

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

A+E FACTUAL PRODUCTIONS, LLC
Employer

and

WRITERS GUILD OF AMERICA, EAST
Petitioner

Case 02-RC-351933

and

ATRIUM STAFFING, LLC
Interested Party

DECISION AND ORDER

The Employer's and Interested Party's Requests for Review of the Regional Director's Decision and Direction of Election are granted, solely with respect to the Regional Director's determination that the Employer did not meet its burden of establishing that the disputed classifications are statutory supervisors. In their statements of position, both the Employer and the Interested Party asserted that certain classifications (i.e., co-executive producers, post supervising producers, supervising producers, and field supervisory producers) should be excluded from the unit (hereinafter "disputed classifications") because the individuals holding those positions are supervisors under Section 2(11) of the Act. At the hearing, the hearing officer informed the parties that the Regional Director had exercised his discretion under Section 102.64(a) of the Board's Rules and Regulations to defer litigation and determination of this issue to post-election proceedings, if necessary. The hearing officer advised the parties of the Regional Director's ruling during both the first and second dates of the hearing and indicated that the parties were not permitted to litigate whether the disputed classifications are supervisors.

Although the Regional Director permissibly exercised his discretion under Section 102.64(a) to defer the supervisory status issue to post-election proceedings,¹ he erred by then deciding the issue in his Decision and Direction of Election without having afforded the parties the opportunity to litigate that issue. Accordingly, the Regional Director's findings regarding the supervisory status of the disputed classifications are vacated and will have no preclusive effect in this or any other case.

¹ Member Mayer applies Sec. 102.64(a) as extant law in denying the Employer's Request for Review, and expresses no opinion on whether the policy that the Board set forth in that rule was correctly determined. In denying review of the Regional Director's finding that the Employer is a statutory employer of the unit employees under Sec. 2(2) of the Act, he relies solely on its exercise of direct control over employees' hiring, wages, and term of employment.

We further grant the Employer's request for extraordinary relief in a limited respect. We direct the Regional Director to segregate and impound the mail ballots cast by individuals in the disputed classifications. If, following the tally of ballots cast by employees in classifications that are not contested, the disputed ballots are found to be determinative and their status is not otherwise resolved, we direct the Regional Director to conduct a hearing in which the parties are permitted to fully litigate the issue of the disputed classifications' alleged supervisory status.

The Employer's and Interested Party's requests for review are denied in all other respects² and their requests for extraordinary relief (i.e., stay of the election or impoundment of all ballots) are also denied in all other respects.

JAMES R. MURPHY, CHAIRMAN

DAVID M. PROUTY, MEMBER

SCOTT A. MAYER, MEMBER

Dated, Washington, D.C., June 8, 2026.

² In denying review, we note that, although the Employer does not dispute the Regional Director's finding that the petitioned-for unit is appropriate based on community of interest factors, the Regional Director's characterization of the functional integration element was overly broad. Functional integration exists only where employees must work together and depend on one another to accomplish their tasks. See, e.g., *MV Transportation, Inc.*, 373 NLRB No. 8, slip op. at 5, fn. 24 (2023); *WideOpenWest Illinois, LLC*, 371 NLRB No. 107, slip op. at 7, fn. 16 (2022).