

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

FRIENDS OF THE NEW YORK TRANSIT MUSEUM

Employer

And

Case 29-UC-387687

**DISTRICT COUNCIL 37, AMERICAN FEDERATION
OF STATE, COUNTY & MUNICIPAL EMPLOYEES**

Petitioner

DECISION AND ORDER CLARIFYING BARGAINING UNIT

I. INTRODUCTION

On May 22, 2026,¹ District Council 37, American Federation of State, County, & Municipal Employees (Petitioner) filed the instant unit clarification petition (UC Petition) seeking to clarify an existing unit of certain employees employed by Friends of the New York Transit Museum (Employer) and represented by the Petitioner.

On March 3, the Petitioner filed a petition in Case No. 29-RC-382191 to represent a unit of Museum Educators, Senior Educators, Visitor Experience Facilitators, Family and Access Programs Assistant Managers, Birthday Experience Facilitators, Marketing Coordinators, Registrars, Rights and Repro Specialists, School Youth and Group Programs Coordinators, and Development Coordinators employed by the Employer.² On March 13, Region 29 of the National Labor Relations Board (the Board) approved the parties' stipulated election agreement whereby several classifications would be permitted to vote in the representation election subject to challenge. The pertinent challenged classifications were Family and Access Programs Assistant Manager, Registrar, Rights and Reproduction Specialist, Development Coordinator, and School Youth and Group Programs Coordinator.

On April 7, Region 29 of the Board certified the Petitioner as the collective-bargaining representative of employees in the following appropriate unit (the Unit):

INCLUDED: All full-time and regular part-time Education Associates; Museum Educators; Visitor Experience Facilitators; and Marketing Coordinators employed by the

¹ All dates are in 2026, unless otherwise noted.

² This petition was not introduced into the record, but I take administrative notice of it.

Employer at its 99 Schermerhorn Street, Brooklyn, NY, 11201, 130 Livingston Street, Brooklyn, NY 11201, and 882 Third Avenue, Brooklyn, NY 11232 facilities.

EXCLUDED: All Acting Directors; Principal Executive Secretaries; Development Directors; Assistant Directors of Education and Public Programs; Tour Guides; Senior Exhibits Managers; Curators; Senior Account Managers; Operation Managers; Assistant Deputy Directors of Retail Operations and Product Development; Senior Manager of Development; Public Program Manager; Exhibit Technician; Processing Archivist; Digital Archivist; Maintenance; Visitor Experience Manager; Retail E-Communications and Operations; Retail Assistant Managers; Retail Associates; Access Managers; Press and Marketing Managers, Digital Content Creator, and Content and Research Manager, office clerical employees, managerial employees, guards, technical employees, service and maintenance employees, confidential employees, supervisors as defined in the Act, and all other employees.

The Petitioner contends that the unit should be clarified to include the following employees (the Petitioned-For Unit):

1. Family and Access Programs Assistant Manager;
2. Registrar;
3. Rights and Reproduction Specialist;
4. Development Coordinator; and
5. School Youth and Group Programs Coordinator.³

The Employer maintains that these positions do not share a community of interest with the Unit. It further contends that the positions of Family and Access Programs Assistant Manager, Registrar, and School Youth and Group Programs Coordinator are supervisors under Section 2(11) of the National Labor Relations Act, as amended (the Act).⁴ Lastly, the Employer contends that the position of Development Coordinator is a confidential position.

On August 13, 18, and 19, a hearing officer of the Board held a hearing in this matter by videoconference. As explained below, based on the record and relevant Board law, I find that a question concerning representation exists and that the existing unit should be clarified to include the Family and Access Programs Assistant Managers and School Youth and Group Programs Coordinators and to exclude the Registrars, Rights and Reproduction Specialists, and the Development Coordinators.

II. FACTS

³ The UC Petition also requested that the positions of Birthday Experience Facilitator and Public Program Coordinator be included in the Unit. After filing the UC Petition, the Petitioner requested to withdraw these positions from inclusion in the Unit. In the Order Directing Hearing and Notice of Hearing, the Regional Director for Region 29 granted this request. As such, these positions will not be addressed in this Decision.

⁴ The Employer initially argued that the Rights and Reproduction Specialist was also a supervisor under Section 2(11) of the Act but conceded at the hearing that the position was not supervisory.

A. The Employer's Operations

The Employer is the New York Transit Museum's (Museum) nonprofit affiliate. The Museum tells and preserves the stories of mass transportation through the presentation of exhibitions, tours, educational programs, and workshops. The Museum is housed in a decommissioned subway station in Downtown Brooklyn but also has a gallery annex at Grand Central Terminal, an archive, an off-site storage facility, and office space across the street from the Museum.

The record evidence shows that Acting Director Regina Shepherd oversees the entire Museum operation.⁵ Several positions report directly to Shepherd. The relevant ones are the Assistant Deputy Director for Education and Public Programs, held by Amy Boyle, and the Registrar, which is currently vacant. There was a discrepancy at the hearing as to whom the Rights and Reproduction Specialist, which is also currently vacant, reports. Acting Director Shepherd testified that the Rights and Reproduction Specialist reports directly to the Registrar. Both the former Rights and Reproduction Specialist and the former Registrar testified that the Rights and Reproduction Specialist reports directly to Acting Director Shepherd. Neither the job posting for the Rights and Reproduction Specialist nor the job posting for the Registrar clarify the matter.

