

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

CITY CENTER FOR COLLABORATIVE LEARNING

Employer

and

Case 28-RC-377822

**ARIZONA ALLIANCE OF CHARTER TEACHERS
AND STAFF, AFT LOCAL 6627, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. SUMMARY

The Petitioner seeks to represent a unit of all full-time and regular part-time professional employees employed by the Employer, including counselors, teachers, special education teachers, inclusion specialists, office managers, registrars, and the Dean of Students, as well as all full-time and regular part-time non-professional employees employed by the Employer, including educational assistants, tech/facilities employees, and front-desk employees.

The Employer asserts that it is a political subdivision of the State of Arizona and thereby exempt from the jurisdiction of the National Labor Relations Board (NLRB or the Board) by virtue of Section 2(2) of the Act. The Employer also contends that the Dean of Students must be excluded from the unit as a supervisor within the meaning of Section 2(11) of the Act.¹ The Employer otherwise agrees that the petitioned-for unit is appropriate.

The Petitioner argues that the NLRB's jurisdiction extends to the Employer because the Employer is not a political subdivision of a State and otherwise satisfies the NLRB's jurisdictional standards. The Petitioner further argues that the Employer has failed to meet its burden to show that the Dean of Students is a Section 2(11) supervisor.

A hearing officer of the NLRB held a hearing in this matter on January 7, 2026, via Zoom videoconference, and the parties orally argued their respective positions prior to the close of the hearing. As explained below, based on the record as a whole and current NLRB legal precedent, I find that the Employer is not a political subdivision of a State and thus not exempt from the NLRB's jurisdiction.

¹ The Employer does not allege that the Dean of Students is a managerial employee who should be excluded from the bargaining unit and I will therefore not address this issue in this decision.

I further find that Dean of Students Jessica Janecek (Janecek) has the authority to assign work to employees, responsibly direct employees, and during summer school, discipline employees, with independent judgment in the interest of the Employer. Therefore, Dean of Students Janecek is a Section 2(11) supervisor who must be excluded from the unit. Accordingly, I will direct an election for the petitioned-for unit excluding the dean of students, as detailed below.

II. STATEMENT OF FACTS

A. The Employer's Operations

The Employer, a nonprofit corporation domiciled in Arizona, operates one high school and two middle schools in Tucson, Arizona, pursuant to a contract between the Employer and the Arizona State Board for Charter Schools (Charter Board).² The approximately 41 employees in the petitioned-for unit work at one or more of these schools and serve the approximately 180 high school students enrolled at City High School and 125 middle school students.³ Each school has a principal, and they report to the Employer's Interim Executive Director, Brett Goble (Goble). Goble reports to the Employer's Board of Directors.

Goble and two other individuals incorporated the entity Tucson Small School Project (Tucson Project), the Employer's original name, in 2002. In 2004, Tucson Project entered into a contract with the Charter Board and opened the high school. Tucson Project changed its name to the Employer's current name in 2014 when the Employer also began operating the middle schools. In 2018, the Employer entered into a renewal contract (Contract) with the Charter Board to operate the three schools.

The Employer's corporate bylaws (Bylaws) authorize the Employer's Board of Directors to set the number of Directors and to appoint Directors.⁴ The Board of Directors manages an application process for prospective Directors, and anyone can apply to become a Director. An existing Director nominates a candidate for Director, and the existing Directors vote whether to appoint the candidate to the Board of Directors. The only path to become a Director is to be appointed Director by the Board of Directors.

Regarding the removal of Directors, while the Employer's Articles of Incorporation are silent on this issue, the Bylaws specify that "Directors may be removed from office, with or without cause, as permitted by and in accordance with the laws of this State."⁵ I take administrative notice that in Arizona, if the articles of incorporation or bylaws do not provide a procedure for removal of a director from office, as is the case here, a director of a non-profit corporation appointed by the board of directors may be removed with or without cause by the

² The Arizona State Legislature created the Charter Board.

³ One of the middle schools is named Paulo Freire Freedom School—University.

⁴ See Sections 1, 2, 3, 6, and 15 of Article 3 of the Bylaws.

⁵ Section 15 of Article 3 of the Bylaws

vote of two-thirds of the directors in office.⁶ The Charter Board does not have the authority to appoint or remove a Director, and it has not appointed or removed a Director at any time.

The Charter Board approves Directors in the sense that the Contract requires the Employer to maintain a valid fingerprint clearance card for each Director, submit any proposed change (addition or removal) of Directors to the Charter Board, and receive approval of the change from the Charter Board before the Employer implements the change.⁷ When the Employer notifies the Charter Board of its intent to add a Director, the Employer must confirm that the new Director has a valid fingerprint clearance card and submit to the Charter Board documents that show that the new Director does not have a financial conflict of interest by joining the Board of Directors.

The Charter Board conducts inspections of the Employer and other charter schools to monitor their compliance with the fingerprinting requirements. If the Employer were not in compliance because, for example, a Director possessed the wrong type of fingerprint clearance card and the Employer failed to take corrective action, or because the Employer failed to remove a Director after the Arizona Department of Safety notified the Employer that the Director's fingerprint clearance card was no longer in good standing because the Director had engaged in certain criminal activity, the Charter Board potentially could revoke the Contract or refuse to renew it.⁸ The Employer could not legally operate charter schools if the Contract were revoked.

The Charter Board imposes operational, financial, and academic performance requirements on the Employer. Operationally, the Employer must show the Charter Board that the Employer serves students with disabilities and complies with the Americans with Disabilities Act, the Individuals with Disabilities Education Act, and open-meeting laws, that it has teachers' qualifications and resumes available to the public, and that it responds to the public's complaints in a timely manner. The Employer also must show the Charter Board how the Employer reports and records student attendance, handles tax credit donations and its enrollment process, and asks for student fees.

Regarding academic performance, the Employer must show the Charter Board that the Employer's academic curriculum is aligned with Arizona state standards and that the Employer has a teacher evaluation system, a professional development plan, and a process for reviewing its academic program. The Charter Board uses the letter grade (from "A" to "F") that the Arizona Department of Education (ADE) assigns to the Employer to evaluate the Employer's academic achievement. Financially, the Charter Board requires the Employer to contract with an independent certified public accountant to audit the Employer's financial statements annually. The Charter Board reviews indicators such as the Employer's liquidity, cash on hand, net income, and debt.

⁶ See Ariz. Rev. Stat. § 10-3808(B)(8). The Employer does not have corporate "members." See Article XII of the Employer's Articles of Incorporation.

⁷ See Paragraphs 10 and 21 of the Contract.

⁸ See Paragraph 17 of the Contract: "**Termination or Non-Renewal of the Charter:** The Arizona State Board for Charter Schools may revoke or not renew the Charter for any material breach of the Charter and/or violation of state, federal or local laws, ordinances or rules or regulations; for conditions which threaten the health, safety, or welfare of the students or staff of the school or of the general public; or as provided by law."

