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

TRUE CONCORD VOICES AND ORCHESTRA, INC.

Employer

and

Case 28-RC-344449

TUCSON FEDERATION OF MUSICIANS, AFM, LOCAL 33

Petitioner

DECISION AND DIRECTION OF ELECTION

I. Summary

The Petitioner seeks to represent a unit of musicians[1] who play in the Employer's orchestra.

The Employer argues that the Board lacks jurisdiction over the Employer because the Employer does not meet the Board's discretionary jurisdictional standard for symphony orchestras.[2] The Employer contends that this is because certain parts of its annual revenue are restricted to certain uses and therefore do not qualify as revenue available for "operating expenses" within the meaning of the Board's jurisdictional standard for symphony orchestras. The Employer argues that without those restricted contributions, the applicable jurisdictional standard is not met. The Employer also argues that the showing of interest is insufficient to raise a question concerning representation given the passage of time between the filing of the petition and the time of the hearing.[3] The Union argues that the Board's jurisdictional standard for symphony orchestras is satisfied here.

A hearing officer of the Board held a hearing in this matter, and the parties orally argued their respective positions prior to the close of the hearing. As explained below, based on the

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[1] The record shows that the Employer utilizes both vocalists and instrumentalists in its productions. While both groups are "musicians" within the plain meaning of the term, the petitioner's proposed unit description and the record are both sufficiently clear that the Petitioner seeks only to represent the instrumentalists in the orchestra, not the vocalists in the choir.

[2] The applicable Board jurisdictional standard is set forth at the Board's Rules and Regulations §103.2 Symphony orchestras (Rule 103.2): "The Board will assert its jurisdiction in any proceeding arising under sections 8, 9, and 10 of the Act involving any symphony orchestra which has a gross annual revenue from all sources (excluding only contributions which are because of limitation by the grantor not available for use for operating expenses) of not less than $1 million." 29 CFR 103.2.

[3] The sufficiency of a showing of interest is a non-litigable administrative determination. *Yellow Cab Company*, 103 NLRB 395 (1953). I therefore will not address this Employer argument in this decision.

record as a whole and relevant Board precedent, I find that the Board has jurisdiction in this matter. I also find the petitioned-for unit to be an appropriate unit. I find that a question concerning representation exists and I will direct an election accordingly.

II. Statement of Facts

A. The Employer's Operations

The Employer is a nonprofit corporation located in Tucson, Arizona. Its operations are illuminated by its mission statement: "True Concord shares beauty, joy, and harmony with the world by creating musical experiences that move, enrich, and inspire. We accomplish this primarily through performance and recordings of masterworks, new works, and the music of America's cultural mosaic."

The Employer produces about six main stage concerts per year for audiences in Tucson, Arizona, and Green Valley, Arizona. The Employer is primarily a choral organization and employs vocalists for all its concerts. In roughly 85 percent of the Employer's productions, the choir performs by itself or with just a keyboard accompaniment. In its remaining productions, which the Employer's music director characterizes as "masterworks, many of which involve instrumental forces," the choir is joined by an orchestra. About 10 percent of the organization's concerts use a full orchestra, and the remaining 5 percent of performances use instrumentalists in some combination less than the full orchestra. The instrumentalists in this orchestra comprise the petitioned-for unit.

As reflected in its mission statement, recording music is also a key component of the Employer's operations. The record shows that the Employer's recordings have earned a substantial amount of recognition nationwide. The Employer has recorded and released several albums, some of which have been nominated for Grammy awards in 2015 and 2025. Recordings of its live performances have been broadcast and made available for streaming by an Arizona PBS station, one of which was nominated for an Emmy award. I also take administrative notice that the Employer's albums are available for purchase from various sources, including Amazon.com, Discogs, Walmart, and Barnes & Noble.

The Employer's recordings are not the only facet of its operations with national reach. The Employer has commissioned new works and arrangements from well-known contemporary composers, including Jocelyn Hagen, Jake Runestad, John Rutter, and Morten Louridsen. I take administrative notice that Ms. Hagen and Mr. Runestad are based in Minnesota, Mr. Rutter is based in the United Kingdom, and Mr. Lauridsen is based in California.[4] The record reflects that the Employer's operations reach well beyond Arizona state lines, as summarized in the Employer's own fundraising material, which quips that the Employer is "[l]ocally loved and nationally respected."

