior Director of Creative Logoizo.⁷⁴ Prior to being a CD, Lemoine held the position of graphic designer since 2018.⁷⁵ The record reflects that the CD job description was updated about April 12, 2024.⁷⁶

⁶⁵ TR163.

⁶⁶ EX2.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* (emphasis in original).

⁷¹ EX2.

⁷² BX3.

⁷³ TR70-71.

⁷⁴ TR22.

⁷⁵ TR185.

⁷⁶ TR38-39; UX1; see EX3.

As CD, Lemoine’s role is to support the project team and work with the SCD and PCD in crafting a presentation to the Creative Council for review.⁷⁷ Additionally, the CD focuses on facilitating a creative dialogue around quality and creative approach to help the team think critically.⁷⁸ In collaboration with the SCD and PCD, Lemoine, as CD, crafts a proposal based on the Employer’s creative brief and the specific goals given to the team by Chief Creative Strategy Officer Mullen.⁷⁹ The creative brief issued by the Employer must be “upheld at basically all cost,” and CDs cannot change the creative brief or propose ideas that are not in line with the creative brief.⁸⁰ As a CD, Lemoine is not permitted to create something out of whole cloth and she has always been given the parameters within which she must work.⁸¹

The April 2024 CD job description states the purpose of the CD is “[t]o lead and bring to life the creative vision for a portion of Meow Wolf’s new exhibition space.”⁸² According to the job description, the CD “is responsible for supervising artists and creative leaders,” as well as “serve as an intermediary between the project’s large creative teams by driving the vision and overseeing a significant portion of an exhibition’s creative experience.”⁸³ Additionally, the CD will serve as subject matter expert and “[l]ead, mentor, and inspire members of the creative team.”⁸⁴ The CD position is required to explore the Employer’s origins, as well as attend the Employer’s “Immersiversity,” in order to learn the “Meow Wolf way.”⁸⁵

C. Senior AD Benjamin “Benji” Geary

Senior SA (SAD) Geary was not called to appear and did not testify. Further, no ADs, SAD, or Principal ADs were called to appear and testify during the proceedings.

As SAD, Geary, like PCD Wang and CD Lemoine, reports to Senior Director of Creative Logoizo.⁸⁶ Geary, in addition to being SAD, is also a Co-Founder of the Employer and is a core member of the Employer’s Creative Council. However, no evidence was produced at the hearing to establish whether Geary’s position in the Creative Council was on account of his position as SAD or because of his status as Co-Founder.

⁷⁷ TR186.

⁷⁸ TR195.

⁷⁹ TR186-187.

⁸⁰ TR188.

⁸¹ TR189.

⁸² EX3.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ EX3.

⁸⁶ TR22.

Geary, as SAD, reports to Logoizo.⁸⁷ Geary is the only SAD and only AD of any classification who reports to Logoizo.⁸⁸

The Employer provided a job description for the SAD position which states the purpose of the position is to “**empower[] their artists, makers, and teams** to make creative choices, while also serving as a **supervisor and mentor for other Art Directors** on their project.”⁸⁹ According to the SAD job description, the SAD position requires supervisory experience and a “diverse history of working in the arts or other creative field.” Additionally, the job description specifies that an SAD will be required to “[s]upervise[], guide[], and mentor[] other Art Directors on the team.”⁹⁰

There is no requirement in the job description that an applicant for the SAD position also be a Co-Founder of the Employer. Moreover, there is no indication in the job description that the SAD position and the Co-Founder status share any duties or responsibilities.

As described by the Employer on its website:

Our founders are Santa Fe-based artists with previous and current lives as graphic designers, technologists, writers, fabricators, painters, sculptors, musicians, rat gang leaders, and shoplifters.⁹¹

Absent an attenuated link between founders and artists on the Employer’s website, there is no indication that any classifications of SAD, CDs, or ADs and Co-Founders share any duties or responsibilities.

D. Bargaining History

The Employer and the Union have a collective-bargaining agreement (CBA) with the effective dates of April 15, 2022, through April 14, 2026. The Employer recognizes the Union as the exclusive bargaining representative for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment for all full-time and regular part-time employees of the Employer in the job titles listed in Appendix A of the CBA, who are employed at the Employer’s Santa Fe, New Mexico locations.⁹²

⁸⁷ TR22.

⁸⁸ *Id.*; BD3.

⁸⁹ EX6, emphasis in the original.

⁹⁰ EX6.

⁹¹ EX7.

⁹² BX2; BX6, pp.30-31.