If the Charter Board determines that the Employer is not in compliance with any of the operational, financial, or academic performance requirements, the Charter Board could issue a corrective action plan to the Employer, require the Employer to appear at a Charter Board meeting to explain its actions, and even revoke the Contract. At the time of the hearing, the Employer was subject to the terms of two consent agreements that the Charter Board had required the Employer to enter. Because the Charter Board determined that some of the Employer's teachers' fingerprint cards were expired or otherwise invalid, the first consent agreement requires the Employer, on a weekly basis, to monitor its staff's fingerprint clearance cards and to report the results to the Charter Board. The second consent agreement requires the Employer to regularly furnish the Charter Board with financial paperwork because the Employer's debt is too high. The consent agreements notify the Employer that noncompliance with their terms could result in revocation of the Contract.

The ADE also regulates the Employer in some respects. The ADE, for example, requires the Employer to advertise the Board meetings at which the Employer will propose and adopt its budget and to submit the budgets, as well as a financial report and fiscal audit, to the ADE annually. The ADE could withhold funds from the Employer if the Employer failed to comply with these financial mandates.⁹

The Employer, like Arizona public schools, receives funding from the State of Arizona, is required to comply with Arizona open-meeting laws, and is eligible to receive monies from donations made through the Arizona public school tax credit program.¹⁰ The Employer's employees, like employees of Arizona public schools, are eligible to participate in the Arizona State Retirement System.

B. Supervisory Status of Dean of Students Jessica Janecek

Janecek is the sole Dean of Students at City High School, where she reports to principal Jessica Melrose. Janecek oversees student affairs at the high school, including as the primary person for student disciplinary action, student scheduling, planning school outings for students, and ensuring that students are on track to graduate.

Janecek is in charge of the Employer's Advisory Program at the high school, which is an integral component of the Employer's educational program to ensure that the Employer provides its students with the academic and emotional support that they need.¹¹ Janecek does not have the authority to eliminate the Advisory Program.

⁹ Goble testified that to his knowledge, the ADE does not exercise the same oversight over Arizona private schools.

¹⁰ Goble testified that to his knowledge, Arizona private schools do not receive funding from the State of Arizona, are not required to comply with Arizona open-meeting laws, and are ineligible to receive monies from donations made through the Arizona public school tax credit program, although private schools are eligible to receive monies from donations made through a different Arizona tax credit program.

¹¹ The principals of the middle schools are responsible for implementing the Employer's Advisory Programs at these schools.

The Employer requires every high school teacher to take on the additional responsibility of teaching a 40-minute Advisory class four times per week.¹² It is the Advisor's job to aid students to progress academically and to identify strategies to help them if they are not doing so. In this regard, the Advisor works on social-emotional learning lessons for students and serves as an advocate for them if they need to change a class, obtain help with a teacher, or are facing disciplinary action. Advisors also explore careers with students and help them obtain internships during their senior year.

Janecek writes and prepares all the curriculum for the Advisory Program. Every week, Janecek prepares a week's worth of tasks and lesson plans for the Advisors to implement during their Advisory classes and posts these materials on a website hub that she created for Advisors to access. Janecek creates or selects the materials according to her assessment of students' current needs.¹³

Janecek meets with Advisors every Monday to review these materials and answer their questions. Janecek also has prepared a guide for Advisors on how to teach the Advisory class and conducts training for the Advisors on this topic. Janecek expects the Advisors to complete their weekly tasks and lesson plans and will follow up with them if they have not done so. Janecek sometimes attends and may teach part of an Advisory class period to provide the Advisor help and support.

Janecek is responsible for student-led conferences. She meets with the Advisors to ensure that Advisors and students are ready for these conferences and that Advisors know how to prepare students to present at these conferences.¹⁴ Janecek could face repercussions from the principal if the Advisor failed to hold a student-led conference or if the conference did not go well because, for example, the Advisor was unprepared for it. Janecek assigns each new student an Advisor who, except in very rare circumstances, remains assigned to the student as long as the student is enrolled at the school. In deciding which Advisor to pair with a particular student, Janecek considers their personalities and may also consider the recommendation of the student's middle school Advisor if the new student attended one of the Employer's middle schools.

Janecek organizes special events at the school such as community days. The Employer requires teachers and students to perform community service or other volunteer activities in the community twice yearly. For these community days, Janecek books or arranges several community-service activities. Teachers can elect to participate in one of these activities or instead organize their own community service or volunteer activity to attend with their students.

Janecek is the administrator of the four-week summer school that the high school has offered to its students for at least ten years. Before summer school begins in 2026, Janecek expects to work with the principal to determine the staffing that the school will need for summer

¹² The sixteen Advisory class periods are taught simultaneously.

¹³ For example, Janecek testified that if she noticed that gossiping was an issue at the high school, she would provide Advisors lessons and materials to address gossiping.

¹⁴ Student-led conferences are yearly meetings held at the end of the school year that are similar to parent-teacher conferences and during which the student shares and discusses with the parents and an Advisor the student's goals and the schoolwork that the student has performed that school year.

school, based on the budget available for summer school. During summer school, Janecek works in person at the school while the principal may be on vacation or working remotely. If a conflict develops between a teacher and a student or parent, Janecek mediates the situation. If a teacher is absent during summer school, Janecek arranges for a substitute teacher or teaches the class herself. During summer school, if a teacher complained to Janecek that the teacher was not a good fit for the children in a particular class, and Janecek believed that the teacher would work better with a different group of kids in another class, Janecek could assign the teacher to a different class. Janecek works at the high school during its 180-day regular school year and 4-week summer school.

The Dean of Students is in charge of overall administration of the high school when the principal is absent, such as when the principal is sick or on a school trip. On these rare occasions, Janecek arranges for substitutes or other replacements.¹⁵ The principal often works even when she is sick or traveling.

The principal makes the final decision regarding whether a teacher or other employee should be disciplined, but Janecek provides input to and confers with the principal depending on the issue. If there is a problem in the way an employee is impacting the student experience, Janecek provides the principal her thought process and recommendation on how to move forward while maintaining a student-centered approach.

If an Advisor were to refuse to participate in the Advisory Program by, for example, refusing to complete the weekly Advisory tasks that Janecek prepares for the teachers, or if the Advisor otherwise refused to follow Janecek's instructions, Janecek would investigate the situation, write it down, and report the teacher to the principal. The teacher's refusal could lead to disciplinary action for the teacher from the principal. Janecek does not recall that an Employer has disciplined an Advisor at any time. If a teacher refused to follow the directives of the Dean of Students, the Dean of Students would investigate the situation, write it down, and report the teacher to the principal.

