

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

THE NEW YORK TIMES COMPANY

Employer

and

Case 02-RC-280769

**THE NEWSGUILD OF NEW YORK, LOCAL
31003, TNG/CWA**

Petitioner

DECISION AND DIRECTION OF ELECTION

On August 2, 2021,¹ the NewsGuild of New York, Local 31003, TNG/CWA (Petitioner) filed a petition to represent certain employees of The New York Times Company (Employer). The Petitioner seeks a bargaining unit (the petitioned-for unit) that includes all full-time and regular part-time engineers, analysts, designers, project managers, product managers, and assistants² who perform work for the Employer's websites and mobile applications, wherever located in the United States, and excluding managers, supervisors and guards as defined by the National Labor Relations Act (the Act).³ There are approximately 566 employees in the petitioned-for unit.

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board (the "Board") has delegated its authority in this proceeding to the Regional Director of Region 2. A hearing was held before a Hearing Officer of the Board via videoconference over nine days, beginning on August 23 and ending September 2, at which time the parties were afforded the opportunity to present evidence and to state their respective positions on the record. The parties submitted post-hearing briefs, which I have carefully considered.

Based upon the entire record⁴ in this matter and in accordance with the discussion below, I conclude and find as follows:

¹ All dates occur in 2021 unless otherwise indicated.

² During the hearing, the petitioner amended the petition, and the parties agreed by stipulation, to remove the classification assistants from the petitioned-for unit.

³ The parties have stipulated that the employees in the petitioned-for unit are not professional employees.

⁴ Board Exhibit 1—f is the Employer's Statement of Position, Position Statement Rider, and the first ten pages of Attachment B to the Statement of Position. The entire copy of Attachment B and Attachment C to the Statement of Position were inadvertently omitted from the official record. The Record is hereby corrected to substitute the complete copy of attachment B and include Attachment C. In addition, in its Brief the Employer submits that a document attached to the Brief as Exhibit A was inadvertently excluded from the official record. That complete document, with the addition of a blank page as the second page of the document, is in the record as Joint Exhibit 1.

1. The Hearing Officer's rulings are free from prejudicial error and hereby are affirmed.
2. The parties stipulated, and I find, that the Employer, a New York corporation with a principal office and place of business located at 620 Eighth Avenue, New York, New York 10018, is engaged in the publication and distribution of digital and print products, including the New York Times newspaper and other publications across the United States. During the 12-month period ending July 30, 2021, a representative period, the Employer, in conducting its business operations described above derived gross revenues in excess of \$200,000, held membership in or subscribed to interstate news services, published nationally syndicated features, advertised nationally sold products, and purchased and received at its New York, New York facility goods valued in excess of \$50,000 directly from points outside the State of New York.
3. The parties stipulated, and I find, that the Employer, is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act.
4. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
5. The parties stipulated, and I find, that the following individuals are supervisors of the Employer within the meaning of Section 2(11) of the Act and therefore excluded from the petitioned-for unit: Issara Paoluengtong, Senior Product Manager, NYT Cooking; James Robinson, Director of International Analytics; Joel Stillman, Lead Product Designer Email Products; Kelsey Johnson, Senior Manager Data Governance; Nimra Nauraz, Manager, Data & Insights (Advertising Analytics); and Yi Qu, Manager, Data & Insights (Marketing Analytics)

The Union petitions to represent, in a single collective-bargaining unit, the petitioned-for employee classifications who perform work for the New York Times website and mobile applications.⁵

⁵ The Union's responsive position statement identifies the following job titles within the petitioned-for unit: Agile Coach, Analyst Subscriber Reporting and Analytics, Associate Engineer, Associate Product Designer, Associate Product Manager, Associate QA Engineer, Associate Software Engineer, Creative Director of Product Design, Data & Insights Analyst, Data Activation Analyst, Data Analyst, Data Engineer, Data Governance Manager, Data Products Analyst, Data Scientist, Database Administrator, Director of International Analytics, Director of Product and Design, Engineer, Head of Forecasting & Subscriber Analytics, Insights Product Manager, Lead Analyst, Lead Engineer, Lead Product Designer, Lead Software Engineer, Manager of Consumer Marketing Analytics, Manager of Customer Care Insights, Manager of Data & Insights, Manager of Data Governance, Manager of Marketing Tech Product, Manager of Platform Analytics, Manager of Product Analytics, Operations and Engagement Manager, Principal Product Designer, Principal Software Engineer, Product Analyst, Product Designer, Product Director, Product Manager I, Product Manager II, Program Manager, Project Coordinator, Project Manager, QA Engineer, Release Manager, Scrum Master, Senior Analyst, Senior Android Engineer, Senior Data Analyst, Senior Data Scientist, Senior Database Administrator, Senior Database Reliability Engineer, Senior Director, Senior Engineer, Senior Backend Engineer, Senior Manager, Senior Product Analyst, Senior Product Designer, Senior Product Manager, Senior QA Engineer, Senior Software Engineer, Software

The Union asserts that all employees in the petitioned-for unit work within the Cross-Functional Department of the Employer (XFun Department). The Union argues that the following community-of-interest factors support a finding that its petitioned-for unit is appropriate. First, the XFun Department conforms to an administrative function or grouping of the Employer's operation, and while the department contains a variety of different job classifications, referred to as "Functions", all are to be included in the petitioned-for unit. The Union contends that the petitioned-for employees are hired via the same process, irrespective of Function and, when an employee is being considered for promotion, managers solicit input from employees across functions. Second, the petitioned-for employees have similar skills and training. Third, the petitioned-for employees have overlapping job duties and do not perform distinct work. Fourth, the petitioned-for employees are functionally integrated into the same work process. Fifth, the petitioned-for employees are engaged in constant intra-unit communication. Sixth, work assignments and job classifications frequently interchange among the petitioned-for employees. Seventh, the employees enjoy similar terms and conditions of employment, including bonus structure, evaluation system, leave and various benefits and personnel policies promulgated by the Employer's centralized human resources department. Eighth, the petitioned-for employees have common supervision, known as the Cross-Functional Leadership Team. Finally, the Union asserts that there are no special considerations of facility, industry, or employer precedent.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the National Labor Relations Act (Act). For the reasons discussed below, based on the record, the briefs, and relevant Board law, I find that the record establishes the petitioned-for unit is an appropriate unit for the purposes of collective bargaining. Accordingly, I have directed the petitioned-for election in this case.