IV. ANALYSIS

A. Managerial Employees

The Act makes no provision for “managerial employees;” this category of personnel has been excluded from the protection of the Act by Board policy. See *NLRB v. Yeshiva University*, 444 U.S. 672, 682 (1980); *Ladies’ Garment Workers Union v. NLRB*, 339 F.2d 116, 123 (2d Cir. 1964); *Ford Motor Co.*, 66 NLRB 1317, 1322 (1946); *Palace Laundry Dry Cleaning Corp.*, 75 NLRB 320, 323 fn. 4 (1948). It should be made clear at the outset that “supervisory status is specifically defined in Section 2(11) of the Act and is not equitable with managerial status.” *Howard-Cooper Corp.*, 121 NLRB 950, 951 (1958).

Under Board policy, “managerial employees” are defined as employees who formulate and effectuate high-level employer policies or “who have discretion in the performance of their jobs independent of their employer’s established policy.” *Republican Co.*, 361 NLRB 93, 95 (2014) (quoting *General Dynamics Corp.*, 213 NLRB 851, 857 (1974)); see also *Wolf Creek Nuclear Operating Corp.*, 364 NLRB 1619, 1621 (2016); *Tops Club, Inc.*, 238 NLRB 928, 928 fn. 2 (1978) (quoting *Bell Aerospace*, 219 NLRB 384, 385 (1975), on remand from the Supreme Court’s decision 416 U.S. 267 (1974)). The decisions must be made on behalf of the employer. *Allstate Insurance Co.*, 332 NLRB 759, 762 (2000).

The party asserting managerial status bears the burden of proof. *Republican Co.*, 361 NLRB 93, 96 (2014); *LeMoyne-Owen College*, 345 NLRB 1123, 1128 (2005); *Waste Management de Puerto Rico*, 339 NLRB 262, 279 (2003).

In *NLRB v. Yeshiva University*, 444 U.S. 672, 682–683 (1980), Supreme Court described managerial employees as follows:

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

Managerial cases inquire into the degree of discretion and authority exercised by the disputed employees. The Employer provided limited record evidence regarding ADs. There is only one SAD employed by the Employer, and no other classification of AD in the proposed bargaining unit. Notwithstanding SAD Geary’s position, the record does not reflect that SAD Geary was asked or subpoenaed to appear, and Geary did not testify at the hearing. As such, the only record evidence available about the SAD position is the SAD job description. The SAD job description, however, does not contain sufficient evidence to adequately address the working

conditions, duties, responsibilities, supervision, or authority given to a SAD. Additionally, the only employee who testified about ADs was PCD Wang, who simply testified that she had begun her career with the Employer as an AD before working as a CD and continuing the CD career path.

The Employer contends that SAD Geary is a managerial employee due to his status as Co-Founder. However, the Employer did not meet its burden to provide sufficient record evidence to establish that SAD Geary's duties are enmeshed with Geary's Co-Founder duties when Geary takes an active role in the Employer's Creative Council and budgetary discussions. The Creative Council is comprised by the Employer's leadership. Given that Geary's SAD job description does not define his position as leadership, it is unclear in the record whether Geary's seat at the Creative Council stems from his status as Co-Founder or as SAD. Additionally, the Employer failed to meet its burden to provide sufficient record evidence to establish that being a Co-Founder is a pre-requisite to be a SAD or vice versa. The Employer provided no record evidence that other Co-Founders enjoy AD status in any classification. Moreover, Geary, in his position as SAD, reports to a supervisor along with nine other CDs in varying classifications. There was no record evidence showing that other Co-Founders have supervisors, or that Co-Founders, as part of their Co-Founder responsibilities, must report to a supervisor. Indeed, based on the record evidence, the SAD and Co-Founder positions appear to be mutually exclusive.

Accordingly, based on the foregoing and the record as a whole, I find the Employer has not met its burden to establish that the SAD or ADs in any classifications are managerial employees.

The Employer argues that CDs in all classifications cannot properly be included in any bargaining unit because they are managerial employees. More specifically, the Employer contends that CDs in all classifications exercise their discretion independent of the Employer's policies. *See Simplex Industries*, 243 NLRB 111 (1979). Put another way, the Employer asserts that CDs exercise independent judgment in the performance of their duties. *See Miller Electric Co.*, 301 NLRB 294, 298-299 (1991). Additionally, the Employer contends that PCDs are "so closely related to or aligned with management as to place the employee in a position of potential conflict of interest between his employer and his fellow employees," that SCDs "formulate and effectuate high-level employer policies," and that CDs are responsible for training other employees to effectuate the Employer's policies.