[4] See jocelynhagen.com (accessed February 20, 2026); jakerunestad.com (accessed February 20, 2026); johnrutter.com (accessed February 20, 2026); mortenlauridsen.net (accessed February 20, 2026).

B. Commerce

The Employer is a 501(c)(3) nonprofit corporation, and its revenue is derived from a mix of ticket sales, album sales, governmental grants, donations from private individuals and organizations, and interest generated by an endowment. This income is reported to the IRS on an IRS Form 990, Return of Organization Exempt from Income Tax (Form 990). The record contains the Employer's Form 990 for fiscal tax years 2021, 2022, 2023, and 2024. These filings reflect that the Employer's fiscal tax year starts on July 1 and ends on June 30 each year. These forms show the Employer's reported revenue for the following years:

Tax Year	**Total Revenue**
2020-2021	$1,153,387
2021-2022	Omitted from record
2022-2023	$1,022,808
2023-2024	$1,184,504

The record also includes several Employer documents entitled "statement of activity." A statement of activity is an internal document used by the Employer which tracks all of its revenue and expenditures in a given year. Each statement of activity tracks a 12-month period, starting in July and ending in the following June (the same period as reported on the Form 990s). The record contains the Employer's statements of activity for 2021-2022, 2022-2023, 2023-2024, and 2024-2025.

The Employer's statements of activity break down the organization's income by source: bequests, gifts, gifts released from restriction, grants, merchandising income, Misc. income, ticket handling fees, and ticket sales. Revenue from each of these sources is then placed into one of three columns: Total General, Recording, and Taking Flight Campaign. These columns are then added together to arrive at the organization's total gross revenue for that 12-month period.

The record establishes that revenue placed within the "total general" column of the Employer's statements of activity is unrestricted and is available to spend on any aspect of the organization's operating costs.

The record shows that revenue placed in the "Recording" column of the Employer's statements of activity denotes income which, due to a restriction placed on the contribution by the grantor, could only be spent for the purpose of recording albums. While this revenue is restricted to the purpose of recording an album, it may cover several different costs associated with producing that album. For example, the 2022-2023 Statement of Activity reflects $190,073.11 of revenue restricted to recording costs. Of that total, $36,420.24 was spent producing the concert which was recorded (concert production), $118,947.95 was spent on wages for the artists who worked on the recording (personnel artistic), and $34,704.92 was spent on the actual production and engineering of the album (Recording & CD Expenses).

The record reflects that revenue placed in the "Taking Flight Campaign" column of the Employer's statements of activity denotes income derived from donations made to a specific donation campaign called "Taking Flight." Donors to this program elect to give a gift with no

use restrictions, a gift with was restricted for use in "special artistic projects" (i.e., recordings), to contribute to "capacity building and sustainability" (which funds artist retention, staffing, public relations, and fundraising initiatives), or to contribute to the Employer's endowment. Donors to the "Taking Flight Campaign" fill out a "gift intention form" which allows the donor to allocate a gift between these different categories. The Employer sends thank you letters to donors to the "Taking Flight Campaign" which state the amount of the donation and reflect whether any restrictions have been placed on its use by the donor.

The table below summarizes the Employer's revenue as reflected in each statement of activity:

Year	**Total General**	**Recording**	**Taking Flight**	**Total**
2021-2022	$782,983.91	$30,509.20	N/A	$813,493.11
2022-2023	$831,222.33	$190,073.11	N/A	$1,021,295.44
2023-2024	$895,041.95	$220,039.15	$67,985.10	$1,183,066.20
2024-2025	$948,475.90	$20,662.04	$131,969.66	$1,101,107.60