I. PRECLUSION

A. Record Evidence

In response to the filing of the Petition, the Regional Office served a copy of the Petition on the Employer on August 2, 2021, and additionally served a Notice of Representation Hearing (Notice) on all parties on the same date. The Notice explicitly states: Pursuant to Section 102.63(b) of the Board's Rules and Regulations, [the Employer] must complete the Statement of Position and file it and all attachments with the Regional Director and serve it on the parties listed on the petition such that is received by them by no later than Noon Eastern time on August 12, 2021.

The Employer, on August 10, served the Region and Petitioner with a Statement of Position (SOP) form and attachments. The attachments included a rider to the SOP, and a document titled "Initial List", which included attachments "Attachment B" and "Attachment C,"

Engineer, Staff Analyst, Staff Database, Reliability Engineer, Staff Engineer, Staff Product Designer, Staff QA Engineer, Staff Software Engineer, Story Analytics Analyst, Systems Analyst, Technical Associate Product Manager, Technical Lead, Technical Product Director, Technical Product Manager I, Technical Product Manager II, Technical Project Manager, and Technical Senior Product Manager.

which are both lists of employees. The Statement of Petition form addresses the unit sought. Line 3 of the statement of position form asks, “Do you agree that the proposed unit is appropriate?” and provides a “yes” or “no” option. This line concludes by further stating “(if not, answer 3a and 3b).” The Employer marked the “no” box in response to line 3. Line 3a states “see attached Rider.” and 3b similarly states “see attached Rider.”

In the attached Rider to the SOP, the Employer contends that the petitioned-for unit should include only the followings titles within Product Engineering: Associate Engineer, Associate QA Engineer, Associate Software Engineer, Data Engineer, Engineer, Lead Engineer, Lead Software Engineer, Principal Software Engineer, QA Engineer, Senior Android Engineer, Senior Database Reliability Engineer, Senior Engineer, Senior QA Engineer, Senior Software Engineer, Software Engineer, Staff Database Reliability Engineer, Staff Engineer, Staff QA Engineer, Staff Software Engineer. The Employer asserts that the additional titles in the petitioned-for unit do not share a community of interest because they are organized in separate groups, with separate supervision; have distinct skills and training; have distinct job functions and perform distinct work; do not interchange with other employees in the proposed unit; and have distinct terms and conditions of employment.⁶ The Employer further contends that because the petition sets the number of employees at 600 and because this number does not correspond to any defined grouping of employees, the Employer believes there may be a significant number of disputes over the exemptions for supervisors, managers, and confidential employees. The Employer contends that any employee who does not perform work for the New York Times website and mobile apps or employees who do not perform work in the United States are excluded and asserts that all clerical workers, interns, and Managers as defined by the Act should be excluded.

Attachment B, titled “Initial List”, is a list of 364 employees and includes the name, work location, job classification, and shift of the employees with engineering titles, but no employees with the classifications of analysts, designers, project managers, product managers, and assistants that are sought in the petition are listed on Attachment B. Attachment C lists the names of

⁶ The Employer contends that the following titles must be excluded: Administrative Assistant, Administrative Coordinator, Agile Coach, Associate Product Designer, Associate Product Manager, Creative Director of Product Design, Data Activation Analyst, Data Analyst, Data Governance Manager, Data Scientist, Database Administrator, Data & Insights Analyst, Data Products Analyst, Story Analytics Analyst, Director of Product and Design, Director of International Analytics, Executive Assistant, Head of Forecasting & Subscriber Analytics, Insights Product Manager, Lead Product Designer, Manager of Consumer Marketing Analytics, Manager of Customer Care Insights, Manager of Data & Insights, Manager of Data Governance, Manager of Marketing Tech Product, Manager of Platform Analytics, Manager of Product Analytics, Operations Coordinator and Executive Assistant, Principal Product Designer, Product Analyst, Product Designer, Product Director, Product Manager I, Product Manager II, Program Manager, Project Manager, Release Manager, Scrum Master, Senior Analyst, Senior Data Analyst, Senior Data Scientist, Senior Database Administrator, Senior Director, Senior Manager, Senior Product Analyst, Senior Product Designer, Senior Product Manager, Staff Analyst, Staff Product Designer, Systems Analyst, Technical Associate Product Manager, Technical Product Manager I, Technical Product Manager II, Technical Senior Product Manager, Technical Product Director, Technical Project Manager.

individuals the Employer seeks to exclude, and basis for exclusion, but does not list the job classifications, and job locations for the listed employees.

The Employer did not request an extension of the deadline for the statement of position.

On August 17, Petitioner filed a Responsive Statement of Position.

On August 19, I issued an Order rejecting the Employer's amended attachment "C" of August 17, in which the Employer included the work location, shift, and job classification for individuals it seeks to exclude, since the proffer was neither timely nor had the Employer shown good cause to permit the untimely filing.

At hearing on August 23, I directed the hearing officer to rule that the Employer was precluded from contesting the appropriateness of the unit at the pre-election hearing, as it had not filed a timely Statement of Position that met the requirements of Section 102.63(b)(1)(iii), (b)(2)(iii), and 102.66(d) of the Board's rules and regulations. However, I exercised my discretion under Section 102.66(b) of the Rules and further directed the hearing officer to receive evidence on the appropriateness of the proposed unit issue, including that all parties might call witnesses, cross-examine witnesses, and present documentary evidence on this issue.⁷ I further directed the hearing officer to rule that the Employer was precluded from presenting any evidence, cross-examining any witnesses, and presenting argument regarding managerial/supervisory status of any of the listed employees in Attachment C of the Employer's SOP.

At the hearing, the Employer, for the first time, argued that Product Management employees are Managers as defined by the Act and Project Management Office employees in the agile track do not perform work for The New York Times website and mobile applications.