Regarding independent judgment, or exercising discretion independent of the Employer's policies, contrary to the Employer's assertions, the record reflects that CDs in all classifications are subject to the direction and parameters imposed by the Employer's Creative Council and to the final approval of the Employer's Controls Gate. Indeed, the Employer underscored to all of its employees the Creative Council's role in providing a "Go," i.e., an approval, or a "No Go," i.e., a denial, to a project team's ideas. Rather than showing CDs exercising discretion in the performance of their job duties as the Employer asserts, the record reflects that CDs in all classifications operate within limits established by the Employer. As the Board noted, an employee does not acquire managerial status by making some decisions or exercising some judgment "within established limits set by higher management." *Holly Sugar Corp.*, 193 NLRB 1024, 1026 (1971).

Similarly, in *Case Corp.*, 304 NLRB 939 (1991), the Board held that industrial engineers are not managerial because although they participated in grievance handling and bargaining, the record did not show they had discretion to deviate from established policies or the authority to make any final binding disposition of grievances. See also *George L. Mee Memorial Hospital*, 348 NLRB 327, 333 (2006); *S. S. Joachim & Anne Residence*, 314 NLRB 1191 (1994); *Sampson Steel & Supply, Inc.*, 289 NLRB 481, 482 (1988); *Central Maine Power Co.*, 151 NLRB 42, 45 (1965); *American Radiator & Standard Sanitary Corp.*, 119 NLRB 1715, 1717 (1958).

The record evidence shows that CDs, SCDs, and PCDs, do not have discretion to deviate from the Employer's established policies or to make any binding decisions absent the approval of higher management. Contrary to the Employer's contentions, the record evidence does not demonstrate that CDs in any classifications exercise any discretion or authority in conducting their duties independent of Employer's policies.

Although PCDs actively discuss their projects with upper management, this is primarily done at the Employer's Creative Council and Controls Gate levels where PCDs have no authority to ignore or contradict upper management's decisions. Indeed, the record evidence reflects that suggestions or decisions by PCDs are subject to being rejected or granted just as much as the suggestions or decisions by SCDs or CDs. The Employer did not meet its burden to provide sufficient record evidence to establish that SCDs effectuate high level policies any more than other employees.

Additionally, there is no record evidence to show that SCDs formulate the Employer's policies. Notably, even the Employer's sole supervisory witness, Senior Director of Creative Logoizo, does not formulate policies as they relate to the job descriptions of CDs in all classifications. Rather, Logoizo helped inform the development of such policies. As referenced in their respective job descriptions, SCDs and CDs are required by the Employer to take part in the same Immersiversity to learn about the Employer's policies, not to formulate and effectuate the Employer's policies.

Further, the record reflects that CDs in all classifications, not just the CD classification itself, are in charge of mentoring and training employees. However, the fact that employees train or instruct other employees does not, by itself, establish managerial status, and such employees will not be found to be managerial if they do not exercise sufficient independent discretion or judgment in carrying out these duties. *Wolf Creek Nuclear Operating Corp.*, 364 NLRB 1619, 1621 (2016). Compare *Roofing, Metal & Heating Associates*, 304 NLRB 155, 161 (1991); *A. Barton Hepburn Hospital*, 238 NLRB 95, 96 (1978); and *Fairfax Family Fund, Inc.*, 195 NLRB 306, 308 (1972), with *Miller Electric Co.*, 301 NLRB 294, 298–299 (1991). As discussed above, the record evidence does not support finding that CDs, SCDs, and PCDs exercise sufficient independent discretion or judgment in carrying out their duties, to include mentorship or training.

In sum, the record demonstrates that no classifications of CDs exercise any discretion or authority in conducting their duties. Rather, the record shows the Employer uses its executive leadership and other supervisors in deciding the limitations under which CDs operate, reviewing and directing CDs in the performance of their duties, and approving its projects and exhibitions.

Based on the parties' arguments and the record as a whole, I find that the Employer has not met its burden to establish that CDs and ADs in all classifications are managerial employees.

B. Community of Interest

Under long-settled Board law, a unit sought by a union must not be the most appropriate unit; the Act only requires that the proposed unit be appropriate. *Overnite Trans. Co.*, 322 NLRB 723, 723 (1996). It is well settled that the "Board's procedure for determining an appropriate unit under Section 9(b) of the Act is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends." *Boeing Co.*, 337 NLRB 152, 153 (2001).