Several positions also report to Assistant Deputy Director for Education and Public Programs Boyle. The relevant one is the Manager of School Youth and Group Programs, held by Tyrone Santana-Copeland. Under him are Family and Access Programs Assistant Manager Kristi LiCausi, School and Youth Group Programs Coordinator Patricia Janick, Museum Educators, Birthday Experience Facilitators, and Costume Storytellers.

Development Coordinator James Helm reports to the Development Director. The record is silent as to whom the Development Director reports.

As for the positions in the existing Unit, the Museum Educators, as mentioned above, report to Manager of School Youth and Group Programs Santana-Copeland. The Visitor Experience Facilitators report to the Assistant Manager of Visitor Experience, who reports to the Operations Director. The record is silent as to the Marketing Coordinators' chain of command. There is some discrepancy as to whom the Education Associate, of which there is only one, reports. The job description for the Education Associate states that the position reports to the Family and Access Programs Assistant Manager. However, Family and Access Programs Assistant Manager Kristi LiCausi testified that the Education Associate does not report to her but instead reports to Manager of School Youth and Group Programs Santana-Copeland. This issue will be discussed in detail below as it relates to the supervisory status of the Family and Access Programs Assistant Manager.

Some positions occasionally act as the Manager on Duty. The Manager on Duty is a key holder for the Museum, meaning the person can open and close the Museum. The Manager on

⁵ The evidence is not entirely clear whether Acting Director Shepherd is the acting director of both the Museum and the Employer, but the evidence shows that she oversees operations ranging from letting people in the door of the Museum to fundraising.

Duty opens the Museum and turns on all exhibits; oversees the Visitor Experience frontline staff who handle the admissions booth and are stationed throughout the Museum to help visitors throughout the building and to provide security; opens and closes the admissions booth and reconciles the cash and credit card transactions at the admissions booth. The Manager on Duty is also responsible for making the decision to evacuate the building, call emergency services, and/or do whatever is needed to keep the visitors and staff safe in the event of an emergency; and is responsible for producing incident reports if anyone is injured at the Museum.

B. Family and Access Programs Assistant Manager

Kristi LiCausi is currently the only Family and Access Programs Assistant Manager. LiCausi develops and implements family programs at the Museum. She works with the Assistant Deputy Director for Education and Public Programs and the Manager of School Youth and Group Programs on the budget, including staying within the parameters of the budget, budget tracking, and meeting revenue goals set in the budget. The job description for the position states that it is “dedicated to the administration, development, and implementation of family and access programs which take place onsite and online at the [M]useum.”

Supervisory Factors

Family and Access Programs Assistant Manager LiCausi testified that she cannot hire, fire, promote, demote, or discipline employees, nor can she effectively recommend these actions. She testified that she does not consult in hiring decisions.

LiCausi schedules Museum Educators for shifts in family programs and access programs. She does this by slotting Museum Educators into open program shifts based on their availability. The Manager of School Youth and Group Programs, not LiCausi, handles time off approvals for Museum Educators and makes the final determination as to their schedules. Further, the Manager of School Youth and Group Programs determines the number of Museum Educators needed for family programs.

There is evidence showing that LiCausi met with the Assistant Deputy Director for Education and Public Programs, the Manager of School Youth and Group Programs, and the Education Associate to discuss and confirm the Education Associate’s weekly shift schedule. On one Saturday, the Education Associate emailed LiCausi and copied Manager of School Youth and Group Programs Santana-Copeland and School Youth Group Programs Coordinator Janick. He stated that he was scheduled to work that day but that he had worked the previous Saturday. Since he normally only works every other Saturday, he asked if there was a mistake in scheduling. LiCausi responded within three minutes and stated that it had been a mistake but that if he wanted to work since he was scheduled, he was welcome to do so but if he did not work, that was completely fine, too. Santana-Copeland was out of the office that day, so LiCausi made the decision to allow the Education Associate to work or not. LiCausi testified that she did so because the Education Associate has set days that he works and that the schedule was just an administrative mistake that she was correcting.

Family and Access Programs Assistant Manager LiCausi serves as the Manager on Duty as needed, although LiCausi testified she has never done so when the Acting Director or the Manager of School Youth and Group Programs was not also at the Museum to provide consultation to her.

There was a discrepancy as to whether the part-time Education Associate, Jason Weitz, reports to Family and Access Programs Assistant Manager LiCausi or to Manager of School Youth and Group Programs Tyrone Santana-Copeland. The Assistant Deputy Director for Education and Public Programs testified that Weitz is LiCausi's "direct report" and that LiCausi schedules his shifts, assigns him tasks, and meets with him to check in on how things are going. LiCausi testified that she is not responsible for Weitz's work and that he receives tasks from numerous people, including those in public programs, the Manager of School Youth and Group Programs, and Museum Educators. Further, Weitz will request tasks from other people since his unstructured days mean he is often looking for ways to be helpful. If he needs to call out of work, he will contact Manager of School Youth and Group Programs Santana-Copeland. The job description of the Education Associate from October 2025 states that the position reports to the Assistant Manager of Family and Access Programs. According to the Assistant Deputy Director for Education and Public Programs, LiCausi cannot terminate or discipline Weitz, but she could recommend such action to the Assistant Deputy Director for Education and Public Programs and the Manager of School Youth and Group Programs. LiCausi's recommendation would be a "major factor" in any such decision.