Notwithstanding the hearing officer's preclusion order, on brief the Employer argues that the petitioned-for unit includes five distinct functions – Product Engineering, Product Management, Product Design, Project Management Office ("PMO") and Data and Insights – that do not share a community of interests with Product Engineers.⁸ The Employer also contends that employees in the Product Management function do not share a community of interest with any of

⁷ The Board has long held that it has a statutory obligation to determine the appropriate bargaining unit in each case and that "absent a stipulated agreement, presumption, or rule, the Board must be able to find—based on some record evidence—that the proposed unit is an appropriate one for bargaining before directing an election in that unit." *Allen Healthcare Services*, 332 NLRB 1308, (2000); *Williams-Sonoma Direct, Inc.*, 365 NLRB No. 13 (2017). Accordingly, the hearing officer took record evidence in order to evaluate the appropriateness of the petitioned-for unit.

⁸ The Employer argues that the employees in each of these functions have distinct training, skills, and educational backgrounds; that there is no material interchange among employees from one function to another; that employees in each function report to their functional managers, and those managers alone have authority to hire, fire, evaluate, reward, or discipline them.

the other petitioned-for functions because they are, as a group, supervisory and/or managerial under the Act. Petitioner was granted special to file a reply brief on this issue.

B. Board Standard

Procedurally, the Board conducts a pre-election hearing for the purpose of determining whether a question of representation exists under Section 9(c) of the Act. Section 9(b) requires that a proper petition has been filed concerning a unit “appropriate” for the purposes of collective bargaining. Whether the unit sought is “appropriate” is a substantive question involving both the scope and composition of the bargaining unit sought, an inquiry that begins with examination of the unit sought. *The Boeing Co.*, 337 NLRB 152, 153 (2001).

To identify the substantive issues present in a representation case, the Board utilizes a series of pre-election hearing procedures, addressed generally in Section 102.60 of the Board’s Rules and Regulations. Section 102.63 addresses how the filing of a petition triggers a hearing, and Section 102.63(b) requires, subsequent to a notice of hearing, an employer to file a statement of position. Section 102.63(b)(1)(i) *Employer’s Statement of Position*, addresses the requirements of the Statement of Position in three parts:

- A. The employer's Statement of Position shall state whether the employer agrees that the Board has jurisdiction over it and provide the requested information concerning the employer's relation to interstate commerce; state whether the employer agrees that the proposed unit is appropriate, and, if the employer does not so agree, state the basis for its contention that the proposed unit is inappropriate, and state the classifications, locations, or other employee groupings that must be added to or excluded from the proposed unit to make it an appropriate unit; identify any individuals whose eligibility to vote the employer intends to contest at the pre-election hearing and the basis of each such contention; raise any election bar; state the length of the payroll period for employees in the proposed unit and the most recent payroll period ending date; state the employer's position concerning the type, date(s), time(s), and location(s) of the election and the eligibility period; and describe all other issues the employer intends to raise at the hearing

Subsection (B) requires the employer to provide contact information for a representative of the Employer. The final subsection states:

- C. The Statement of Position shall include a list of the full names, work locations, shifts, and job classifications of all individuals in the proposed unit as of the payroll period preceding the filing of the petition who remain employed at the time of filing, and if the employer contends that the proposed unit is inappropriate, the employer shall separately list the full names, work locations, shifts, and job classifications of all individuals that the employer contends must be added to the proposed unit to make it an appropriate unit. The employer shall also indicate those individuals, if any, whom it believes must be excluded from the proposed unit to make it an appropriate unit. The list(s) of names shall be

alphabetized (overall or by department) and be in an electronic format approved by the General Counsel unless the employer certifies that it does not possess the capacity to produce the list in the required form.

In order to be timely, the employer must file the Statement of Position with the Regional Director and serve on the parties named in the petition by the date and time specified in the Notice of Hearing.

The consequence of failing to comply with Section 102.63(b)(1)(i) is addressed in Section 102.66(d) *Preclusion*. Under that section, a party is precluded from “...raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position.”). That section continues:

If the employer fails to timely furnish the lists of employees described in §102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii), the employer shall be precluded from contesting the appropriateness of the proposed unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting evidence or argument, or by cross-examination of witnesses.

Section 102.66(d) additionally states that the failure to contest eligibility or inclusion at the pre-election hearing does not preclude a party from challenging the eligibility of the voter at the election.

C. Preclusion Determinations

The record establishes the Employer is precluded from challenging the appropriateness of the petitioned-for unit and the eligibility of voters listed in Attachment C as statutory supervisors or managers. See *Ikea Distrib. Servs., Inc.*, 370 NLRB No. 109, slip op. at 1 (2021) (affirming the Regional Director’s decision to preclude the Employer from litigating whether certain employees should be included in the unit in light of its failure to timely serve its statement of position on the union); *Brunswick Bowling Products, LLC*, 364 NLRB No. 96 slip op. at 3 (2016) (overturning Regional Director’s decision to accept statement of position that was timely filed, but served 3 hours and 20 minutes late, and allow union to litigate issues raised therein); *Williams-Sonoma Direct, Inc.*, supra at fn.1 (adopting Regional Director’s decision to reject employer’s statement of position and preclude litigation of issues raised therein based solely on the employer’s failure to timely serve its statement of position on the petitioner).

Section 102.63(b)(1)(i) is clear that where a party objects to a petitioned-for unit it is not sufficient to simply disagree, but that party must also timely furnish the lists of employees.

On brief, the Employer continues its objection to the decisions to preclude.

Here, the Employer timely filed a Statement of Position form with lists as attachments, but not the lists of employees described in Sections 102.63(b)(1)(iii), (b)(2)(iii), or (b)(3)(iii) of the Rules and Regulations. The Employer did not do this in a timely manner, and accordingly preclusion attaches to the Employer’s arguments objecting to the unit sought.

The Employer is also precluded from challenging the eligibility of voters listed in Attachment C as statutory supervisors or managers because that list did not include work locations, shifts, and job classifications. The Rider to the SOP and Attachment C do not show which of the proposed excluded employees possessed the proposed excluded job classification titles. Additionally, Attachment C cannot be cross-referenced with a full list containing job classifications and locations for the listed employees due to the Employer's failure to provide the full list of all individuals in the proposed unit.

Having found the Employer precluded from objecting to the scope of the petitioned-for unit and the eligibility of voters listed in Attachment C as statutory supervisors or managers, I then move to consideration of this central question in a representation case: whether the petitioned-for unit is an appropriate unit.