The Employer's music director testified that the Employer receives governmental grants from local art organizations, state art agencies, and occasionally from the National Endowment for the Arts (NEA).[5] He testified that while the funds received from the local and state agencies typically carry no restriction in how the funds are used, NEA grants are restricted in the way that the funds may be used and the time period in which they may be used. The Employer's music director testified that one NEA grant the Employer received in 2022 was in the amount of $10,000, and was restricted for use in a recording project. There is no other record evidence as to the nature of the use restrictions placed on NEA grants. The record does not include a NEA grant to the Employer for fiscal year 2024 in the amount of $25,000, but I take administrative notice of this NEA grant.[6]

The record shows that in 2025, the Employer received a grant from the Kurt Weill Foundation for Music, a New York Non-profit which holds the rights to Kurt Weill's works, licenses those works, and makes money available to music organizations across the country to produce Weill's works. This grant totaled $35,000, and was conditioned on the Employer licensing and performing a specific symphony and having the performance broadcast on Arizona PBS. The music director testified that the organization considered the funds from this grant to be restricted because of the conditions placed on the receipt and use of the funds.

[5] I take administrative notice that the National Endowment for the Arts is an independent agency of the United States Government that provides support and funding for the Arts.

[6] See NEA Recent Grant Search, https://grantsearch.nea.gov/ (accessed February 20, 2026) (Search term "True Concord") I find that this information is publicly available, its authenticity is not reasonably in dispute, and documents including this grant are responsive to the Board's subpoena *duces tecum* #B-1-1P02CY7.

C. Analysis

1. Board Jurisdictional Legal Standards

a. Statutory Jurisdiction

The National Labor Relations Board's jurisdiction under the National Labor Relations Act extends to enterprises whose operations affect interstate commerce. The Board's jurisdiction has been construed to extend to all such conduct as might constitutionally be regulated under the commerce clause, subject only to the rule of *de minimis*. *NLRB v. Fainblatt*, 306 U.S. 601, 606–607 (1939). See *J. M. Abraham, M.D.*, 242 NLRB 839 (1979) (statutory jurisdiction established by receipt of Medicare funds); *Longshoremen ILWU (Catalina Island Sightseeing Lines)*, 124 NLRB 813 (1959) (regulation by another Federal agency under the commerce clause established statutory jurisdiction).

Statutory jurisdiction can be satisfied in a number of ways. Receipt of federal funds or regulation by another federal agency can establish statutory jurisdiction. See *J. M. Abraham, M.D.*, 242 NLRB 839 (1979) (statutory jurisdiction established by receipt of Medicare funds); *Longshoremen ILWU (Catalina Island Sightseeing Lines)*, 124 NLRB 813 (1959) (regulation by another Federal agency under the commerce clause established statutory jurisdiction).

Statutory jurisdiction is also satisfied (i.e., an Employer's operations have a greater than *de minimis* effect on interstate commerce) when, during a 12-month period, that Employer receives goods or services worth at least $5,000 from points outside the state in which it operates. See, e.g., *Musical Arts Association*, 356 NLRB 1470 (2011) (jurisdiction where symphony had over $1,000,000 in gross annual revenues and over $5,000 in out-of-state purchases); *Colorado Symphony*, 366 NLRB No. 122 (2018); *Lancaster Symphony*, 358 NLRB No. 104 (2012) (same) (not reported in Board volumes).

Moreover, statutory jurisdiction is also satisfied when an Employer reaches a more than *de minimis* combined purchase of goods and services from companies engaged in interstate commerce. See *Healthy Minds, Inc.,* 371 NLRB No. 6, slip op. at 9-10 (2021) (statutory jurisdiction established based upon Employer's purchases of goods and services totaling $8,700 from ADT Security, Suddenlink, and DirecTV, all companies engaged in interstate commerce); see also *Sommerset Manor, Inc.*, 170 NLRB 1647 (1968) ($1,800 indirect inflow more than *de minimis*); *Marty Levitt*, 171 NLRB 739 (1968) ($1,500 direct outflow more than *de minimis*); *Aurora City Lines, Inc.*, 130 NLRB 1137, 1138 (1961), enfd. 299 F.2d 229, 231 (7th Cir. 1962) ($2,000 direct inflow more than *de minimis*).