LiCausi was involved when the Education Associate's position description was being updated but does not recall any specific suggestions she gave. She testified she was fairly new to the Employer at the time this occurred and that she defers to Manager of School Youth and Group Programs Santana-Copeland.

The job description for the Family and Access Programs Assistant Manager, posted in February 2025, does not mention supervising the Education Associate or any other position. It does not indicate an ability to hire, fire, or discipline employees. It does state that the position will act "on occasion" as the Manager on Duty, which serves "as supervisor across the Museum."

The Assistant Deputy Director for Education and Public Programs also testified that Family and Access Programs Assistant Manager LiCausi is involved in discussions around Museum Educators' work, evaluates their work, provides feedback to them, is involved in hiring them, and is involved in training them. The only evidence of Family and Access Programs Assistant Manager LiCausi exercising these responsibilities was that on one occasion, LiCausi emailed two Museum Educators, copying Manager of School Youth and Group Programs Santana-Copeland, asking if they would prefer to go into work early the next day or stay late on another day to prepare and plan for a Transit Tots event. This was necessary because the Museum Educators did not have availability that lined up with each other while they were at the Museum, so LiCausi had not been able to discuss with the Museum Educators what they were going to do for the program or what preparation was necessary. These extra hours for the Museum Educators were to be paid. LiCausi testified that Santana-Copeland has said that if there were shifts that Museum Educators needed, LiCausi could go ahead and schedule them. She also testified that the training of Museum

Educators for this Transit Tots event was more of a chance for the Museum Educators to demonstrate the Transit Tots program and run through it, not an opportunity for LiCausi to train the Museum Educators on how to perform their jobs.

Acting Director Regina Shepherd testified cursorily that LiCausi supervises Tour Guides and Visitor Experience Facilitators.⁶ There was no further testimony about LiCausi's alleged supervision of these positions.

Community of Interest

There was limited record evidence concerning Family and Access Programs Assistant Manager LiCausi's community of interest with positions in the Unit. LiCausi does not have the same kind of rate of pay,⁷ benefit plans, or health plans as those in the Unit. She does not do similar tasks as those in the Unit. Her position requires a higher level of skills than those in the Unit, and they do not share tasks. LiCausi can work remotely one day per week, but those in the Unit cannot. She works in an office in the Museum with cubicles set up for her, Manager of School Youth and Group Programs Santana-Copeland, School Youth Group Programs Coordinator Janick, and Special Education and Access Manager Sarah Thompson. LiCausi frequently encounters the Visitor Experience team and works with the Education employees. Acting Director Shepherd testified that LiCausi fills in for Tour Guides and Visitor Experience Facilitators if someone is absent. All employees of the Employer are paid through a payroll software called TriNet.

C. Registrar

The position of Registrar is currently vacant.⁸ The position was previously held by Elsie Winks.

The Registrar is in charge of all items in the Museum's collection. There are about one million objects in the collection, and the Registrar is in charge of processing the items, bringing them in, caring for them, making sure the climate control works, and upholding any legal obligation to care for the items. The Registrar works across all of the Museum's locations and deals with incoming and external loans.

Supervisory Factors

⁶ The transcript intermittently refers to "vets" and "VEX." Because there is no position at issue with a title close to "vets," but there are Visitor Experience Facilitators, something that could be shortened to "VEX," I will assume references to "vets" should be references to Visitor Experience Facilitators.

⁷ The record does not contain specific evidence about the rates of pay for most of the employees in the Petitioned-for Unit. The only pay rate provided in the record was that of the Rights and Reproduction Specialist

⁸ Neither party raised the vacancy of this position as grounds for not making a determination on its inclusion or exclusion. The position became vacant in about June 2026, after the Petition was filed but before the hearing. This situation is analogous to that in *National Association for the Advancement of Colored People*, 241 NLRB 430 (1979), where the Board made a determination on a position's inclusion when that position had been vacant for about five months at the time of the hearing.

There was a discrepancy as to whether the Rights and Reproduction Specialist reports to the Registrar or to the Acting Director. The Acting Director testified that the position reports to the Registrar. The former Rights and Reproduction Specialist testified that she reported to the Acting Director when she was the Rights and Reproduction Specialist. Winks testified that the Rights and Reproduction Specialist did not report to the Registrar. Winks did, however, help draft the job description for the Rights and Reproduction Specialist at the behest of the former Director of the Museum. Winks also sat in on the first round of interviews. The former Director had the final say on the job description and on who was hired.

Winks testified she could give input about firing someone that would be taken into account but that the final decision was not hers. Winks testified she could not promote, demote, or discipline employees.