II. FACTS

(i) *The Employer's Operations*

The Employer publishes and distributes digital and print products, including the New York Times newspaper and other publications. The Employer's websites and mobile applications, which consist of various software used by users externally and/or employees internally, are built and maintained by a cross functional grouping of the Employer's employees designated internally as XFun. XFun has five program Missions responsible for a business outcome and two platform missions. The program Missions are Growth, Engagement, Delivery Engineering, Brand, Standalone, and Digital Advertising. The platform missions are Core Platforms and Data Platforms. Each Mission is staffed with multiple teams. Some Missions have so many Teams that they are first organized into Groups. A Group is a set of Teams that are working on related topics or a larger theme. For example, the Engagement Mission has three Groups that are composed of multiple Teams. Teams are the smallest unit of XFun and where all of the petitioned-for unit employees perform their work. There are over eighty teams in XFun. The Teams are cross-functional and employees on the teams perform at least one of five Functions (classifications): Product Engineering, Product Management, Product Design, Data and Insights (DIG), and Project Management Office (PMO). Members of the Team work together collaboratively across the functions to complete Mission directed assigned tasks.

XFun uses the Agile Software Development Process. The Agile Process is a set of project practices based on the idea that there should be relatively short iterations and planning cycles and release cycles. The Agile Process consists of three phases: discovery, design, and execution. The Agile Process allows every Team member, regardless of function, to work together on the same objectives at the same time. Meetings, or "ceremonies", are part of process. All ceremonies are collaborative. XFun utilizes core Team scrum ceremonies: Sprint Planning, Retrospective, Backlog Grooming, and Daily Stand-Up.

All Team members utilize Slack and Jira and the entire Google suite. Teams rely on slack and google suite to work and communicate with each member. Each Team and Mission has a dedicated Slack channel, as does XFun as a whole. The Teams utilize Google calendar for out of office, to keep all Team members apprised of an individual Team member's absence so as not to

hinder collaboration or progress. Coda is another workplace productivity tool that functions on Teams. It is used to visualize roadmaps and the KPIs that are within the roadmaps.

The Employer utilizes flex-seating in its office which means there are no assigned desks for the employees. However, Teams are designated an area of desks, a “neighborhood.” Employees are assigned locations - Manhattan, or Long Island City - and which floors to work from based on their Mission and Team assignments. Employees are notified of their neighborhood through marker circles on floor plans. Teams sit together in those generally assigned locations. Since the pandemic, all employees have worked from home.

(ii) *XFun* Leadership Team and supervision

XFun is jointly led by Chief Product Officer Alex Hardiman and Chief Growth Officer Hannah Yang. The XFun Leadership Team consists of about fourteen senior leaders, including all the Mission and Function leads. The Leadership Team establishes enterprise goals, allocate resources across missions, solve issues that cannot be solved at a lower level (Mission or Team), and are the final authority when missions disagree with each other. Mission leadership interpret the XFun Leadership’s enterprise goals into achievable accomplishments, set objectives and key results (OKRs, key progress indicators (KPIs), and direct work. Teams are led by Team leads; they are classified as Individual Contributors and are not people managers- they do not have direct reports. The Team leads are cross-functional, usually each Team lead represents a function. Functional employees are supervised by a direct manager, who is the same function as themselves. Employee and direct supervisor meet in one-on-ones, sometimes as infrequently as every two weeks, but usually once a week. At these meetings, the employee gives updates on their daily work within the Team. Direction is also given to employees by Group and Mission cross functional leads. Team leads meet with their Mission cross-functional leadership team in bi-weekly Leadership meetings and there are monthly and quarterly all hands meetings for the Missions where work progress, results, and lessons learned are discussed. Petitioner Witness senior product designer Bon Champion testified that at the non-mandatory bi-weekly Forge meetings, Mission leads provide feedback to individual Team members regardless of function. The testimony of feedback, guidance, and even assignment is echoed throughout the record. Additionally, Mission leadership is responsible for resource allocation, which typically refers to the number of Team members.

(iii) *Functions*

Within the XFun Department, the petitioned-for unit employees, as members of Missions. Teams, and functions, perform work as one of the following: engineer, analyst, designer, project/program manager, and product manager. Each employee regardless of function sets individual goals with their functional manager. The employees share these personal goals with their cross-functional teammates to ensure everyone’s personal goals align within the Team, but also align with the larger Team and Mission goals. Personal goals need to align with the larger Team and Mission goals because a majority of an employee’s work is dedicated not to their functional work but rather the cross-functional teamwork. XFun Leadership directed that an employee’s work time should be 70-80% cross-functional teamwork and 20-30% function specific work.

(iv) Teams

Teams are formed when a Mission's cross-functional leadership identifies a problem or issue or gap in the Mission's purview. Leadership then allocates resources to form the Team by moving head count to allow for hiring of the Team. In simple terms, Mission leadership identifies an issue, then requests from its function managers either personnel or allocations of their budgets to hire new function employees. Once formed and staffed, the Team begins the Agile Process with the discovery phase. The Team will work out various options to solve the assigned problem. The options are formatted as roadmaps, a loose schedule or plan of work that explains how the Team will address the assigned problem and keep their work aligned with the Mission and Department's overall goals and objectives. The roadmaps are reviewed at the Group level, if applicable, or the Mission level. The crossfunctional leadership team of the Group or Mission give feedback to the roadmaps. Then, the Mission leadership team will select the optimal solution for the Team to produce. The Teams are cross functional because no one person or function has the skills to deliver a feature or product, for the Employer's website and mobile apps that would solve the issue that Mission leadership has identified. The Team OKRs allow its members to keep in mind what the actual objectives are for everything they build and produce. As long as the Team's decision making remains aligned with Mission leadership, they are given free rein to make their own decisions internally.

Petitioner Witness Senior Manager of the newsroom and product analytics Kathy Zhang described her Team's experience in creating Stela Home, an internal tool used by stakeholders to see engagement and story performance on the website. Zhang testified that in building Stela Home, she and her Team researched and internally decided to pursue the project in this manner.