According to Goble, if a teacher did not fulfill his or her responsibilities regarding the Advisory Program, the Dean of Students could recommend to the principal that the teacher be disciplined and also recommend the appropriate type of discipline, such as a performance improvement plan. Goble could not recall any specific instance when the Dean of Students recommended that a teacher be disciplined.

While the Dean of Students does not have the authority to discipline teachers during the regular school year, the Dean of Students, according to Goble, does have limited authority to discipline teachers during summer school in the sense that the Dean of Students can issue teachers documented verbal warnings and that could be used against the teachers in the future,

¹⁵ The principal has been sick only about one day according to Janecek, and she has "hardly ever" fulfilled the principal's role during the school year because the principal has "hardly ever" been gone.

but excluding performance improvement plans.¹⁶ Goble did not recall whether such documented verbal warnings are part of the Employer's progressive disciplinary policy.¹⁷

According to Janecek, no one has communicated to her that she has the authority to discipline anyone, and she does not know if she will have the authority to discipline teachers during the next summer school in 2026. Janecek nonetheless testified that if teachers engage in egregious action at summer school, such as by being under the influence of alcohol at school, she could send them home because her priority is to keep students safe.

Janecek has a role in the Employer's hiring of employees. When the Employer receives resumes, Janecek and the principal individually or together review the resumes. Sometimes Janecek and the principal separately prepare a list of the applicants that each believes should be interviewed and then compare the lists. At other times, Janecek and the principal prepare this list together. In either case, Janecek and the principal collaboratively determine which applicants will and will not be interviewed.¹⁸ If Janecek and the principal were to disagree about which applicants should be interviewed, the principal would decide whom to interview, although Janecek has not had any disagreements with anyone about which applicant is the best fit for the school. The principal schedules the interviews.

The applicant, Janecek, the principal, and usually a staff member that would work directly with the applicant participate in the interviews. The interviewers have a debrief afterward, collaboratively decide whom to invite for second interviews, and collaboratively select two or three finalists, any of whom Janecek, the principal, and the third staff member would be "fine" to hire. In the case of applicants for a teaching position, these three individuals ask the finalists to perform a teaching demonstration in front of students during which they observe how the finalists interact with the students. Janecek, the principal, and the third staff member then consider input from the students to make a hiring decision. Students have quite a bit of power in the final hiring decision, but the principal has ultimate hiring authority. Janecek does not have the authority to reject any applicant,¹⁹ and she would not hire anyone during summer school without consulting with Janecek.

¹⁶ An exception to the Dean of Student's lack of authority to discipline a teacher during the regular school year would be if the Dean of Students, but not the principal, is present at the high school and a situation occurs that requires immediate disciplinary action, such as if a teacher grabs a student. In this hypothetical, the Dean of Students could independently immediately implement the discipline.

¹⁷ Goble testified that the Employer has a written progressive disciplinary policy that applies to its staff but its progressive disciplinary policy is not in the record.

¹⁸ A staff member who works in the same area or field sometimes also participates reviewing the resumes.

¹⁹ During the initial review of applicant resumes, if the principal wanted to invite a particular applicant to advance to the next round of the hiring process, but Janecek disagreed and did not want to move forward with that applicant, Janecek testified that while she believed that the principal would seriously consider her opinion, the principal would make the ultimate decision.

Janecek attends meetings at which only Janecek, the principals of the three schools, the Executive Director, the professional development person JoAnn Groh (Groh), and sometimes the inclusion specialist are present.²⁰ They discuss initiatives and other matters that affect the three schools, including confidential information and operating strategy. Janecek also meets informally with the principal on most workdays, and they discuss any matters relevant to the high school such as the Advisories, how the teachers are doing in the classroom, and generally how the high school is running and functioning.

Janecek has her own office, but other teachers use it with her approval. Janecek has a master key to the high school that many of the office staff, but not teachers, also have. Teachers can access duplicates of any of the Employer's keys that Janecek has on her keychain.

III. LEGAL ANALYSIS

A. The Employer Is Not a Political Subdivision of the State of Arizona and Is Not Exempt from the Jurisdiction of the NLRB

Section 2(2) of the Act explicitly excludes “any State or political subdivision thereof” from the definition of “employer.” The term “political subdivision” is not defined in the Act. In *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971), the U.S. Supreme Court adopted the NLRB's test for whether an entity is an exempt political subdivision of a state. Under that test, an entity is exempt only if it is either: (i) created by a state, so as to constitute a department or administrative arm of the government; or (ii) administered by individuals who are responsible to public officials or to the general electorate. *Hawkins County*, 402 U.S. at 605.

The Employer argues that it is exempt from the NLRB's jurisdiction as a political subdivision of the State of Arizona under the second prong of *Hawkins County*, because the Charter Board controls and regulates the Employer, including by approving new Directors, and because the Employer is subject to state laws and regulations that apply only to public schools and other governmental bodies, but not to private schools.²¹ The Petitioner maintains that the Employer satisfies neither prong of *Hawkins County* and that the Employer is thus not exempt from the NLRB's jurisdiction.

1. The State of Arizona Did Not Create the Employer

Under the first prong of *Hawkins County*, the Board considers whether the entity was “created directly by the state, such as a government entity, legislative act, or public official.” *Pennsylvania Virtual Charter School*, 364 NLRB 1118, 1122 (2016). “The Board has

²⁰ The Petitioner seeks to include inclusion specialists in the unit. The record reflects that the Petitioner does not seek to include any classification that includes the word “development” and that Groh is not included in the Employer's list of employees in the petitioned-for unit.

²¹ During oral argument at the pre-election hearing, the Employer contended that it was not claiming that it was an exempt political subdivision by virtue of the first prong of *Hawkins County*. However, the Employer argued in its Statement of Position that the Charter Board, an entity established by the Arizona State Legislature and not by private individuals, directly created the Employer. Because this language suggests that the Employer is asserting that the State of Arizona created the Employer, and by implication that the Employer is exempt from the NLRB's jurisdiction under the first prong of *Hawkins County*, I shall also discuss the first prong of *Hawkins County*.

consistently held that entities created by private individuals such as nonprofit corporations are not exempt under the first prong of *Hawkins County*.” *Hyde Leadership Charter School*, 364 NLRB 1137, 1141 (2016). In addition, an entity is not exempt simply because it receives public funding or operates pursuant to a contract with a government entity. *Pennsylvania Virtual Charter School*, 364 NLRB at 1122-1123. Furthermore, although a charter school may exist only because state laws allow for its creation, that is not the relevant inquiry under existing Board precedent. *Id.* at 1123.