The former Registrar did supervise a temporary, contract Processing Archivist, a position specifically excluded from the Unit, and a temporary, independent contractor Project Archivist. While Winks was supervising these positions, she received a pay bump of 10%. Once those temporary employees left, Winks's pay returned to normal. Prior to Winks, the Project Archivist was supervised by the Digital Archivist, who left the Museum. The Processing Archivist was supervised by the Director or the Acting Director before Winks took on that duty. A Collections Manager typically would have supervised the Processing Archivist and the Project Archivist, but that position was vacant.

When the contract for the Processing Archivist came up for renewal, Winks recommended not renewing it, so the contract was not renewed. Winks testified that she recommended not renewing the contract because the amount of work it took to supervise the position was not something she could do with her workload. Winks testified she did not feel like the decision was hers and that she just provided her input.

Winks also supervised temporary, independent contractor Digitization Technician/Archives Technician Sara Avila. Avila worked at the Museum for about six weeks packing up items in a malfunctioning cold storage unit and scanning negatives that were deteriorating. Winks asked her friend Avila to take the position. The hiring of Avila was "signed off by" Winks's supervisor, Acting Director Shepherd. Winks accepted Avila's invoices and recommended to the Acting Director that they be paid. Winks decided how many hours the job should take. Winks suggested to the Acting Director how much the position should pay per hour, and the Acting Director added \$2.00 per hour to Winks's suggested rate.

Winks was trained as a Manager on Duty as an emergency backup although she never performed those tasks.

Community of Interest

Again, there was limited testimony concerning the Registrar's community of interest with positions in the Unit. The Registrar does not have the same kind of rate of pay or benefit plans as

those in the Unit. The Registrar does not do similar tasks or report to the same people as those in the Unit. The positions do not share tasks. They interact collegially but not for work purposes. The Registrar can work remotely one day per week. While Winks worked in several locations, she testified she was in the Museum fairly regularly to check on the temperature, environment, and status of the objects in the Museum. She had the most face-to-face time while in the Museum with the curatorial team, who are not in the Unit, in their office where there was a desk designated for the Registrar. Winks also always tried to have employees use the archives as part of their jobs and tried to have a more open line of communication to facilitate that.

D. Rights and Reproduction Specialist

As stated above, the Employer conceded at the hearing that this position is not supervisory. However, the Employer maintain that this position does not share a community of interest with the Unit.

The position of Rights and Reproduction Specialist is currently vacant.⁹ The position was previously held by Ashley Swinnerton, who is now the Acting Collection Manager.

The Rights and Reproduction Specialist looks at the Museum's collection and helps to monetize its usage through both the Metropolitan Transportation Authority and others who want to use the Museum's photographs and works with those people to execute the legal agreements around that usage, works with owners of intellectual property if the Museum wants to use someone else's work, digitizes collections materials, researches collection items to determine details, catalogues records in the collections database, and does outreach activities such as giving tours of the archive.

The Rights and Reproduction Specialist does not have the same kind of rate of pay or benefit plans as those in the Unit. The position receives a 401(k) and health benefits. The Rights and Reproduction Specialist does not do similar tasks or report to the same people as those in the Unit. The positions do not share tasks. Like the Registrar, the Rights and Reproduction Specialist interacts collegially with people in the Unit but not for work purposes. The Rights and Reproduction Specialist can work remotely one day per week. The Rights and Reproduction Specialist works in multiple places, much like the Registrar, although the position primarily works in the archive space, which is located in the basement of the office building across the street from the Museum.

Former Rights and Reproduction Specialist Swinnerton testified that her work did not really impact employees who worked at the Museum. Her work impacted what went on the walls of the Museum and how the Museum uses the collection materials. Swinnerton testified that her work affected the curator and the exhibits team, which then fed to the front-of-house staff and their interpretation of the materials when they give tours or hold programs at the Museum. Swinnerton testified that she worked primarily with the Content and Research Manager, the Registrar, and the Curator.

⁹ See fn. 5, above. This position has also been vacant since about June 2026.

E. Development Coordinator

James Helm is the only Development Coordinator. He reports to the Development Director.

Helm works in a cubicle in the office space across the street from the Museum. Others in the office include the Acting Director, the Senior Accountant, the marketing team, the fundraising team, and some people working on public programs.

Helm generally works on fundraising. He works with donors, especially the Museum's members. He is a frontline person who picks up phone calls and answers emails. He also assembles reporting information, such that he has access to confidential information such as budgets, employee salaries, contact information of donors, and giving history. Helm works with trustees and Board members directly and is part of the development committee meetings that occur monthly.

The Acting Director testified that Helm determines which positions can be filled and the salaries for those positions based on the budget of particular grants. He is not involved in hiring. There are budget lines that allow for a certain number of people, a certain kind of staff at a certain salary, and Helm advises senior management what is available in those budgets.

The job description for the Development Coordinator does not mention creating any sort of labor relations policy. The testimonial evidence did not show that the Development Coordinator has knowledge of the Employer's formulation, determination, or effectuation of management policies in the field of labor relations.

Again, there was limited testimony concerning the Development Coordinator's community of interest with positions in the Unit. The Acting Director testified that the Development Coordinator is like the Registrar in that he works separately, in a different space, has a different workload, and does not have interplay with the tasks of those in the Unit. He does not share workspace, wages, retirement plans, or benefits with those in the Unit. He can work remotely one day per week.