The Board's jurisdictional criteria do not literally require evidentiary data respecting any certain 12-month period of operation. *Reliable Roofing Co.*, 246 NLRB 716, 716 fn. 1 (1979) (citing *United Mine Workers of America, District 2 (Mercury Mining and Construction Corporation)*, 96 NLRB 1389, 1390-1391 (1951)). Rather, the 12-month period for asserting jurisdiction may be the most recent calendar or fiscal year preceding the unfair labor practice, or the 12-month period immediately preceding the hearing before the Board. *SAG-AFTRA New York*, 370 NLRB No. 14, slip op. at 2 (2020).

b. Discretionary Jurisdiction

In its exercise of administrative discretion, the Board has limited the assertion of its broad statutory jurisdiction to those cases which, in its opinion, have a substantial effect on commerce. This discretionary jurisdiction is established in different industries by adjudication by the Board or by the Board's exercise of formal rulemaking. The parties agree and I find that the proper discretionary standard to apply in the instant case is the standard applying to symphony orchestras noted above, at Rule 103.2.

At present, there does not appear to be a Board case pertaining to the portion of Rule 103.2 for "contributions which are because of limitations of the grantor not available for use for operating expenses." However, when the Board promulgated this standard in the Federal Register, it provided the following footnote:

> As reflected in the rule, this figure includes revenues from all sources, excepting only contributions which, because of limitations placed thereon by the grantor, are not available for operating expenses. These contributions encompassing, for example, contributions to an endowment fund or building fund, are excluded because of their generally nonrecurring nature [***] Income derived from investment of such funds will, however, be counted in determining whether the standard has been satisfied.

National Labor Relations Board, "Jurisdictional Standards Applicable to Symphony Orchestras", Federal Register 38, no. 44 (March 7, 1973): 6176, fn. 4 (internal citations omitted).

The Board addressed the issue of "non-recurring expenditures" in *Magic Mountain, Inc.* 123 NLRB 1170 (1959) (*Magic Mountain*). In *Magic Mountain*, the Board declined to count the receipt of goods used in the construction of a theme park towards asserting jurisdiction over an Employer that would be engaged only in the operation of the park upon completion. *Id* at 1170. In declining to assert jurisdiction, the Board emphasized that it based its decision on a distinction between the operations of an Employer and the "non-recurring capital expenditures" incurred by that Employer. *Id.*

2. Application of Board's Legal Standards

a. The Board has Statutory Jurisdiction Over the Employer

Neither party addressed nor reached a stipulation regarding the Board's statutory jurisdiction in this case. I will therefore determine the Board's statutory jurisdiction for this petition. The record contains evidence of the Employer's finances from 2021 to 2025. I will

analyze the period from July 1, 2023, to June 30, 2024, because it is the 12-month period closest to the filing of the petition and the opening of the hearing for which there is record evidence.[7]

The record does not establish the direct inflow or outflow of goods and services across state lines for the Employer during this 12-month period. The 2023-2024 statement of activity shows that the Employer paid over $15,000 in fees for use of its box office software. While the dollar amount here is sufficient to establish a more than *de minimis* effect on commerce, the record does not establish what company provides this service to the Employer, whether that company is located outside the state of Arizona, or whether that company is itself engaged in interstate commerce.

Similarly, the amount of income from "Merchandising" likely satisfies the *de minimis* standard, but the record does not reveal how much of this merchandise flowed across state lines. The same is true for "Recording & CD expenses," and for the consulting fees paid to the agent that helped the Employer with "Fund Development." Had the Employer substantially complied with the Board's subpoena, establishing each of these amounts would be a simple endeavor. Because the Employer cherry-picked which of the subpoenaed documents it would produce and offer into evidence, the task is more difficult with the limited documents the Employer offered that were admitted into the record. Reopening the record to get these subpoenaed documents produced and admitted into the record would also result in significant further delay, but thankfully, I find it unnecessary to do so.