Three individuals, including Goble, created the Employer by incorporating it in 2002. The State of Arizona did not create the Employer or require Goble and his two fellow incorporators to create the Employer. The Charter Board, a public entity created by the Arizona State Legislature, subsequently granted the Employer, which receives public funding, a contract to operate its three schools. Therefore, although it is true that the Employer exists because the Arizona State Legislature created the charter school regime, including by creating the Charter Board, and although it is also true that the Employer receives public funding pursuant to its contract with the Charter Board, these facts do not establish that the Employer was created directly by the State of Arizona under the first prong of *Hawkins County*. See *Hyde Leadership Charter School*, 364 NLRB at 1141; *Pennsylvania Virtual Charter School*, 364 NLRB at 1122-23.

2. Individuals Who Are Responsible to Public Officials or to the General Electorate Do Not Administer the Employer

Under the second prong of *Hawkins County*, for an entity to be exempt from the Act’s jurisdiction, it must be administered by individuals who are responsible to public officials or to the general electorate. *Hawkins County*, 402 U.S. at 605. The key inquiry is whether an entity is “administered by” individuals responsible to public officials or to the general electorate. *Id.* Where the appointment and removal of a majority of an entity’s governing board members is controlled by private individuals—as opposed to public officials—the entity is subject to the Board’s jurisdiction. *Pennsylvania Virtual Charter School*, 364 NLRB at 1126. Where an examination of the appointment-and-removal method yields a clear answer to whether an entity is “administered by individuals who are responsible to public officials or to the general electorate,” the Board’s analysis properly ends. *Id.*

Pursuant to the Employer’s Bylaws, the Employer’s Board of Directors—not the Charter Board, any other subdivision of the State of Arizona, or any other public officials—controls the appointment and removal of Directors. A Director nominates an applicant, and the Board of Directors elects or does not elect the Director.

The Charter Board has never appointed or removed a Director, and there is no evidence in the record that the Charter Board has the authority to appoint or remove a Director. Although the Charter Board has the authority to penalize the Employer, including by revoking the Contract or failing to renew it, if the Board of Directors fails to remove a Director whose fingerprint clearance card is invalid or otherwise not in good standing, it is the Board of Directors that decides whether to remove the offending Director and whom to appoint, if anyone, as a replacement.

The Charter Board approves Directors only in the limited sense that the Charter Board could refuse to approve the Employer's request to add a Director if the Director did not have the appropriate fingerprint clearance card or if the Employer failed to confirm that the Director did not have a conflict of interest. Contrary to the Employer's position, the Charter Board's authority to refuse to approve the Employer's request to add a new Director, or to revoke or refuse to renew the Contract if the Board of Directors fails to remove a Director who is not in compliance with fingerprinting and conflict-of-interest requirements applicable to Directors, is insufficient to establish that the Charter Board controls the appointment and removal of Directors.

The Employer also claims that the Board of Directors is accountable to the Charter Board because the Charter Board controls the Employer by enforcing applicable contractual and statutory regulations. The Employer notes that the Charter Board has the authority to inspect and audit the Employer, and if the Charter Board determines that the Employer has violated a regulation, to order the Employer to take corrective action and to revoke or refuse to renew the Contract if the Employer fails to comply. In this regard, the Employer emphasizes that the Charter Board and the Employer have entered into two consent agreements pursuant to which the Employer must report financial and fingerprinting information to the Charter Board.

The Board has rejected the Employer's argument. See *Pennsylvania Virtual Charter School*, 364 NLRB at 1126 (because trustees of charter school's governing board, and not public officials, appointed and removed trustees, oversight and regulation of charter school by public official, including authority to renew charter school's contract, was insufficient to find that trustees are accountable to a public official for the purpose of NLRB jurisdiction). See also *Pennsylvania Virtual Charter School*, 364 NLRB at 1124 (observing that just as a state's decision to cease subcontracting work to a private employer that fails to satisfy the state's standards does not convert the subcontractor into a state entity, neither does a public official's decision to revoke a charter school's contract convert the charter school into a state entity).

The Employer also asserts that the Board of Directors is accountable to the Charter Board because the Employer and its employees are subject to state laws and regulations that apply only to public schools, other governmental bodies, and to their employees, but not to private schools or their employees. In this regard, Goble testified, for example, that the Employer must comply with Arizona's open-meeting laws, including opening meetings of the Board of Directors to the public, publicly disclose certain financial information, comply with Arizona's curriculum standards and testing benchmarks, and submit budgets, financial reports, and audits about its use of state funding to the Arizona Department of Education. Goble also testified that the Employer's employees, like employees of public schools but unlike employees of private schools, are eligible to receive monies from donations made through the Arizona public school tax credit program.

These Employer arguments are unavailing. First, the Employer has not cited any precedent or case law to support its assertions. Second, the Employer has failed to explain why the Board of Directors is accountable to the Charter Board just because the Employer and its employees are subject to state laws and regulations that apply only to public schools and other governmental bodies, but not to private schools or their employees. For example, inasmuch as

private entities that contract with the government are subject to certain laws and regulations that apply to them as government contractors but do not apply to private entities that do not contract with the government, this distinction does not convert the government contractor's governing board into one that is accountable to a public official for the purpose of NLRB jurisdiction.

Based on the foregoing and the record as a whole, I find that the Employer is subject to Board jurisdiction.

B. Dean of Students Jessica Janecek Is a Statutory Supervisor

1. Board General Supervisory Legal Authority

Section 2(3) of the Act excludes from the definition of "employee" "any individual employed as a supervisor." 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 to 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 merely of a routine or clerical nature, but requires the use of independent judgment.

Thus, the Board will find individuals to be supervisors if: (1) they hold the authority to engage in any 1 of the 12 supervisory functions listed in Section 2(11); (2) their "exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;" and (3) their authority is held "in the interest of the employer." *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006) (*Oakwood*), citing *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 713 (2001). As the Board explained in *Oakwood*, "to exercise independent judgment an individual must at a minimum act, or effectively recommend action, free of control of others and form an opinion or evaluation by discerning and comparing data." *Oakwood*, 348 NLRB at 692-93. But "a judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement." *Id.* Furthermore, a judgment is not independent if "there is only one obvious and self-evident choice" or "if the assignment is made solely on the basis of equalizing workloads[.]" *Id.*

In addition to the factors identified in the Act, the Board also considers secondary indicia that can provide support for a supervisory finding but are not sufficient alone to establish supervisory status. *Training School at Vineland*, 332 NLRB 1412, 1412 fn. 3 (2000). Secondary indicia may include factors such as a higher rate of pay, or an employer holding out the employee as a supervisor. *American Commercial Barge Line Co.*, 337 NLRB 1070, 1072 (2002); *Carlisle Engineered Products*, 330 NLRB 1359, 1360 (2000).

The burden of establishing supervisory status rests on the party asserting that status. *Croft Metals, Inc.*, 348 NLRB 717, 721 (2006) (*Croft Metals*). That party must establish supervisory status by a preponderance of the evidence. *Oakwood*, 348 NLRB at 687.