F. School Youth and Group Programs Coordinator

Patricia Janick is the only School Youth and Group Programs Coordinator. She reports to Manager of School Youth and Group Programs Santana-Copeland. She schedules and tracks part-time Museum Educator shifts for all school and group tour programs at the Museum. She ensures that shifts are distributed equitably in accordance with the availability of the part-time Museum Educators. Assistant Deputy Director for Education and Public Programs Boyle testified that Janick is heavily involved in the management of the part-time Museum Educators, including the hiring process, reviewing resumes, participating in all interviews for those positions, making recommendations about who should be hired, evaluating, and training. The School Youth and Group Programs Coordinator leads morning meetings with all Museum Educators to review what is occurring that day, to review what locations different tours will be in, and to troubleshoot any

concerns. Janick also leads a debrief meeting with the Museum Educators to talk through any issues that arose that day. Janick also books and schedules all of the group visits to the Museum, which includes managing credit card payments or the invoicing process.

Janick testified that when she schedules the group tours, she bases the assigned Museum Educator on availability and their expertise, such as whether they can lead a special education program. This happens in consultation with Manager of School Youth and Group Programs Santana-Copeland and Access and Special Ed Manager Sarah Thompson. She will also occasionally ask the Museum Educators to complete tasks such as helping cut out Metro cards for an art activity on a tour.

Like the Family and Access Programs Assistant Manager, Janick testified that she recommends the scheduling of Museum Educators and presents it to the Manager of School Youth and Group Programs for his final approval.

Janick evaluates Museum Educators by taking their tours and filling out a five-page Museum Educator Group Tour Observation Form. Prior to April 2026, two people would do these evaluations to get two perspectives. However, in April 2026, Janick was the only one doing evaluations for at least two of the employees. Janick testified this was because the time of year was busy and there were scheduling issues with having two evaluators, so instead, Janick, the Access and Special Education Programs Manager, Assistant Deputy Director for Education and Public Programs Boyle, and Manager of School Youth and Group Programs Santana-Copeland divided the evaluations based on availability and equally executed observations of Museum Educators. Janick testified that she does not know if any further action comes from her observation forms and that she is not sure that employees have performance evaluations. Assistant Deputy Director for Education and Public Programs Boyle testified that the evaluations would be taken into consideration but would not be the final determination as to whether someone remains in good standing in order to receive a pay increase.

When the Employer posted jobs for Museum Educators, Santana-Copeland asked Janick to download all of the application materials and put them in a shared folder. As she was doing so, Janick went through the resumes and made a spreadsheet with the names of applicants and whether they applied with a cover letter and résumé. If something stood out about the applicant, such as being bilingual or having prior museum experience, she would make a note. She also marked some applicants as a no for interviews because there were noticeable defects with their applications, such as no résumé or no related experience. She specified that she went through the documents quickly so the notes were just initial insights. In an email to Santana-Copeland and Boyle, Janick wrote that she had made note of a few standouts that she thought should be brought in for interviews. However, after Janick's initial review, the managers would independently review the applications and would change the applicants' statuses to yes to an interview or no to an interview.

Janick then participated in all of the interviews for the Museum Educator position. She and Manager of School Youth and Group Programs Santana-Copeland made recommendations to Assistant Deputy Director for Education and Public Programs Boyle regarding who they felt was best to hire. They also checked references for the candidates. Janick testified that after the

interviews, there were times when her recommendation and Santana-Copeland's recommendation differed. Ultimately, Santana-Copeland's recommendation would go through. He would listen to Janick, but there were occasions when Janick really supported a candidate or was not as excited about a candidate, and Santana-Copeland would make the opposite decision regardless.

The job description for the School Youth and Group Programs Coordinator does not mention the ability to hire, fire, or promote employees. Janick testified she cannot fire, promote, demote, or discipline employees. She testified she can have a conversation with her manager, Santana-Copeland, and say that someone needs to be disciplined, but whether or not that happens is up to Santana-Copeland and Boyle.

There was limited testimony concerning School Youth and Group Programs Coordinator Janick's community of interest with positions in the Unit. She does not have the same kind of rate of pay, health plans, or retirement plans as those in the Unit. She does not do similar tasks as those in the Unit. Her position requires a higher level of skills than those in the Unit, and they do not share tasks. Janick can work remotely one day per week. She does interact with employees in the Unit, and they work in the same space since the bulk of Janick's work takes place in the Museum. She works in an office in the Museum with cubicles set up for her, Manager of School Youth and Group Programs Santana-Copeland, Family and Access Programs Assistant Manager LiCausi, and Special Education and Access Manager Sarah Thompson.

III. BOARD LAW

A. Unit Clarification Petitions

The Board recently clarified the standard to use in situations like the present one:

[W]hen a unit clarification petition seeks to resolve the unit placement of a classification that voted subject to challenge, but whose placement was unnecessary to resolve prior to the issuance of the certification of representative, the applicable standard is the same standard that would have been applied had the issue been litigated prior to the underlying election.

MV Transportation, Inc., 373 NLRB No. 8, slip op. at 6 (2023).