As described in the facts above, I've taken administrative notice of the fact that the Employer received a $25,000 NEA grant in June 2024. This money was available for the Employer's use between June 2024 and May 2025. This money was granted by NEA, a federal agency, and was transferred across state lines. This NEA grant is sufficient to establish the Board's statutory jurisdiction for this petition. See *J. M. Abraham, M.D., supra.*

b. The Board's Discretionary Jurisdictional Standard is Met

Initially, I note that pursuant to Board Rules and Regulations §102.66(d), "a party shall be precluded" from raising or presenting evidence on the issue of discretionary jurisdiction in this proceeding because it "failed to raise [the issue] in its timely Statement of Position." 29 CFR 102.66(d). While statutory jurisdiction may be raised at any point, discretionary jurisdiction must be timely raised or is waived. *Anchortank, Inc*., 233 NLRB 295 (1977). I permitted the receipt of record evidence regarding the Employer's finances to appropriately establish the Board's statutory jurisdiction. However, to fully address the record evidence received on this issue, on a non-precedential basis, I will address discretionary jurisdiction under Rule 103.2.

The Employer argues that any of its revenue which was restricted in its use by the grantor to a specific project (such as a recording project) is not available for "operating expenses" and should not count towards the $1 million threshold described at Rule 103.2. The Employer argues

[7] The record shows that the Employer did not fully comply with the Board's subpoena *duces tecum* in this case, and at hearing, made an untimely petition to revoke the subpoena on the grounds that it was overbroad and unduly burdensome. The petition to revoke was denied, but the record does not reflect that any further documents were produced by the Employer beyond those the Employer offered and were admitted into the record.

that it is necessary to interpret the rule in this way to give meaning to each word in the rule, or else the phrase "available for operating expenses" would have just been drafted as "available for operations." According to the Employer, gifts restricted for use on a specific project are definitionally not for "operating expenses," even if that specific project resembles its everyday operations.

The Union argues that the revenues earmarked for use in recordings should be counted as "available for operating expenses" because, as stated in the Employer's mission statement, the Employer's operations revolve around the performance and recording of music. The Union contends that excluding revenue earmarked for recording projects would be as absurd as excluding contributions earmarked for producing live concerts: both are at the heart of the Employer's operations, and therefore appropriately constitute operating expenses. To contrast the limits placed on these recording funds, the Union concedes that any contributions made to the Employer's endowment are not available for operating expenses, because the principal of that endowment is unavailable to spend on the Employer's operations.

When the Board promulgated Rule 103.2, it specified that the exception in the rule applies to funds contributed to building funds and endowments because of their non-recurring nature and their unavailability for general use. The case cited by the Board in the footnote to this rule excluded as a "non-recurring capital expenditures" the construction of a facility, which is contrasted with the operation of that facility.

Based on the foregoing and the record as a whole, I find that the Employer's recording projects and other artistic initiatives are not "non-recurring capital expenditures," and contributions restricted to these projects and initiatives are not "unavailable for operating expenses" within the meaning of Rule 103.2. I find this because the record reflects that recording music is central to the Employer's operations. The record establishes that the Employer has created multiple commercial recordings and will likely continue to do so in the future.

The record also shows that most of the "restricted" money the Employer spent on these projects is allocated for the wages of the musicians and the production of the concert to be recorded. These costs are similar to the costs incurred while producing a concert as part of the Employer's regular season of performances (which the Employer concedes are "operating expenses"). Even those costs that pay for the audio engineers who record and mix the records are "operating expenses" because, again, the Employer has made recording a central and recurring part of its operations. This is true whether the earmarked funds were placed in the "recording" column or the "Taking Flight" column of the statement of activity, so long as those funds were used in the Employer's operations.

Accordingly, I will include any donations or grants whose use is restricted to recording towards the $1 million dollar threshold under Rule 103.2. Furthermore, I will similarly include any contribution to the "Taking Flight" campaign unless that contribution goes to the Employer's endowment.

Turning to the record evidence, the Form 990 for the 12-month period from July 1, 2023, to June 30, 2024, shows gross revenue of $1,184,504. The Statement of activity for the same period shows revenues of $1,183,066**.** The small difference between these figures does not change the outcome here. A campaign pledge form (Employer's Exhibit 21) suggests that the Employer received $10,000 to their endowment from one donor during this 12-month period.[8] I note that the pledge form does not establish receipt of those funds by the Employer during the stated time, but even if it did, the amount of the donation does not bring the total revenue for the year below $1,000,000. The record evidence shows that the income for this 12-month period is at least $1,173,000.