Supervisory status cannot be established by record evidence which is inconclusive or otherwise in conflict. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Mere inferences or conclusory statements, without detailed, specific evidence, are insufficient to establish supervisory authority. *Lynwood Manor*, 350 NLRB 489, 490 (2007); *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006). Any lack of evidence in the record on an element necessary to establish supervisory status is construed against the party asserting supervisory status. *Veolia Trans.*, 363 NLRB 1879, 1883–1884 (2016) (citing *Lynwood Manor*, 350 NLRB 489, 490 (2007)); see also *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1048 (2003). The Board looks to evidence of supervisory authority in practice, not simply paper authority; job descriptions or other documents suggesting the presence of supervisory authority are not given controlling weight. See *Golden Crest*, 348 NLRB at 731, citing *Training School at Vineland*, 332 NLRB at 1416.

Persons with the power “effectively to recommend” the actions described in Section 2(11) are supervisors within the statutory definition. *Entergy Systems & Service*, 328 NLRB 902 (1999); *Detroit College of Business*, 296 NLRB 318, 319–320 (1989); *Westwood Health Care Center*, 330 NLRB 935, 938–939 (2000). The evidence must, of course, show that the recommendation is undertaken with independent judgment. *Tree-Free Fiber Co.*, 328 NLRB 389, 391–392 (1999); *F.A. Bartlett Tree Expert Co.*, 325 NLRB 243, 245 (1997). The authority to effectively recommend generally means that “the recommended action is taken without independent investigation by superiors, not simply that the recommendation is ultimately followed.” *Children’s Farm Home*, 324 NLRB 61, 61 (1997); see also *DirectTV U.S. DirectTV Holdings LLC*, 357 NLRB 1747, 1748–1749 (2011); *Ryder Truck Rental*, 326 NLRB 1386 (1998); *ITT Lighting Fixtures*, 265 NLRB 1480, 1481 (1982), enf. denied on other grounds 712 F.2d 40 (2d Cir. 1991).

2. Assignment of Work

a. Board Assignment of Work Legal Authority

The authority to “assign” refers to “designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant over-all duties, i.e., tasks, to an employee . . .” *Oakwood*, 348 NLRB at 689. These are designations of an employee’s “significant overall duties,” not an “ad hoc instruction that the employee perform a discrete task.” *Id.*

Choosing the order in which an employee will perform “discrete tasks within [the supervisory] assignments” does not demonstrate the authority to assign under Section 2(11). *Id.* No independent judgment is shown if “there is only one obvious and self-evident choice” or “if the assignment is made solely on the basis of equalizing workloads[.]” *Oakwood*, 348 NLRB at 693. Assignments based merely on employee availability do not involve independent judgment. *Springfield Terrace LTD*, 355 NLRB 937, 943 (2010). Assignments based on a rotational basis or based on detailed instructions do not involve independent judgment. See *Shaw, Inc.*, 350 NLRB 354, 355–56 (2007). Assignments based on employees’ expressed preferences or reached by consensus of the employees on a shift also do not involve independent judgment. *Children’s Farm Home*, 324 NLRB 61, 64 (1997). Putative supervisors must have the power to require

certain actions be taken; it is not enough that the putative supervisor can merely request certain actions of employees. *Golden Crest Healthcare Center*, 348 NLRB 727, 729 (2006).

Likewise, assignments based on employees' well-known skills are not made with independent judgment. *UPS Ground Freight, Inc.*, 365 NLRB 1123, 1124 (2017), *enfd.* 921 F.3d 251 (D.C. Cir. 2019); *CNN America, Inc.*, 361 NLRB 439, 460 (2014) (citing *KGW-TV*, 329 NLRB 378, 381–382 (1999)); *S.D.I. Operating Partners, L.P.*, 321 NLRB 111 (1996). Nor is independent judgment shown where an assignment is simply based on whether or not an individual is capable of performing the task assigned. See *G4S Government Solutions, Inc.*, 363 NLRB 977, 979 (2016) (citing *Volair Contractors, Inc.*, 341 NLRB 673, 675 *fn.* 10 (2004)); *Cook Inlet Tug & Barge, Inc.*, 362 NLRB 1153, 1154 (2015) (citing *Croft Metals, Inc.*, 348 NLRB 717, 722 (2006)). Making assignments to employees who are able to perform all assignment options, and none of whom have special training or education that make them qualified for any particular assignment, does not involve independent judgment. *NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury*, 372 NLRB No. 35, slip op. at 9-10 (2022).

b. Application

Janecek assigns teachers significant overall duties when she provides teachers the Advisory lesson plans, teaching materials, and weekly tasks, and explains to them during weekly meetings how to use these materials in class. In addition, at certain times of the year Janecek provides teachers materials and instruction on how to ensure that students are prepared to present at the student-led conferences. Teachers are required to follow the directives of the Dean of Students regarding the Advisory program, including by completing the Advisory lesson plans and weekly tasks. If a teacher refused to follow the directives of the Dean of Students, the Dean of Students would investigate the situation, write it down, and report the teacher to the principal. The teacher then would face potential repercussions from the principal.

Janecek uses independent judgment when she assigns the Advisory lesson plans, teaching materials, and weekly tasks to the teachers. Janecek writes and prepares all the curriculum for the Advisory Program, and she appears to have unfettered discretion in doing so because there is no evidence that she seeks or requires approval from anyone with respect to her curriculum choices. In this regard, Janecek creates and selects materials for the Advisory Program based on her assessment of students' needs.

Janecek also assigns, or has the authority to assign, teachers to work on specific service projects during community days. All teachers must participate in community days by working on a volunteer project in the community. Janecek permits teachers to choose between participating in a project the teachers themselves have created or selected on their own and participating in one of the projects that Janecek herself has created or selected through use of her own independent judgment. Janecek also uses independent judgment to decide whether to approve a teacher's proposed volunteer project by considering whether the proposed project keeps students safe and involves volunteering and giving back to the community.

Janecek would use independent judgment if she exercised her authority to reassign a teacher from one class to another class during summer school. If a teacher who was teaching a class during summer school complained that he or she was not a good fit for that class, Janecek has the authority, using her own discretion, to reassign that teacher to another summer class.

Based on the foregoing and the record as a whole, I find that the Employer met its burden to establish that Janecek assigns work to teachers using independent judgment.

3. Responsibly Direct

a. Board Responsibly Direct Legal Authority

With regard to “responsibility to direct,” the Board in *Oakwood* held “if a person on the shop floor has ‘men under him’ and if that person decides ‘what job shall be undertaken next or who shall do it,’ that person is a supervisor, provided that the direction is both ‘responsible’ ... and carried out with independent judgment.” *Oakwood*, 348 NLRB at 691. Direction includes authority to manage an assigned team to ensure timely completion of projects by deciding the order in which work is to be performed and telling employees to follow that order, instructing employees how to perform jobs properly, correcting improper performance, and moving employees, when necessary, to do different tasks. *Croft Metals*, 348 NLRB at 722.