B. Supervisors

The Act expressly excludes supervisors from its definition of *employee*. Section 2(11) of the Act defines a supervisor as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such

authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The three requirements to establish supervisory status are that the putative supervisor possesses one or more of the above supervisory functions; uses independent, rather than routine or clerical, judgment in exercising that authority; and holds that authority in the interest of the Employer. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 712-13 (2001) (citing *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-74 (1994)).

Supervisory status may be shown if the alleged supervisor has the authority either to perform a supervisory function or to effectively recommend the same. The statutory definition of a supervisor is read in the disjunctive. Possession of any one of the enumerated powers, if accompanied by independent judgment and exercised in the interest of the employer, is sufficient to confer supervisory status. *Kentucky River*, above at 713. Supervisory status may likewise be established if the individual in question has the authority to effectively recommend one of the powers, but effective recommendation requires the absence of an independent investigation by superiors. *Children's Farm Home*, 324 NLRB 61, 65 (1997).

If such authority is used sporadically, the putative supervisor will not be deemed a statutory supervisor. *Coral Harbor Rehabilitation and Nursing Center*, 366 NLRB No. 75, slip op. at 17 (2018). The supervisor must at least act or effectively recommend such action “without control of others and form an opinion or evaluation by discerning and comparing data.” *Oakwood Healthcare, Inc.*, 348 NLRB 686, 692-93 (2006). Judgment is not independent when the putative supervisor follows detailed instructions (e.g., policies, rules, collective-bargaining agreement requirements). *Id.* at 693. To be independent, “the judgment must involve a degree of discretion that rises above the ‘routine or clerical.’” *Id.* at 693 (citing *J.C. Brock Corp.*, 314 NLRB 157, 158 (1994) (quoting *Bowne of Houston*, 280 NLRB 1222, 1223 (1986) (finding that “the exercise of some ‘supervisory authority’ in a routine, clerical, perfunctory, or sporadic manner does not confer supervisory status”))). If a choice is obvious, the judgment is not independent. *Oakwood Healthcare*, above at 693. However, the mere existence of company policies does not eliminate the possibility of independent judgment if the policies allow for discretionary choices. *Id.* When putative supervisors consider the skills or special training of available personnel, the assignment of work involves the exercise of independent judgment. *Id.*

The Board has an obligation not to construe the statutory language too broadly because the individual found to be a supervisor is denied the employee rights that are protected under the Act. *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006); *Oakwood Healthcare*, above at 687.

Indicia other than those enumerated in Section 2(11) of the Act are secondary indicia. Although secondary indicia may be considered in determining supervisory issues, they are not dispositive. In the absence of one of the enumerated primary indicia, secondary indicia, standing alone, are insufficient to establish supervisory status. *St. Francis Medical Center-West*, 323 NLRB 1046, 1047 (1997). However, “[w]here the possession of any one of the powers listed in Section 2(11) is not conclusively established, the Board looks to secondary indicia to determine supervisory status. *Sam's Club*, 349 NLRB 1007, 1014 (2007).

Secondary indicia of supervisory status include, but are not limited to, the individual's designation as a supervisor, attendance at supervisory meetings, receipt of management memos, responsibility for a shift or phase of the employer's operation, authority to grant time off to other employees, responsibility for inspecting the work of others, responsibility for reporting rule infractions, receipt of privileges exclusive to members of management, and compensation at a rate higher than the employees supervised. The ratio of supervisors to employees is also a secondary indicator of supervisory status. See *Sheraton Universal Hotel*, 350 NLRB 1114, 1118 (2007); *Flexi-Van Service Center*, 228 NLRB 956, 960 (1977).

The party asserting supervisory status has the burden of proving supervisory authority and must establish it by a preponderance of the evidence. *Kentucky River*, above at 711; *Oakwood Healthcare*, above at 687. The lack of evidence is construed against the party asserting supervisory status. *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1047-48 (2003). In addition, purely general and conclusory evidence is insufficient to establish supervisory status. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006); *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004). Similarly, supervisory status is not demonstrated when the evidence is in conflict or inconclusive. *Entergy Mississippi, Inc.*, 367 NLRB No. 109, slip op. at 2-3 (2019), affd. *International Brotherhood of Electrical Workers, AFL-CIO, CLC, Local Unions 605 and 985 v. National Labor Relations Board*, 973 F.3d 451 (5th Cir. 2020).

"[J]ob descriptions, job titles, and similar 'paper authority,' without more, do not demonstrate supervisory authority." *G4S Regulated Security Solutions*, 362 NLRB 1072, 1073 (2015) (citing *Lucky Cab Co.*, 360 NLRB 271, 272 (2014), and *Golden Crest Health Center*, above at 731 (2006)).

Lastly, Board precedent is clear that to qualify as a supervisor under Section 2(11) of the Act, the putative supervisor "must exercise supervisory authority over employees of the employer at issue, and not employees of another employer." *Franklin Hospital Medical Center*, 337 NLRB 826, 826 (quoting *Crenulated Co.*, 308 NLRB 1216 (1992)); see also *Fleet Transport Co.*, 196 NLRB 436 (1972) (driver-trainer effectively recommended the hiring of drivers who were all either independent contractors or the employees of independent contractors); *Fordham University*, 193 NLRB 134 (1971) (faculty members directly employed researchers to work on grants); *Westinghouse Electric Corp.*, 163 NLRB 723 (1967) (steam engineers had authority over workmen employed by Employer's customers); *El Mundo, Inc.*, 167 NLRB 760 (1967) (newspaper dealers hired their own carrier boys); *Eureka Newspapers, Inc.*, 154 NLRB 1181 (1965) (same).