In conclusion, between July 1, 2023, and June 30, 2024, the Employer's gross annual revenue from all sources (excluding only contributions which are because of limitations by the grantor not available for use for operating expenses) exceeds the $1 million discretionary standard set forth at Rule 103.2. There is insufficient record evidence to show that any contributions which were unavailable for operating expenses dropped the Employer's total revenue below $1 million during this period. Therefore, based on the foregoing and the record as a whole, I find that the Board's discretionary jurisdictional standard at Rule 103.2 is satisfied.

3. Appropriate Unit

a. Legal Standard

Although not an issue raised by the parties, I will next address whether the petitioned-for unit is appropriate for collective bargaining. The Act does not require a petitioner to seek representation of employees in the most appropriate unit possible, but only in *an* appropriate unit. *Overnite Transportation Co*., 322 NLRB 723 (1996). Thus, the Board first determines whether the unit proposed by a petitioner is appropriate for the purposes of collective bargaining.

The Board has identified three fundamental elements that render the petitioned-for grouping of classifications appropriate: the petitioned-for unit must be (1) "homogeneous," (2) "identifiable," and (3) "separate" or "sufficiently distinct." *American Steel Construction*, 372 NLRB No. 23, slip op at 3-4 (2022).

The first element—that the unit be "homogeneous"— simply reflects the principle that petitioned-for employees must share a community of interest that renders the unit suitable for collective bargaining. *Id.* The Board has made clear that it will not approve fractured units; that is combinations of employees that have no rational basis. *Odwalla, Inc.,* 357 NLRB 1608 (2011); *Seaboard Marine,* 327 NLRB 556 (1999).

"A unit is not fractured simply because a larger unit might also be appropriate, or even more appropriate." *Macy's Inc.,* 361 NLRB 12, 22 (2014) (citing *Specialty Healthcare,* 357 NLRB 934, 942(2011)). The Board has found that while "a unit might be fractured if it is limited to the members of a classification working on a particular floor or shift," an entire department or classification can be an appropriate unit. *Id*. *See also Cristal USA, Inc.,* 365 NLRB No. 82 (2017)

[8] This form reflects a pledge to give $50,000 over five years, presumably with one payment falling between July 2023, and June 2024.

(finding petitioned-for unit of Plant 2 North production employees to be an appropriate unit where they "work in a plant separate from other production employees, have skills and specialized training specific to producing a particular chemical, and produce that chemical as a distinct part of the Employer's production process" and are commonly supervised by the Plant 2 North manufacturing superintendent); *DPI Secuprint, Inc.,* 362 NLRB 1407, 1410 at n.10 (2015) (finding unit of employees is appropriate despite being drawn from several departments if they are readily identifiable as a group and share a community of interest).

Traditional community of interest factors include: whether the employees sought by a union 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. *United Operations, Inc.,* 338 NLRB 123 (2002). All relevant factors must be weighed in determining community of interest.

The second element—that the unit be "identifiable"—is met where the unit employees can "logically and reasonably be segregated from other employees for the purposes of collective bargaining." *American Steel Construction*, 372 NLRB No. 23, slip op at 5 (2022). An important consideration is whether the employees sought are organized into a separate department or administrative grouping. Particularly important in considering whether the petitioned-for unit sought is appropriate are the organization of the plant and the utilization of skills. *Gustave Fisher, Inc.,* 256 NLRB 1069, 1069 n.5 (1981).

The third element—that the unit be "separate" or "sufficiently distinct"—recognizes that even if the petitioned-for unit exhibits a mutuality of interests and has some coherent organizing principle, it may nonetheless be inappropriate because it excludes employees who cannot rationally be separated from the petitioned-for employees on community of interest grounds. *American Steel Construction*, 372 NLRB No. 23, slip op at 5 (2022). When applying this element, the Board invalidates petitioned-for units where the petitioned-for employees have little-to-no separate identity from the excluded employees. *Id.*

Crucially, the Board has always made clear that the presence of *some* overlapping interests between the petitioned-for and excluded employees does not invalidate the petitioned-for unit, even if those overlapping interests indicate that a larger unit would also be appropriate for collective bargaining. *Id.* Instead, the excluded employees must share "strong," "substantial," "overwhelming," "significant," or extremely "close" interests with the petitioned-for employees to mandate inclusion. *Id.*

b. The Petitioned-For Unit is an Appropriate Unit

Applying the *American Steel* factors, I find that the petitioned-for unit is homogenous, identifiable, and sufficiently distinct.