When the Board determines that the unit sought by a union is readily identifiable and employees in that unit share a community of interest, the Board will find the unit sought to be an appropriate unit. See *American Steel Construction, Inc.*, 372 NLRB No. 23 (2022), overruling *PCC Structural, Inc.*, 365 NLRB No. 160 (2017) as modified in *Boeing Co.*, 368 NLRB No. 67 (2019), and returning to the standard articulated in *Specialty Healthcare & Rehab. Ctr. of Mobile*, 357 NLRB 934 (2011) *enfd. sub nom. Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013).

The Board's well-established test for finding the requisite community of interest "considers 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 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." *American Steel Construction, Inc.*, 372 NLRB No. 23, slip op. at 3 (2022) (citing *Haag Drug Co., Inc.*, 169 NLRB 877, 877 (1968). See also *Country Ford Trucks, Inc. v. NLRB*, 229 F.3d 1184, 1189 (DC Cir. 2000) (observing that "more than one appropriate bargaining unit logically can be defined in any particular factual setting") (quoting *Operating Engineers Local 627 v. NLRB*, 595 F.2d 844, 848 (D.C. Cir. 1979))).

The record here reflects that the CDs, SCDs, PCDs, and the SAD are readily identifiable as a group and all share a community of interest by performing work for the Employer's Santa Fe, New Mexico locations. Although SCD Love has a different supervisor, CD Lemoine, PCD Wang, and SAD Geary are all supervised by Logoizo. Additionally, Logoizo supervises 10 of the 14 employees in the proposed bargaining unit. Here, the record evidence shows that the SAD and CDs in all classifications are organized in a similar department and may all be assigned to work on the same projects. The record indicates that the type of work that CDs and the SAD in all classifications perform is not sufficiently distinct and is ultimately managed by the same Creative Council and Controls Gate, i.e., all CDs, SCDs, PCDs, and the SAD share a common chain of supervision over their work. As discussed above, the Employer failed to meet its burden to establish that the CDs and the SAD in all classifications are managerial employees. Accordingly, the record evidence supports that the bargaining unit proposed by the Union here is readily identifiable and shares a community of interest and is therefore an appropriate unit.

V. CONCLUSION

Based on the entire record in this matter 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.⁹³
3. The Union is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act (the Unit).

Included: All full-time and regular part-time Creative Directors (all classifications) and Art Directors (all classifications), including Marketing Creative Directors, Creative Directors, Creative Directors – Content, Senior Creative Directors, Principal Creative Directors, and Senior Art Directors employed by the Employer out of its Santa Fe, New Mexico locations.

Excluded: All other employees, including confidential employees, managers, guards, and supervisors as defined by the Act.

At the May 13, 2024 hearing, there were approximately 14 employees in the Unit found appropriate.

VI. 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 Communications Workers of America, AFL-CIO.

⁹³ The parties stipulated to the following commerce facts: The Employer, Meow Wolf, Inc., a Delaware Corporation, with an office and place of business located at 2600 Camino Entrada, Santa Fe, New Mexico, is engaged in the business of providing Art Exhibitions and Entertainment. During the past twelve months, a representative period, the Employer, in the course and conduct of its business operations, derived gross revenues in excess of \$1,000,000 and purchased and received goods or services valued in excess of \$5,000 directly from points outside of New Mexico.

A. Election Details

The Employer requests a mail ballot election. The Union notes that due to two employees working remotely and living outside of the Employer's location in Santa Fe, New Mexico, that at a mixed manual-mail election would be appropriate.

Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to ensure the fair and free choice of bargaining representatives, and the Board in turn has delegated the discretion to determine the arrangements for an election to Regional Directors. *San Diego Gas and Elec.*, 325 NLRB 1143, 1144 (1998) (citing *Halliburton Services*, 265 NLRB 1154 (1982)). These arrangements include the mechanics of an election, such as the date and method of voting. *San Diego Gas & Electric*, supra at 1144; *Nouveau Elevator Industries*, 326 NLRB 470, 471 (1998).