To be responsible direction, the putative supervisor “must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly.” *Oakwood*, 348 NLRB at 691-92. The Board also said, “[I]t must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. It must also be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps.” *Id.* at 692.

b. Application

Here, Janecek uses independent judgement to responsibly direct teachers in their performance of Advisory duties. Janecek directs teachers in their performance of these duties by managing a team of approximately 16 Advisors to implement the Advisory curriculum that she herself prepares. Janecek decides the jobs that teachers undertake, and the order in which work is to be performed, by creating the weekly lesson plans and materials that Janecek requires them to use during the four class periods per week that each Advisor teaches the Advisory curriculum.

Janecek responsibly directs teachers in their performance of Advisory duties because she is accountable for the Advisory program in the sense that she has the authority to issue instructions to teachers with respect to any facet of the Advisory program, and that she could face repercussions from the principal if a teacher performed poorly on an Advisory-related task, such as failing to prepare students for student-led conferences. Janecek directs teachers with independent judgment because she has wide, if not complete, discretion in determining which tasks teachers should perform, and how they should perform them, to implement the Advisory

curriculum effectively. Janecek's responsible direction of teachers is not of a clerical or routine nature, but rather requires the use of her independent judgment.

Based on the foregoing and the record as a whole, I find that the Employer met its burden to establish that Janecek responsibly directs teachers using independent judgment.

4. Discipline

a. Board Authority to Discipline Legal Authority

To establish the supervisory authority to discipline or effectively recommend discipline, asserted disciplinary authority "must lead to personnel action without independent investigation by upper management." *Veolia Transportation Services*, 363 NLRB 902, 908 (2016) (citing *Sheraton Universal Hotel*, 350 NLRB 1114, 1116 (2007), and *Beverly Health & Rehabilitation Services*, 335 NLRB 635, 669 (2001), enfd. in pertinent part 317 F.3d 316 (D.C. Cir. 2003)); see *Lucky Cab Co.*, 360 NLRB 271 (2014) (quoting *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002)); *Pepsi-Cola Bottling Co.*, 154 NLRB 490, 493-494 (1965).

Where the evidence is in conflict as to whether a particular type of corrective action constitutes discipline, the Board will find that the party asserting supervisory status has not met its burden. *Veolia Transportation Services*, 363 NLRB 902, 908-909 (2016). The authority to issue verbal reprimands, without more, does not establish the authority to discipline. *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1139 (1999); *Washington Nursing Home*, 321 NLRB 366, 371 (1996); *Ohio Masonic Home*, 295 NLRB 390, 394 (1989); *Passavant Health Center*, 284 NLRB 887, 889 (1987); *Beverly Manor Convalescent Centers*, 275 NLRB 943, 945 (1985). "[T]he mere factual reporting of oral reprimands and the issuance of written warnings that do not alone affect job status or tenure do not constitute supervisory authority." *Passavant Health Center*, 284 NLRB 887, 889 (1987) (citing *Heritage Manor Center*, 269 NLRB 408, 413 (1984); see also *Republican Co.*, 361 NLRB 93, 99-100 (2014); *Hausner Hard-Chrome of KY., Inc.*, 326 NLRB 426, 427 (1998); *Azusa Ranch Market*, 321 NLRB 811, 812-813 (1996); *Ten Broeck Commons*, 320 NLRB 806, 812 (1996)

Independent judgment must be shown to establish disciplinary authority. See, e.g., *G4S Regulated Security Solutions*, 362 NLRB 1072, 1073 (2015); *Green Acres Country Care Center*, 327 NLRB 257 (1998). Testimony that discipline may be a collaborative effort, without specificity as to what collaboration entails or how often it occurs, may suggest that putative supervisors do not exercise independent judgment. *Veolia Transportation*, 363 NLRB 1879, 1885-1886 (2016), enfd. sub nom. *Transdev Services, Inc. v. NLRB*, 991 F.3d 889 (8th Cir. 2021); *Shaw, Inc.*, 350 NLRB 354, 356-357 (2007); *Tree-Free Fiber Co.*, 328 NLRB 389, 391-392 (1999).

b. Application

The record evidence shows that during summer school, Janecek has the authority to discipline employees with independent judgment.

Goble testified that during summer school, the Dean of Students can issue staff members documented verbal warnings that could be used against the Dean of Students in the future. Goble also testified that during summer school (and on the rare occasions the principal is absent during the regular school year), if an immediate decision regarding teacher discipline is necessary, such as if a teacher grabs a student, the Dean of Students could “implement the discipline” when the egregious action occurred even though the principal is not present.

Janecek similarly testified that during summer school, in cases where anything is endangering the students, she can act without first seeking approval, such as by telling a teacher to go home if the teacher is clearly under the influence of alcohol. Inasmuch as the record does not reflect that there are limits or restrictions to Janecek’s discretion to determine whether a staff member has engaged in action that merits a verbal warning, or to determine whether a staff member’s action is egregious or endangers students and thus merits discipline, Janecek uses independent judgment to issue discipline to staff members during summer school.

Based on the foregoing and the record as a whole, I find that the Employer met its burden to establish that during summer school, Janecek has the authority to discipline employees using independent judgment.

5. Hire

a. Board Authority to Hire Legal Authority

The Board has found the authority to hire established where putative supervisors hired individuals and crews on a temporary basis, that such hires were a significant part of the putative supervisors’ function, that the putative supervisors set the pay and duration of employment for such temporary hires, and the putative supervisors had complete discretion to decide whom to hire (based on their assessment of what skills were needed and whether candidates had the appropriate skills or qualifications). *Union Square Theatre Management, Inc.*, 326 NLRB 70, 71 (1998); see also *Fred Meyer Alaska, Inc.*, 334 NLRB 646, 649 (2001); *Detroit College of Business*, 296 NLRB 318, 319 (1989).

The fact that not all of the putative supervisors have actually exercised their hiring authority does not defeat a supervisory finding. *Fred Meyer Alaska, Inc.*, 334 NLRB 646, 649 (2001). However, the Board has found that a putative supervisor who substituted for a superior (for about 2 weeks annually) and in this capacity hired an employee on only one or two occasions over a six-year period was not a supervisor within the meaning of Section 2(11). *New Jersey Newspapers Co.*, 322 NLRB 394, 395 (1996).