Teams utilize a "cadence" for a distinct work schedule. A sprint is a type of cadence, cycle model is another. Sprints and cycles are ways of pacing out the work of a large project into manageable and measurable chunks. The cycle model is an eight-week cadence with work being mapped out for six weeks with a two week cool down. Sprints are usually intervals of two weeks, with some variance.

During sprint planning meetings, the Teams "goal what happens" which is jargon for predicting the amount of work to be accomplished in the upcoming sprint. The Team uses a point system and assigns engineering tasks points and then assess how many points they can accomplish in the given sprint. The Project Manager calculates the number of points to be undertaken in the sprint. Various factors impact the point totals including Team member vacations. For other functional work, the PMO, product manager, and functional employee discuss the work and come to an agreement for what they would accomplish in the sprint.

During the sprint planning meeting, Jira software is the primary tool used by the Teams. The PMO is often, but not always, the one that sets up the mechanism for organizing the sprint in Jira. Jira is a task tracking software; it keeps track of a Team's assigned work in the form of tickets. All tickets related under the same project are grouped in what is called an epic. All Team members create tickets whenever their work needs input or assistance from another function.

Another type of core Team ceremony within the Agile Software Process is the Daily standup. Daily standups are daily Team meetings where each member discusses what they accomplished the previous day, what they plan to accomplish that day, and discuss any potential or active “blockers” (any issue that is getting in the way of efficiently completing a task.) Blockers are brought up at daily standups to crowd source the Team for suggestions and know how on how to eliminate the blocker. Additionally, while most work is mapped out in sprint planning meetings, if there are new assignments to be completed, they would be self-assigned or discussed to assess the Team needs in order to prioritize the work.

Another ceremony is the Retrospective meeting (“Retros”). Retros are all-hands team meetings that allow the Teams to assess the past work whether it be an entire project or just the last sprint and come to a consensus on things you want to do different. These Retros are collaborative in nature and allow the members to voice their opinions. Petitioner witness Champion testified that his Team would post comments digitally that would then be voted on to see which comment the Team would address. Petitioner witness Senior Software Engineer Goran Svorcan-Merola testified that the Games Team decided at a Retro meeting that two-week sprints were too difficult to plan out, and so they adjusted their schedule to one-week sprints.

Back log grooming is another ceremony held by the entire Team. Back log grooming is a meeting where the Team evaluates and discusses created but unassigned tasks. The Team identifies priorities among the tasks and ensures that they are clear and understandable.

(v) Project/Program Managers

The PMO office is broken into two main categories, project managers and program managers. The difference primarily lies in the complexity of the work to be accomplished. Project managers will most often be responsible for smaller initiatives and an individual team. Program managers will handle complex initiatives that often span multiple Teams. The job generally entails making sure that the Teams have all of the information that they need to do their jobs efficiently and that there are no roadblocks to their success. The PMOs are responsible for conducting the meetings that are at the core of the Agile Software Development Process. Generally, they ensure that the rest of Team’s process runs smoothly, and the Team is aware of the project’s pacing and upcoming tasks. Additionally, Program Managers keep stakeholders informed of the project’s timeline and request assistance from them if necessary.

(vi) Product Managers

Product managers prioritize the work for a Team. They ensure that the Team’s products have a clear definition and are in line with and further the Mission and XFun Department goals. Product managers accomplish these tasks by relying on the cross-functional Group leads and Mission leads to inform them of the XFun Department’s larger goals. Additionally, Product managers do extensive research among the engineering employees and analyst employees to inform the Team’s work. They also write product briefs which are written statements describing what a new or planned product is expected to do and its business need.

(vii) Data Analysts

Data and analytics is the management of data and the analysis of data to drive business processes and improve business outcomes through more effective decision making and enhanced customer experiences. Data analysts often provide their interpreted models to Product Managers. Product Managers will pose questions about how customers use the website and/or mobile apps or the prospective uses of products. The Analyst will interpret the question into an analytical or statistical set of questions and then deliver a set of analyses (which includes cleaning, transforming, aggregating, and analyzing data) with interpretation and conclusion to the Product Manager. Primarily, analysts utilize SQL⁹ for working with data. However, many use other computer programming languages such as R, a statistical programming language, and Python, a generalized language for statistical and mathematical programming. Analysts work with engineers to help actualize their data collection and report their findings to their “consumers” e.g., stakeholders, the newsroom, and Product Managers.

(viii) Designers

Designers within XFun create holistic user experiences that visually match the aesthetic of the Employer, make sense intuitively, and are comprehensible to all of the Employer’s users. User experience, commonly referred to as UX, is essentially the visual design and interaction design of a digital experience. It is how a user sees, interacts with, and moves through the New York Times’ website and mobile apps’ products.

Designers interact with all other functions as they, along with the Product Managers, envision the product the Team is building. They design and create the blueprint for the engineers to code, use data from analysts to inform their designs, respond, and work on the PMO’s timeline. Additionally, they evaluate the work of their Teams in a process called visual quality assurance. Visual Quality Assurance are due diligence checks to make sure that the engineer created features match the original designs that were created by the designer. Tr. 900.

(ix) Engineers

If designers are the architects of a Team’s product, then the engineers are the builders. Engineers take the idea of the designer and bring it to life through writing code. They inform their Teams of what is possible in design and function, whether it be UX, data collection, or timelines. The code the engineers write powers the web site and mobile app, so that when either are open, they function. For the mobile apps, engineers specialize in writing code for either Apple iOS or Android platforms. Due to the nature of the systems, the work is not interchangeable. Though the work of engineers is technical in nature and requires skill, neither a computer science degree nor attendance of a coding bootcamp is a requirement for the position.

⁹ SQL stands for structured query language. It is a necessary programming language to query databases and produce aggregated data to answer questions or to deliver data.

(x) Performance Evaluations and Promotions

Performance evaluations are accomplished through a 360-feedback performance review. The direct manager solicits feedback from cross functional Team members and stake holders or anyone with whom the evaluated employee closely works on a consistent basis. Evaluated employees can also nominate individuals to provide feedback. Cross Functional Group and Mission leadership also provide input and feedback to the direct manager for the evaluations. The individual goals employees set with their direct manager do not factor into the evaluations. The direct manager reviews the employee's goals with respect to the Team. Employees annual bonuses are impacted by both their individual performance evaluations as well as the overall performance of the Employer.