C. Confidential Employees

The Board uses a "labor nexus" test, approved by the Supreme Court in *NLRB v. Hendricks County Rural Electric Membership Corp.*, 454 U.S. 170, 176 (1981), to determine if employees are confidential. Confidential employees "assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations." *Lincoln Park Nursing Home*, 318 NLRB 1160, 1164 (1995); see also *Bakersfield Californian*, 316 NLRB 1211 (1995); *B.F. Goodrich Co.*, 115 NLRB 722, 724 (1956).

Merely having access to files such as records of grievances does not establish confidential status. *Lincoln Park Nursing Home*, above at 1164. Even typing disciplinary matters, grievances, or other personnel documents does not make employees confidential. *Id.*

D. Community of Interest

In determining whether employees share a community of interest, the Board considers the following factors:

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.

United Operations, Inc., 338 NLRB 123, 123 (2002)

IV. APPLICATION OF BOARD LAW TO THE FACTS OF THIS CASE

A. Family and Access Programs Assistant Managers Should Be Included in the Unit

1. Family and Access Programs Assistant Managers Are Not Supervisors

The Family and Access Programs Assistant Manager schedules Museum Educators by putting them into open slots based on their availability; such schedules are subject to final approval by the Manager of School Youth and Group Programs. The Family and Access Programs Assistant Manager does not handle time off requests or even determine the number of Museum Educators needed for each day or shift. The Family and Access Programs Assistant Manager does not hire, fire, promote, demote, or discipline employees, nor can she effectively recommend these actions.

The evidence concerning the Family and Access Programs Assistant Manager's oversight of the part-time Education Associate was contradictory, and ultimately, the Employer did not meet its burden concerning the position's supervisory status. The fact that the position is listed on the part-time Education Associate's job description as that position's supervisor is just "paper authority" and is insufficient to determine supervisory status.

I find that the Family and Access Programs Assistant Manager is not a supervisor under the Act.

2. Family and Access Programs Assistant Managers Share a Community of Interest with the Unit

There was some limited testimony that the Family and Access Programs Assistant Manager does not have the same kind of rate of pay, benefit plans, or health plans as those in the Unit and that she does not do similar tasks as those in the Unit, and has a higher level of skills than those in the Unit. These statements were not proven with any documentary evidence or other specific details about benefits or health plans that either the Family and Access Programs Assistant Manager or the Unit can access.

However, the Family and Access Programs Assistant Manager works in the Museum, encounters the Visitor Experience team, and works with the Education employees. She also fills in for Visitor Experience Facilitators if there is a call out. She reports to the same manager as the Museum Educators, who are in the Unit. She is functionally integrated with the employees in the Unit as she develops family and access programs that Museum Educators present to the public.

The evidence is sufficient to show that the Family and Access Programs Assistant Manager shares a community of interest with the Unit.

Accordingly, I find that the Family and Access Programs Assistant Managers should be included in the Unit.

B. Registrars Should Not Be Included in the Unit

1. Registrars Are Not Supervisors

There was no conclusive evidence that the Registrar supervised anyone in the Unit. The Registrar supervised a few independent contractor employees at one time, none of whom were directly employed by the Employer.

The discrepancy in testimony as to whether the Rights and Reproduction Specialist reports to the Registrar or the Acting Director must be resolved against the Employer who has the burden. There was no direct evidence about the Registrar's purported supervision of the Rights and Reproduction Specialist other than the Registrar sitting in on the first round of interviews but not making a final hiring decision. There was no other evidence showing the Registrar has any supervisory indicia over any other positions.

I find that the Registrar is not a supervisor under the Act.

2. Registrars Do Not Share a Community of Interest with the Unit

The evidence showed little contact with employees in the Unit and no interchange with them. The Registrar's tasks are different than those assigned to those in the Unit. Again, there was some cursory testimony regarding the different rates of pay and benefit plans. The Registrar's work locations varied, and the former Registrar testified that while she had a designated desk in the curatorial office in the back of the Museum, she did not use it very often. She does share a supervisor with employees in the Unit, but does not interchange with them.

The evidence showed that the Registrar does not share a community of interest with the Unit.

Accordingly, I find that Registrars should not be included in the Unit.

C. Rights and Reproduction Specialists Should Not Be Included in the Unit

The only issue concerning the Rights and Reproduction Specialist was whether the position shares a community of interest with those in the Unit.

The evidence showed little contact with employees in the Unit and no interchange with them. The Rights and Reproduction Specialist's tasks are different than those assigned to those in the Unit, and the work does not impact Unit employees. Again, there was some cursory testimony regarding the different rates of pay and benefit plans. The Rights and Reproduction Specialist's work locations varied, with the employee in the position mainly working in the archive space in the office building across the street from the Museum. The Rights and Reproduction Specialist does not share a supervisor with those in the Unit.

The evidence showed that the Rights and Reproduction Specialist does not share a community of interest with the Unit.