The Board commonly entertains arguments that putative supervisors effectively recommend hire. Without additional evidence, a putative supervisor does not effectively recommend hiring where acknowledged supervisors also interview candidates. *Peacock*

Productions of NBC Universal Media, 364 NLRB 1523, 1526-1527 (2016); *Republican Co.*, 361 NLRB 93, 97 (2014); *J.C. Penney Corp.*, 347 NLRB 127, 129 (2006); *Boston Medical Center Corp.*, 330 NLRB 152, 201 (1999); *Ryder Truck Rental, Inc.*, 326 NLRB 1386, 1387 fn. 9 (1998); see also *North General Hospital*, 314 NLRB 14, 16 (1994). This is so even if there is testimony that the putative supervisors' recommendations are given "significant" weight. *Ryder Truck Rental, Inc.*, 326 NLRB 1386, 1388 (1998).

As with all supervisory functions, a hiring recommendation is not effective in the absence of a contention or finding that such recommendation is relied on without further inquiries. *Adco Electric*, 307 NLRB 1113, 1124 (1992), *enfd.* 6 F.3d 1110 (5th Cir. 1993); *Waverly-Cedar Falls Health Care*, 297 NLRB 390, 392 (1989). Likewise, a hiring recommendation has not been shown to be effective where the influence of the recommendation on the ultimate decision is not known. *Pacific Coast M.S. Industries*, 355 NLRB 1422, 1425-1426 (2010); *Third Coast Emergency Physicians, P.A.*, 330 NLRB 756, 759 (2000); *F.A. Bartlett Tree Expert Co.*, 325 NLRB 243, 245 (1997). Merely narrowing the applicant pool by screening applicants and recommending several to the ultimate decisionmaker does not constitute an effective hiring recommendation. *Wake Electric Membership Corp.*, 338 NLRB 298, 298-299 (2002); *Ohio State Legal Services Assn.*, 239 NLRB 594, 596 (1978); *The Door*, 297 NLRB 601, 602 (1990).

b. Application

The record does not reflect that Janecek hires employees or effectively recommends hiring, with independent judgment. Janecek does not have the independent authority to hire employees. As described by Janecek, the decision to hire someone from a pool of finalists is a collaborative one, among the principal, Janecek, and another staff member. There is no record evidence that a consensus among these three individuals is required to hire, or that if individuals do not reach a consensus, Janecek has the authority to hire her preferred applicant. To the contrary, as Goble testified, the principal has the ultimate authority to make final hiring decisions. Based on the foregoing and the record as a whole, the Employer failed to meet its burden to establish that Janecek possesses the authority to hire employees.

Likewise, the record reflects that Janecek does not effectively recommend hiring any employees. Janecek and the principal, and usually a third staff member, jointly or separately review job applications, collaboratively select the applicants to invite to the interview round, participate in the interviews, collaboratively select applicants to invite to a second round of interviews, select two or three finalists, arrange for the applicant to perform a teaching demonstration in front of students (in the case of an applicant for a teaching position), and, according to Janecek, collaboratively discuss and decide whom to hire. Although Janecek appears to recommend applicants throughout the hiring process, it is unclear whether Janecek's recommendations are effective.

Based on the foregoing and the record as a whole, the Employer failed to meet its burden to show that the Dean of Students has the authority to effectively recommend hire.

6. Secondary Indicia

The record reflects that Janecek attends some meetings discussing strategic initiatives with the principals of the Employer's three schools and the Executive Director that are not open to employees in the petitioned-for unit other than inclusion specialists. Janecek's attendance at such meetings supports establishing Janecek's status as a statutory supervisor based on my finding discussed above that Janecek is a statutory supervisor by virtue of her authority to responsibly direct employees with independent judgment. I find that the record evidence concerning Janecek's office and her possession of certain keys to certain areas of the high school is too inconclusive to categorize them as secondary indicia of Janecek's supervisory status.

7. Seasonal Supervisor

a. Board Seasonal Supervisor Legal Authority

Those who exercise supervisory authority for a portion of the year and perform rank-and-file functions for the remainder are described as "seasonal supervisors" and may be included in the bargaining unit with respect to their rank-and-file duties if their supervisory and non-supervisory functions are sharply demarcated. *Great Western Sugar Co.*, 137 NLRB 551, 553-54 (1962). Where employees performed supervisory work between 15 percent and 95 percent of their work time, possessed supervisory authority over non-unit employees but not over unit employees, and exercised supervisory authority at customer sites away from the workplace, the Board held that employees who spent at least 50 percent of their working time performing nonsupervisory duties would be eligible to vote. *Westinghouse Electric Corp.*, 163 NLRB 723 (1967), *enfd.* 424 F.2d 1151 (7th Cir. 1970).

The *Westinghouse* "50 percent rule" is inapplicable to situations in which employees exercise supervisory authority over unit employees and perform supervisory and nonsupervisory duties during the same work period, *Aladdin Hotel*, 270 NLRB 838, 839-840 (1984) (*Aladdin*), or where they exercise supervisory authority over unit employees in the same workplace where they exercise nonsupervisory duties. *Canonie Transportation Co.*, 289 NLRB 299, 299-300 (1988) (*Canonie*). The appropriate test under these circumstances is whether the part-time supervisors spend a "regular and substantial" portion of their time performing supervisory duties, or whether such substitution is sporadic and insignificant. *Aladdin*, 270 NLRB at 840; *Canonie*, 289 NLRB at 300. See also *Carlisle Engineered Products*, 330 NLRB 1359, 1360-1361 (2000). Although the Board has not adopted a strict numerical definition for substantiality, the Board has found supervisory status where the individuals have spent 10 to 15 percent of their total work time serving in a supervisory role. See also *Swift & Co.*, 129 NLRB 1391 (1961) (15 percent sufficient); *Archer Mills, Inc.*, 115 NLRB 674, 676 (1956) (10 percent sufficient).

b. Application

As I determined above, the Dean of Students possesses the supervisory authority to discipline staff members during summer school. These staff members include one or two teachers, who are unit employees. Janecek works in person at the high school during both the regular school year and summer school, and she does not stop performing her regular duties

during summer school. Therefore, Janecek possesses supervisory authority over unit employees and performs supervisory and nonsupervisory duties during the same work period and in the same workplace. Accordingly, the test to determine whether the Dean of Students should be included in the bargaining unit on the basis of her supervisory duties during summer school is whether the Dean of Students spends a “regular and substantial” portion of her time performing supervisory duties.

Based on the foregoing and the record as a whole, I find that Janecek spends a regular and substantial portion of her time with the authority to perform supervisory duties. This authority is regular because the high school has taught summer school for at least the last ten years, and inasmuch as the Dean of Students has acted as the principal during every summer school, Janecek and her predecessors have possessed the authority to discipline employees regularly. Janecek’s authority to discipline employees during summer school is also substantial because she spends approximately 10 percent of her worktime when school is in session in summer school, sufficient to qualify Janecek as a statutory supervisor. See *Swift & Co*, 129 NLRB 1391 (1961) (15 percent sufficient); *Archer Mills, Inc.*, 115 NLRB 674, 676 (1956) (10 percent sufficient).