Promotions cycles are determined by the XFun Leadership team and are synchronized among all functions. Management solicits Team members' written testimonials on the qualifications of the candidate being considered for a promotion.

(xi) Hiring

All job postings are posted through Workday on Nytco.com. Tr. 331. All internal candidates, regardless of function, use an internal version of Workday. Tr. 338. Job postings are created by the recruitment team with input from the hiring manager. Tr. 331-32. The Employer's recruitment team is positioned within the Human Resource's Department. Tr. 300. And the hiring manager sits within the function that is hiring. Tr. 312.

While a college degree is not required for any functional position, technical knowledge is. Regardless of the open position's function, technical knowledge is required given the daily interplay between functions. Furthermore, engineers must pass a coding test, analysts must pass an SQL assessment, and designers must provide a portfolio.

Hiring panels are cross functional. The hiring manager is usually the same function as the candidate, but other functions play a role in assessing the candidate's skills. Sometimes the assessment is for a candidate's communication or interpersonal skills, and sometimes the assessment deal with how the candidate understands another function's work. The cross functional panel members debrief and report their assessment back to the hiring managers. The panel's recommendations are taken and considered by the hiring manager.

Hiring managers have the final word on hiring, but not on compensation. Compensation is determined by the Human Resources' recruiting team, which sets the salary bands for all XFun Department hires. The Employer distributes the same orientation packet to all new XFun employees.

(xii) Benefits

The Employer and Petitioner joint stipulated to the benefits the Employer offers all petitioned-for unit employees. The Employer maintains a centralized Human Resources Department for all employees. All proposed unit employees can access their employment benefit

information through a central website. The Employer offers the same comprehensive medical, dental, vision, and prescription coverage options and the same access to flexible spending account to all employees in the proposed bargaining unit. The proposed unit employees receive the same access to Gympass and commuter benefits. The Employer offers all employees in the proposed bargaining unit access on the same auto, home, and pet insurance.

The Employer offers the same reproductive assistance and adoption benefits to all employees in the proposed bargaining unit. As well as the same parental leave, short-term disability, and employee assistance program. The Employer also offers all proposed unit employees the same childcare benefits such as Back Up Care Advantage, Bright Horizons College Coach, and Dependent Care Flexible Spending Accounts.

The Employer maintains an incentive program which awards restricted stock units. Employees of all functions who fall within bands one through three are eligible for restricted stock units. Engineering employees who are in bands four and five also receive restricted stock units. Additionally, all employees are eligible to participate in the Employer's Annual incentive Plan.

II. ANALYSIS

A. SCOPE OF UNIT

The Board in *The Boeing Co.*, 368 NLRB No. 67 (2019), established a three-step method for analyzing the appropriateness of a proposed bargaining unit. Step one requires considering "whether the petitioned-for unit has an internal community of interest using the traditional criteria." *Boeing*, 368 NLRB, slip op. at 3. As identified in *Boeing*, those criteria are:

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.

Id. at 2 (internal quotation marks and citations omitted).

Step two requires considering "whether excluded employees have meaningfully distinct interests in the context of collective bargaining that outweigh similarities with unit members." As in step one, step two's considerations are based on traditional community-of-interest criteria. Id. at 5-6 (Board performing step two analysis by considering criteria of functional integration, separate department, supervision, job functions, terms and conditions of employment, skills and training, and interchange). If the conclusion is drawn from the second step of the analysis that "those distinct interests do not outweigh the similarities, then the unit is inappropriate." Id. at 4 (internal quotation marks and citations omitted).

Finally, step three requires "consideration of guidelines that the Board has established for specific industries with regard to appropriate unit configurations." Id.

Here, the Employer asserts that the petitioned-for unit should be limited to the followings titles within Product Engineering: Associate Engineer, Associate QA Engineer, Associate Software

Engineer, Data Engineer, Engineer, Lead Engineer, Lead Software Engineer, Principal Software Engineer, QA Engineer, Senior Android Engineer, Senior Database Reliability Engineer, Senior Engineer, Senior QA Engineer, Senior Software Engineer, Software Engineer, Staff Database Reliability Engineer, Staff Engineer, Staff QA Engineer, Staff Software Engineer, and should *exclude* the additional titles because they do not share a community of interest.

However, in determining the appropriateness of a petitioned-for unit where no party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit, the Board applies only steps one and three of *Boeing*--the requirement that any appropriate unit have an internal community of interest and that consideration must be given to the Board's decisions on appropriate units in the particular industry involved. *Macys West Stores, Inc.*, 32-RC-246415, fn. 1 (unpublished May 27, 2020). The three-step *Boeing* analysis applies only when a non-petitioning party asserts that the petitioned-for unit is inappropriate unless the unit *includes* certain additional employee classifications that have been excluded from the proposed unit. *Boeing* step two does not apply where, as here, a party contends that the petitioned-for unit, which seeks all engineers, analysts, designers, program/project managers, and product managers, who work for the Employer's website and mobile applications within the cross-functional XFun Department, is inappropriate unless it *excludes* certain petitioned-for classifications. *Los Angeles Daily News Publishing Company*, Case 21-RC-273230 (Unpublished Board Order December 22, 2021). That a party, as here, is precluded from litigating whether the petitioned-for unit is appropriate does not divest a regional director of the responsibility to determine the appropriateness of the proposed unit. Compare *Ikea Distribution Services, Inc.*, 370 NLRB No. 109 (2021) (Unlike the instant case, in *Ikea* the Employer asserted that the petitioned-for unit must include additional employees that had been excluded.)

For the reasons noted below, I find that the petitioned-for employees share an internal community of interest and therefore the proposed unit is an appropriate one.

(i) Departmental Organization

The record evidence shows, and it is undisputed that all the petitioned-for unit employees work within XFun. The entire petitioned-for unit is controlled by the cross functional XFun Leadership Team who make decisions that affect the individual employees. Employees of various functions are assigned to Missions, Groups if applicable, then subsequently to Teams. The XFun Leadership team leads the department through established goals that trickle down through the Missions to the Teams. Petitioner witness Zhang described the goals as Matryoshka dolls, an apt analogy: the Department's, Missions', and Teams' goals are all similar, just reduced in scale. The XFun established goals enable the Missions to create objectives which informs the Teams what their results should be. The cross-functional employees on the Teams work towards the same objectives and work collaboratively to achieve the assigned goals. Accordingly, I find that this factor weighs heavily in favor of finding that the petitioned-for unit shares a community of interest.