The unit is homogenous because the employees in the unit share a community of interest. These instrumentalists share common training and job skills (orchestral instrumentation), they

share a job function, and their work is functionally integrated (one may even say *orchestrated*) in performing music to accompany the Employer's choir. These instrumentalists have frequent and regular contact with each other in rehearsals and performances. As the group of musicians who are only utilized in 10-15% of the Employer's productions, the orchestra musicians share a community of interest as part-time employees.

The unit is identifiable because the orchestra can be logically and reasonably separated from the choir for purposes of collective bargaining. The orchestra comprises a separate department from the choir, and the skills utilized by the orchestra musicians are distinct from those used by the choir musicians. The Employer clearly delineates its own operations along the line between the orchestra and the chorus.

The unit is sufficiently distinct because it does not impermissibly exclude any employees who cannot be excluded on rational community-of-basis grounds. The unit does not include any of the musicians in the choir, but these vocalists clearly have a distinct community of interest. Each employs related but distinct skill sets and is organized in different departments (orchestra versus choir). The choir is used in every production and recording produced by the Employer, while the orchestra only performs in a smaller percentage of these productions. This suggests a significant difference in hours available for work and shows a clear difference in the terms and conditions of employment for these two groups of musicians.

Based on these factors and the record as a whole, I find that the petitioned-for unit is an appropriate unit for collective bargaining. Accordingly, I will order an election, as detailed below.

III. Conclusion

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 a non-profit corporation doing business in Tucson, Arizona.

3. 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.[9]

4. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

[9] The record reflects and I find the following commerce facts: The Employer, True Concord Voices and Orchestra, Inc., an Arizona corporation with an office and place of business located in Tucson, Arizona, operates a choir and orchestra that provide musical performances to public audiences. During the 12-month period ending June 30, 2024, the Employer, in conducting its business operations described above, derived gross revenues in excess of $1,000,000 and purchased and received at its Tucson, Arizona, facility goods valued in excess of $5,000 directly from points outside the State of Arizona.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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

Included: All full-time and regular part-time orchestra musicians employed by the Employer out of its Tucson, Arizona facility.

Excluded: All other employees, choral musicians, office clerical employees, professional employees, managerial employees, confidential employees, and guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Tucson Federation of Musicians, AFM, Local 33.

A. Election Details

Both parties request that a mail ballot election should be held based on the intermittent schedules of the petitioned-for unit. 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 & Electri*c, 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.

Accordingly, pursuant to the parties' requests, since the petitioned-for unit is "scattered" in time with respect to its employees' schedules, I conclude that a mail ballot election is appropriate.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At **2:00 p.m. (Pacific Daylight Time) on Friday, April 10, 2026**, ballots will be mailed to voters from the National Labor Relations Board, Region 28. 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 17, 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).

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 28 office by close of business on **Friday, May 8, 2026**.

All ballots will be commingled and counted by an agent of Region 28 of the National Labor Relations Board on the earliest practicable date after the return date for mail ballots. In order to be valid and counted, the returned ballots must be received in the Regional Office prior to the counting of the ballots. The parties have also requested and I conclude that a ballot count by videoconference by Zoom for Government is appropriate. A reasonable period of time before the agreed-upon ballot count, the parties will be provided information by the assigned Board agent regarding how to participate in the ballot count by videoconference.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during two productions (live concerts or recording sessions) for a total of 5 working days over a 1-year period, or who have been employed by the Employer for at least 15 days over a 2-year period preceding the payroll period ending **March 1, 2026.** *Juilliard School*, 208 NLRB 153, 155 (1974).

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

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

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names (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 **Tuesday, March 31, 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.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 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.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 at Phoenix, Arizona this 27th day of March 2026.

/s/ Cornele A. Overstreet
Cornele A. Overstreet, Regional Director