8. Section 2(11) Supervisor Conclusion

As the party asserting that Janecek is a statutory supervisor, the Employer must prove by a preponderance of the evidence that Janecek has the authority to engage in, or to effectively recommend, any of the supervisory indicia enumerated in Section 2(11) of the Act as long as Janecek’s exercise of at least one of the indicia requires or would require independent judgment. The Employer has met its burden because the record shows that Janecek has the authority to assign overall duties to teachers, to responsibly direct the work teachers, and during summer school, to discipline staff members. The record reflects that Janecek exercises or would exercise independent judgment in performing these actions. Based on the foregoing and the record as a whole, I find that the Employer has met its burden to establish that the Dean of Students is a supervisor of the Employer under Section 2(11) of the Act and therefore appropriately should be excluded from the petitioned-for unit.

IV. CONCLUSION

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

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.²²

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.²³

4. The Petitioner claims to represent the petitioned-for employees, but the Employer declines to recognize the Petitioner.

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

6. The Petitioner is willing to proceed to an election in any unit found appropriate.

7. There is no collective-bargaining agreement covering any of the employees in the unit sought in the petition herein, and there is no contract bar to an election in this matter.²⁴

8. There are no petitions pending in other National Labor Relations Board Regional offices involving other facilities of the Employer.²⁵

9. The parties stipulated on the record, and I find, that the classifications identified below as included in Voting Group A (Professional Unit) are professional employees under Section 2(12) of the Act. The parties further stipulated and I find that the classifications identified below as included in Voting Group B (Non-Professional Unit) are non-professional. Because the parties agree that the petitioned-for unit includes both professional and non-professional employees, I find that a *Sonotone* election²⁶ is appropriate, and I therefore direct an election in the following voting groups:

²² Although the Employer, contrary to the Petitioner, did not stipulate to the Board's jurisdiction over the Employer, the commerce facts admitted by the Employer in its Statement of Position included in Board Exhibit 2 are sufficient to establish that the Employer falls under the Board's jurisdiction. In this regard, the Employer admitted that beginning on July 1, 2024, and ending on June 30, 2025, the Employer: a) received gross revenues equaling or exceeding \$1,000,000 from its sales or performance of services; and b) purchased and received goods valued in excess of \$50,000 from directly outside the State of Arizona.

²³ The parties stipulated to the Petitioner's labor organization status in Board Exhibit 2.

²⁴ The parties stipulated to these facts in Board Exhibit 2.

²⁵ The parties agreed to this fact on the record.

²⁶ Section 9(b)(1) of the Act prohibits the inclusion of professional employees in a unit with employees who are not professional, unless a majority of the professional employees vote for inclusion in such a unit. To carry out the statutory requirement, the Board has long held that the *Sonotone* self-determination election procedure is the appropriate method to allow professional employees to decide for themselves whether they wish to be included in such a diverse unit. See *Sonotone Corp.*, 90 NLRB at 1241–1242; *Barnes-Hind Pharmaceuticals, Inc.*, 183 NLRB 301, 303 (1970); *Firestone Tire & Rubber Co.*, 181 NLRB 830, 833 (1970); *New England Telephone & Telegraph Co.*, 179 NLRB 527, 529–530 (1969).

VOTING GROUP A (PROFESSIONAL UNIT)

Included: All full-time and regular part-time Counselors, Teachers, Special Education Teachers, Inclusion Specialists, Office Managers, and Registrars employed by the Employer at any of the Employer’s facilities in Arizona.

Excluded: All other employees, including Educational Assistants, Tech/Facilities employees, Front Desk employees, Dean of Students, managerial employees, non-professional employees, confidential employees, and guards and supervisors as defined in the Act.

VOTING GROUP B (NON-PROFESSIONAL UNIT)

Included: All full-time and regular part-time Educational Assistants, Tech/Facilities employees, and Front Desk employees employed by the Employer at any of the Employer’s facilities in Arizona.

Excluded: All other employees, including Counselors, Teachers, Special Education Teachers, Inclusion Specialists, Office Managers, Registrars, Dean of Students, managerial employees, professional employees, confidential employees, and guards and supervisors as defined in the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. There will be two voting groups in the election as set forth above, **Voting Group A** and **Voting Group B**. Two questions shall appear on the ballot of the professional employees in **Voting Group A**:

1. Do you wish to be included with nonprofessional employees in a unit for the purposes of collective bargaining? The choices on the ballot will be “Yes” or “No.”
2. Do you wish to be represented for purposes of collective bargaining by **ARIZONA ALLIANCE OF CHARTER TEACHERS AND STAFF, AFT LOCAL 6627, AFL-CIO?** The choices on the ballot will be “Yes” or “No.”

The question on the ballot for the non-professional employees in **Voting Group B** will be: “Do you wish to be represented for purposes of collective bargaining by the **ARIZONA ALLIANCE OF CHARTER TEACHERS AND STAFF, AFT LOCAL 6627, AFL-CIO?** The choices on the ballot will be “Yes” or “No.”

If a majority of the professional employees voting in **Voting Group A** vote “Yes” to the first question on the ballot, indicating their desire to be included in a unit with non-professional employees in **Voting Group B**, they will be so included, and their votes on the second question on the ballot regarding whether or not they wish to be represented for purposes of collective

bargaining by **ARIZONA ALLIANCE OF CHARTER TEACHERS AND STAFF, AFT LOCAL 6627, AFL-CIO** will be counted together with the votes of the nonprofessional employees in **Voting Group B** to decide the question concerning representation for the overall unit consisting of the employees in **Voting Group A** and **Voting Group B**.

If, on the other hand, a majority of the professional employees voting in **Voting Group A** do not vote “Yes” to the first question on the ballot, their ballots will be counted separately to decide the question concerning representation in a separate **Voting Group A**.

A. Election Details

The election will be held on **Tuesday, May 19, 2026**, at the following times and locations:

- **7:00 a.m. to 9:30 a.m. in the auditorium at City High School**, located at 47 East Pennington Street in Tucson, Arizona.

and

- **3:00 p.m. to 5:00 p.m. in the staff room at Paulo Freire Freedom School—University**, located at 300 East University Boulevard, Suite 10, in Tucson, Arizona.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **Saturday, April 25, 2026**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board’s designated office.

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

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

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names (that employees use at work), work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Tuesday, May 5, 2026**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

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

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

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

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

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting,

working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

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

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review. Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated in Phoenix, Arizona this 1st day of May, 2026.

/s/ Cornele A. Overstreet

Cornele A. Overstreet, Regional Director