(ii) Skills, Training, Job Functions and Type of Work

At its fundamental level, the work of the petitioned-for employees requires a technical understanding of software development. No function requires a college degree or special

certification to be hired, yet each function's hiring process is specialized. The record evidence shows that the petitioned-for employees use common work tools, and the same communications platforms, which are all supported centrally by the Employer. The employees utilize the same basic tools such as Employer provided computers, and employer provided applications: Slack, Jira, Google Suite. However, each function performs and in specific skilled tasks. While some employees may be able to perform some of another function's tasks, it is an outlier rather than the norm. Additionally, each function utilizes other applications that are not uniformly used among other functions. For example, engineers use various coding software - e.g., Python, JavaScript, Sequel, et al - that a Project Manager would not utilize and while a majority of functions access and comment in Figma, only designers utilize the software to its fullest potential.

The work of engineers is not interchangeable due to the nature of the competing Apple and Android systems. Notably, while the Employer is seeking a unit of only engineers, it is not seeking to further divide the unit based on the specialization of the engineers, even though their work is as interchangeable as a project manager and a designer.

Based on the foregoing, I find that the petitioned-for employees' skills, training and similar or overlapping job functions support finding a community of interest among the proposed unit classifications. Although the engineering employees have different "primary" functions, and due to developing for both Apple IOS and Android platforms the engineers utilize additional software code so that their specialized work is not interchangeable. However, their work is also technical in nature, and no specialized computer science degree or coding certificate is required for the position. The engineers are part of the team and they are the product builders who take the ideas of the team designers and bring those product ideas to life through writing specialized code. The engineers inform their Teams of what is possible in design and function. All the employees who work for the Employer's website and mobile applications within the cross-functional XFun Department are required to have good technical and computer skills.

(iii) Functional Integration

XFun is functionally integrated in achieving its primary objectives and essential work for the New York Times website and mobile apps. No one person has the skills to deliver a feature or product for the website or mobile apps. Therefore, it is necessary for the various functions to work together to deliver a working feature or product. Teams can only produce the Mission required results with near constant interaction, feedback, and collaboration among the different functions. At various stages of the Agile Software Development process each function aids the other functions in their work. Engineers give feedback to designers on what designs are feasible. Designers spot-check engineers' work to ensure the coding meets the design specifications. Product managers and designers collaborate to decide what the specific experience should look like for the end user. Data analysts work with product managers to come up with measures of success for a given project. And project managers ensure that the entire Team keeps on schedule and seeks outside assistance if necessary. Since each Team is responsible for accomplishing specific tasks that further the goals of the umbrella mission, without the integration, the Mission and subsequently XFun would fail. As such, since functional integration is a necessary part of petitioned-for unit employees work, I find this factor weighs heavily in favor of finding a community of interest.

(iv) Contact Among Employees

Even with the Pandemic profoundly altering office life which resulted in mandated distancing and work from home orders, the employees of XFun have a high rate of virtual contact. Teams have daily meetings where all members attend virtually through a Google platform and speak on the current work for the day and if they are experiencing any hinderances to the process. Daily, Team members are in contact on Slack within their specific Teams' channel. At the Mission level, Teams attend monthly and quarterly meetings and present work to the cross-functional leadership. Additionally, each Mission has a Slack channel that is on average active at least weekly. I find that this factor also favors a finding that there is a community of interest.

(v) Terms and Conditions of Employment

The record evidence shows that all petitioned-for employees are provided the same fringe benefits and use the same online tools to access those benefits. All petitioned-for employees receive the same orientation packet upon being hired. All petitioned-for employees are served by the same human resources department and are subject to the same policies and programs. All petitioned-for employees have similar work hours, and all petitioned-for employee salaries are set centrally by the Employer. Thus, this factor favors finding a community of interest.

(vi) Supervision

The supervision of the employees in the petitioned-for unit can best be described as bifurcated. Each employee has a direct manager, who is of the same function, but they also have cross functional leadership teams at the Group and Mission levels. The record evidence shows that direct managers perform mostly administrative supervisory tasks. They hire, perform evaluations, and assist their direct reports with individual goals. There is no evidence concerning firings or discipline. Concerning substantive work, the evidence shows that cross-functional Group and Mission leadership teams create Teams, assign employees to Teams, assign projects to those Teams, and at times dictate how those projects should be handled. Additionally, the record evidence shows that the cross-functional leadership teams dictate what schedule a Team will work. Petitioner Witness Engineer Price testified that Group Level Product Director Anna Mancusi directed Price's Team to adopt the cycle model cadence. Additionally, Price testified that this cadence change was due to her Team's transfer from the Growth Mission to the Engagement Mission by, at the time, Acting head of Growth Hannah Yang. Furthermore, Petitioner witness Champion testified that the Growth cross functional mission leadership directed that all Teams within the Mission would work on the two-week sprint cadence with sprint planning meetings scheduled every other Tuesday. Accordingly, the evidence shows, and I find, that the cross-functional Group and Mission leadership teams direct work assignments, effect transfers, and determine scheduling. As such, the petitioned-for unit employees share common supervision.

Having now considered the internal community-of-interest of the petitioned-for bargaining unit, I turn to step three of the *Boeing* analysis.

(vii) *Facility, Industry, Or Employer Precedent*

As stated above, the third step in the *Boeing* analysis requires “consideration of guidelines that the Board has established for specific industries with regard to appropriate unit configurations.” *Boeing*, 368 NLRB No. 67, slip op. at 4. I do not find any industry precedent applicable to this case.