Accordingly, I find that the Rights and Reproduction Specialists should not be included in the Unit.

D. Development Coordinators Should Not Be Included in the Unit

1. Development Coordinators are Not Confidential Employees

The evidence showed that the Development Coordinator handles information the Employer believes to be confidential, such as donor information, employee salary information, and budgets. However, the Development Coordinator does not assist in the formulation, determination, or effectuation of labor relations.

As such, I find that the Development Coordinator is not a confidential employee under the Act.

2. Development Coordinators Do Not Share a Community of Interest with the Unit

The Development Coordinator works in the office space across the street from the Museum. He sits with the Acting Director and other positions that are not in the Unit. The Development Coordinator's work is part of a separate workflow in that he is concerned with fundraising and associated tasks rather than visitors' experiences at the Museum. He has different wages, retirement plans, and benefits than those in the Unit. His line of supervision is different than those in the Unit, and he does not interchange with them.

The evidence showed that the Development Coordinator does not share a community of interest with the Unit.

Accordingly, I find that Development Coordinators should not be included in the Unit.

E. School Youth and Group Programs Coordinators Should Be Included in the Unit

1. School Youth and Group Programs Coordinators Are Not Supervisors

The School Youth and Group Programs Coordinator makes schedules based on Museum Educators' availability and on their expertise. The Manager of School Youth and Group Programs has final say over the schedules.

The School Youth and Group Programs Coordinator did an initial, cursory review of application packets for the Museum Educator position. She noted if applicants had provided complete applications or if they had, or lacked, relevant experience. There is no evidence that these notations were the final review of the specified applicants. In fact, the Assistant Deputy Director for Education and Public Programs testified that whoever was making the final determinations about interviews could still review any of the applications.

While the School Youth and Group Programs Coordinator did sit in on interviews, she made recommendations about hiring that were overruled by the Manager of School Youth and Group Programs. There were times when their recommendations differed, and the manager's recommendation would go to the Assistant Deputy Director for Education and Public Programs.

There was quite a bit of evidence and testimony about observation forms the School Youth and Group Programs Coordinator completed for two employees. While the evaluations may have been taken into consideration as to whether the employees remained in good standing in order to receive a pay increase, they are not the final determination for such decisions. This is similar to the situation in *Hausner Hard-Chrome of KY, Inc.*, 326 NLRB 426 (1998), where the Board found that the evaluation authority at issue was insufficient to support a finding of Section 2(11) status. There, the employees had forms with a list of 17 skill categories with five rating levels from Unsatisfactory to Outstanding. The employees at issue circled ratings and wrote comments, then the forms were shown to the plant manager before they were shown to employees. The plant manager would consider the evaluations in determining whether to give raises or promotions, but there was no evidence that the evaluations affected his decisions in those matters in any direct or systematic way. *Id.* at 427. Here, the School Youth and Group Programs Coordinator fills out a similar form then meets with the employee and the Manager of School Youth and Group Programs. The observation forms were potentially a small part in decisions about employees' standing and potential pay raises, but they were not the final determining factor.

I find that the School Youth and Group Programs Coordinator is not a supervisor under the Act.

2. School Youth and Group Programs Coordinators Share a Community of Interest with the Unit

While the School Youth and Group Programs Coordinator does not have the same kind of rate of pay, health plans, or retirement plans as those in the Unit, she interacts with employees in the Unit, and they work in the same location and have quite a bit of interaction related to their work. They share a supervisor in Manager of School Youth and Group Programs Santana-Copeland.

The evidence was enough to show that the School Youth and Group Programs Coordinator shares a community of interest with the Unit.

Accordingly, I find that the School Youth and Group Programs Coordinators should be included in the Unit.

V. CONCLUSION

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the Board. Based upon the entire record in this matter and in accordance with the discussion above, I am clarifying the unit to include the Family and Access Programs Assistant Managers and School Youth and Group Programs Coordinators and to exclude the Registrars, Rights and Reproduction Specialists, and the Development Coordinators. I 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,¹⁰ and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer/Petitioner within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

ORDER

¹⁰ The parties stipulated in their Stipulated Election Agreement to the following commerce facts:

The Employer is a New York corporation, a transportation museum, with places of business at 99 Schermerhorn Street, Brooklyn, NY, 11201, 130 Livingston Street, Brooklyn, NY 11201, and 882 Third Avenue, Brooklyn, NY 11232 the only facilities involved herein. During the preceding twelve months, the Employer, in the course and conduct of its business operations described above, derived gross revenues in excess of \$1,000,000, and it purchased and received at its Brooklyn, New York facilities goods and materials valued in excess of \$5,000 directly from suppliers located outside the State of New York

IT IS HEREBY ORDERED that the petition for unit clarification is granted in part. The existing bargaining unit shall include the Family and Access Programs Assistant Managers and School Youth and Group Programs Coordinators and shall exclude the Registrars, Rights and Reproduction Specialists, and the Development Coordinators.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

Procedures for Filing Request for Review: Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#).

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business **(5 p.m. Eastern Time) on November 4, 2026**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on November 4, 2026**.

Filing a request for review electronically may be accomplished 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. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Direction and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in §102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to §102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Dated: October 21, 2026



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