The Board has a long-standing preference for in-person (manual) elections. "Manual elections permit in-person supervision of the election, promote employee participation, and serve as a tangible expression of the statutory right of employees to select representatives of their own choosing for the purpose of collective bargaining, or to refrain from doing so." *Aspirus Keweenaw*, 370 NLRB No. 45, slip op. at 1 (Nov. 9, 2020). The Board has also recognized, however, that there are instances where circumstances tend to make it difficult for eligible employees to vote in a manual election. *Id.*, slip op. at 2 (internal citations omitted). The Board has addressed a few of these situations, including where voters are "scattered" over a wide geographic area, "scattered" in time due to employee schedules, where there is a strike, or where there are other extraordinary circumstances. *San Diego Gas*, supra at 1145. In these situations, a Regional Director may reasonably conclude that a mail ballot election will enfranchise the most employees.

In *San Diego Gas & Electric*, the Board stated that mail ballot elections may be appropriate in cases where, *inter alia*, eligible voters are "scattered" in the sense that their work schedules vary significantly, so that they are not present at a common location at common times. *Id.* Additionally, a Regional Director might reasonably conclude that the opportunity to participate in the election would be maximized by utilizing mail or mixed manual-mail ballots where "a significant number of eligible voters are not scheduled to be at the election site at the times proposed for manual balloting-for such reasons as that they work part-time or on an on-call basis." *Id.* In such cases, the Regional Director should also consider the positions of the parties, the ability of the unit employees to read and understand a mail ballot, the availability of addresses for employees, and finally, the most efficient use of Board resources. *San Diego Gas*, supra at 1145; See also, *GPS Terminal Services*, 326 NLRB 839, 839 (where the Board found that the Regional Director properly considered whether a manual ballot would be an efficient use of Board resources).

After careful consideration of the parties' positions, I conclude that a mixed manual-mail ballot election is more appropriate than a manual election alone, or a mail ballot election alone, to enfranchise the greatest number of eligible voters and because it is the most efficient use of Board resources. Under *San Diego Gas & Electric*, supra at 1145, a determinative factor in deciding whether a mail-ballot is more appropriate than a manual election is whether the eligible employees will be at a common location at the same time. In deciding that a mixed manual-mail ballot should be held, I find that two of the 14 employees are "scattered" in the sense that they

work remotely in locations outside of Santa Fe, New Mexico, and cannot readily be present at the same place at the same time to vote as those employees working at the Employer's facility in Santa Fe, New Mexico. Accordingly, pursuant to the parties' requests, and since two of the 14 Unit employees work remotely and do not live in Santa Fe, New Mexico, to ensure the broadest possible participation of eligible voters that are scattered and the most efficient use of the Region's resources, I conclude that a mixed manual-mail ballot election will be conducted.

1. Manual Election

I am directing that the manual portion of the election be held on **Thursday, April 2, 2026**, from **11:30 a.m. to 12:30 p.m.**, at the Cat Building-Lunch Area (Dugout) at the Employer's facility, located at 2600 Camino Entrada, Santa Fe, New Mexico 87507. At the conclusion of the polling the ballots shall be impounded.

2. Mail Ballot Election

I am also directing that the election be conducted in part by mail. The ballots will be mailed by U.S. mail to the mailing addresses of all remaining eligible voters employed in the appropriate collective-bargaining unit who have not cast their ballots during the manual election conducted on Thursday, April 2, 2026 (mail ballot eligible voters).

On **Friday, April 3, 2026**, ballots will be mailed by U.S. mail to the mail ballot eligible voters from the National Labor Relations Board, Region 28. Mail ballot eligible voters must sign the outside of the envelope in which the ballot is returned. **Any ballot received in an envelope that is not signed will be automatically void.**

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Friday, April 10, 2026**, should communicate immediately with the National Labor Relations Board by either calling the Regional Office at (602) 640-2160 or the Agency's national toll-free line at 1-844-762-NLRB (1-844-762-6572).

All ballots should be returned to the National Labor Relations Board, Region 28 office by **close of business, 4:45 p.m., on Friday, April 17, 2026.**

All ballots will then be commingled and counted by an agent of Region 28 of the National Labor Relations Board on a date and at a time to be determined by the agent after consulting with the parties, by Zoom video conference. In order to be valid and counted, the returned ballots must be received in the Regional Office prior to the counting of the ballots.

In the event that the Regional Office receives mail ballots from all of the eligible mail ballot eligible voters before **4:45 p.m., on Friday, April 17, 2026**, I will issue an Order scheduling the ballot count, designating an earlier time and date for the ballots to be commingled and counted.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **Sunday, March 22, 2026**, 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(1) 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 (that employees use at work), 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, March 26, 2026**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

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

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. 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 conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

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

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, 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 at Phoenix, Arizona, this 24th day of March, 2026.

/s/ Cornele A. Overstreet

Cornele A. Overstreet, Regional Director