(viii) *Preclusion and Conclusion*

The Employer has been precluded from presenting evidence or argument with respect to the appropriateness of the unit. Section 9 of the Act obligates the Board to make a determination as to whether the petitioned-for unit is appropriate for collective bargaining when the parties refuse to stipulate to the appropriateness of the unit and, accordingly, the hearing officer took record evidence in order to evaluate the appropriateness of the petitioned-for unit. I have evaluated the community of interest among the petitioned-for employees. The record indicates community-of-interest among the petitioned-for employees. It is true that the petitioned-for employees have varied skills, training, and job functions. However, the employees have common supervision, enjoy similar benefits, are subject to the same policies, are functionally integrated, and have frequent contact with one another at their common worksite.

B. SUPERVISORY AND MANAGERIAL STATUS OF PRODUCT MANAGERS

The party asserting that an individual has supervisory authority has the burden of proof. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 713 (2001); *Dean & DeLuca New York, Inc.*, 338 NLRB 1046 (2003). “[W]henver the evidence is in conflict or otherwise inconclusive on a particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

The party asserting managerial status bears the burden of proof. *Republican Co.*, 361 NLRB No. 15, slip op. at 4 (2014).

Here, the Employer has been precluded from presenting evidence or argument with respect to supervisory and managerial status and, accordingly, cannot meet that burden.

The record evidence does not otherwise show that the job classification of Product Managers are managerial employees.

Although there is no specific provision in the Act regarding managerial employees, the Board has long excluded them from coverage. The Supreme Court in *NLRB v. Yeshiva University*, 444 U.S. 672, 682 (1980), described faculty managerial employees as those who “formulate and effectuate management policies by expressing and making operative the decisions of their employer,” and who “exercise discretion within, or even independently of, established employer policy.” This test is applied in the conjunctive, and all elements must be met before an employee is deemed to be a manager. *Id.*

Likewise, “managerial” employees have been defined by the Board as employees who formulate and effectuate high-level policies of the Employer, or who “have discretion in the performance of their jobs independent of their employer's established policy.” *Republican Co.*, 361 NLRB No. 15, slip op. at 3 (2014), quoting *General Dynamics Corp.*, 213 NLRB 851 (1974). The decisions made by managerial employees must be made on behalf of the employer. *Allstate Insurance Co.*, 332 NLRB 759, 762 (2000). However, supervisory status as defined in Section 2(11) of the Act is not equatable with managerial status. *Howard-Cooper Corp.*, 121 NLRB 950, 951 (1958). The party asserting managerial status bears the burden of proof. *Republican Co.*, supra, slip op at 4.

An analysis of managerial status must examine, on a case-by-case basis, the degree of discretion and authority exercised by the disputed employees, which generally do not include the exercise of some judgment “within established limits set by higher management.” *Holly Sugar Corp.*, 193 NLRB 1024, 1026 (1971). In fact, the Board has long recognized that even the authority to exercise considerable discretion does not render an employee “managerial” where that employee's discretion must conform to an employer's established policy.” *Albert Lea Cooperative Creamery Assoc.*, 119 NLRB 817, 822-12 (1957). Thus, an employee may be excluded as managerial if the employee “take[s] or recommend[s] discretionary actions that effectively control or implement employer policy.” *NLRB v. Yeshiva Univ.*, 444 U.S. 672, 682 (1990).

Here, the record evidence shows that objectives are set by the XFun Leadership and Mission cross-functional leadership. While a product manager may brainstorm solutions to a develop a strategy to meet the objective, working within the confines of the Employer’s already established parameters do not make a Manager. At no point in the voluminous record is there specific evidence presented to show a Product Manager utilizing their discretion to change the Employer’s established policies or performing their job in a manner that is outside of the XFun Leadership’s established goals. In fact, the adduced evidence shows that cross-functional Team member Product Managers are wholly constrained by the enterprise goals, the Mission KPIs and the specific Team’s OKRs and do not define technical objectives. Accordingly, I find the Employer has failed to establish Product Managers are Managers as understood by the Board.

III. CONCLUSION AND FINDINGS

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

1. The Hearing Officer's rulings are free from prejudicial error and hereby are affirmed.
2. The parties stipulated, and I find, that the Employer, The New York Times Company, herein collectively the Employer, is a of digital and print products, including the New York Times newspaper and other publications across the United States with its principal office and place of business located at 620 Eighth Avenue, New York, New York 10018, and a facility at 24-01 44th Rd, Long Island City, NY 11101. During the 12-month period ending July 30, 2021, a representative period, the Employer, in conducting its business operations described above derived gross revenues in excess of \$200,000, held membership in or subscribed to interstate news services, published nationally syndicated features, advertised

nationally sold products, and purchased and received at its New York, New York facility goods valued in excess of \$50,000 directly from points outside the State of New York. Accordingly, I find the Employer is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, 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. There is no contract or other bar in existence that would preclude the processing of this petition.
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. Based on the foregoing, I find that the following unit is appropriate within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time engineers, analysts, designers, program/project managers, and product managers who perform work for the New York Times' websites and mobile applications.

EXCLUDED: All other employees, marketing employees, assistants, clerical employees, and guards, and professional employees, 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

A. Election Details

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. On January 24, 2022, ballots will be mailed to voters by National Labor Relations Board, Region 02. 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.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 02 office by close of business on February 14, 2022.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by January 28, 2022, should communicate immediately with the National Labor Relations Board by either calling the Region 02 Office at (212) 264-0300 or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

Due to the extraordinary circumstances of COVID-19 and the directions of state or local authorities including but not limited to Shelter in Place orders, travel restrictions, social distancing and limits on the size of gatherings of individuals, I further direct that the ballot count will take place virtually, on a platform (such as Zoom, TEAMS, etc.) to be determined by the Regional Director. The date and time for the ballot count will be determined by the Regional Director and will occur between Monday, February 28, 2022 and Monday, March 7, 2022, inclusive. All parties will be given at least 24 hours' notice of the date and time for the ballot count.

If the date the ballots are deposited into the mail, due back in the Regional Office, or counted is rescheduled or postponed, the undersigned Regional Director may reschedule such times, dates, and places for the mail ballot election.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **January 1, 2022**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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

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

C. Voter List

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, 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 Friday, January 14, 2022. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by

last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

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

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

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

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election 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.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: January 12, 2022



John J. Walsh, Jr.
Regional Director
National Labor Relations Board
Region 02
26 Federal Plz Ste 3614
New York, NY 10278-3699