

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, NASHVILLE RESIDENT OFFICE**

THE VANDERBILT UNIVERSITY

Employer

and

Case 10–RC–193205

**SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 205**

Petitioner

HEARING OFFICER’S REPORT ON CHALLENGED BALLOTS

I. INTRODUCTION

This Report contains my findings and recommendations regarding determinative challenged ballots cast in a representation election to determine whether certain employees of the Employer, The Vanderbilt University, wished to be represented for purposes of collective bargaining by the Petitioner, Service Employees International Union Local 205. The Petitioner, the Employer, and the Board Agent conducting the election challenged the ballots of 117 employees and the challenges were sufficient to affect the results of the election. On June 26, 2017, the Acting Regional Director issued a Report on Challenges and Notice of Hearing in which he directed that I conduct a hearing to resolve the issues raised by the challenged ballots and to prepare a report with recommendations to the Regional Director as to the disposition of the challenged ballots.¹

Although the Petitioner initially sought an election covering employees employed in four different colleges at the University, it subsequently withdrew part of its petition and the only unit now at issue contains the Employer’s non-tenure-track faculty with a primary appointment in its College of Arts and Science. Of the 117 total challenged ballots over the four different colleges, 51 challenged ballots came from the College of Arts and Science. Of the 51 challenged ballots, the parties resolved 23 of the ballots prior to and during the hearing. The 28 ballots left still affect the election results in the College of Arts and Science Unit, and therefore I must analyze the challenges to these ballots. All of the challenged ballots discussed in this Report were cast in the College of Arts and Science unit.

In this Report, I set forth the procedural history of this case, provide an overview of the University operations relevant to the challenged ballots, and identify the challenged ballots the parties resolved. I then set forth the legal standard for determining the eligibility of the 28 voters whose ballots remain challenged and I make recommendations to the Regional Director as to the

¹ The full title of the Acting Regional Director’s June 26, 2017 Report is “Report on Challenges, Order Approving Partial Withdrawal of Petition, Order Directing Hearing and Notice of Hearing on Challenged Ballots.”

disposition of those ballots. I ultimately recommend that the Regional Director overrule the challenges and open and count the 28 challenged ballots.

II. PROCEDURAL HISTORY

The Petitioner filed the petition in this case on February 16, 2017 seeking to represent employees in the College of Arts and Science, the Peabody College of Education and Development, the Blair School of Music, and the Divinity School. Following a preelection hearing, the Acting Regional Director issued a decision on May 3, 2017 in which she ordered a mail-ballot election in four separate units of employees.² The mail-ballot election began on May 15, 2017. The Region counted the ballots on June 6, 2017 and provided tallies of ballots to the parties. The challenged ballots were sufficient to affect the results of the election in each unit. Neither party filed objections to the election. Thereafter, the Petitioner withdrew its petition for the following three units: the Peabody College of Education and Development Unit, the Blair School of Music Unit, and the Divinity School Unit. Accordingly, the only unit remaining is the College of Arts and Science Unit.

In her preelection decision, the Acting Regional Director found that the appropriate unit for the College of Arts and Science consisted of the following employees:

The College of Arts and Science Unit

Included: All full-time and part-time non-tenure-track faculty employed by Vanderbilt University with a primary appointment in the **College of Arts and Science**.

Excluded: All faculty of other Schools and Colleges, all tenured faculty, tenure-track faculty, emeritus faculty, research faculty who are not teaching courses, adjunct faculty, clinical faculty, all administrators (including deans, directors, provosts, and chairs who may have teaching assignments); faculty who are paid by entities other than Vanderbilt University (including governments, and other organizations), visiting faculty paid by their home institutions, athletic coaches, all other employees employed by the University, including those who teach a class or course and are separately compensated for such teaching;, managers, confidential employees, office clerical employees, professional employees, guards, and supervisors as defined in the National Labor Relations Act.

The Acting Regional Director also concluded the following employees would be eligible to vote in the election: all unit employees who are currently teaching at least one class, or taught at least one class during the Spring 2017 semester.

The tally of ballots for the College of Arts and Science shows that out of the approximately 193 eligible voters, 55 ballots were cast for the Petitioner and 40 ballots were cast against representation. As of June 6, 2017, when the Region served a copy of the tally of ballots

² Acting Regional Director Lisa Henderson issued the preelection decision, and Acting Regional Director Terry Combs issued the Report on Challenges and Notice of Hearing.

on the parties, there were 51 challenged ballots, a sufficient number to affect the outcome of the election.

The determinative challenged ballots, the party challenging eligibility, and the reasons for each challenge are as follows:

Arts and Science Unit

	<u>NAME</u>	<u>CHALLENGED BY</u>	<u>REASON</u>
1	Conrad, Joseph	Union	Did not teach a class
2	Helmuth, Chalene	Union	Paid as staff by other college at Employer
3	Jacquemet, Matthieu	Union	Visiting professor paid by other school
4	Aulakh, Pavneet	Employer	No longer employed
5	Bell, Dianna	Employer	No longer employed
6	Boutelle, Russell	Employer	No longer employed
7	Crouvi, Yifat	Employer	No longer employed
8	Finberg, Keegan	Employer	No longer employed
9	Kenan, Randall	Employer	No longer employed
10	Quigley, Killian	Employer	No longer employed
11	Bischoff, Marcel	Board Agent ³ & Union	Assistant Professor, Associate Professor, Professor & post-doctoral scholar
12	Hamm, Keaton	Board Agent & Union	Assistant Professor, Associate Professor, Professor & post-doctoral scholar
13	Mazzone, Giusy	Board Agent & Union	Assistant Professor, Associate Professor, Professor & post-doctoral scholar
14	McRae, Robert	Board Agent & Union	Assistant Professor, Associate Professor, Professor & post-doctoral scholar
15	Rasdeaconu, Rares	Board Agent & Union	Assistant Professor, Associate Professor, Professor & post-doctoral scholar
16	Reznikov, Aleksandr	Board Agent & Union	Assistant Professor, Associate Professor, Professor & post-doctoral scholar
17	Sale, Andrew	Board Agent & Union	Assistant Professor, Associate Professor, Professor & post-doctoral scholar
18	Chavez, Tizoc	Board Agent	Assistant Professor, Associate Professor, Professor
19	Globetti, Suzanne	Board Agent	Assistant Professor, Associate Professor, Professor
20	Jorge, Maria	Board Agent	Assistant Professor, Associate Professor,

³ The Board Agent challenged voters 11 through 28 pursuant to the Acting Regional Director’s preelection decision specifically directing that employees having the titles Assistant Professors, Associate Professors, Professors, and post-doctoral fellows could vote subject to challenge. See CHM 11338.2(b), “The Board agent must challenge anyone ... who has been permitted by the regional director ... to vote subject to challenge.”

	<u>NAME</u>	<u>CHALLENGED BY</u>	<u>REASON</u>
			Professor
21	Kelley, Neil	Board Agent	Assistant Professor, Associate Professor, Professor
22	Panter, Rebecca	Board Agent	Assistant Professor, Associate Professor, Professor, post-doctoral scholar
23	Robinson, William	Board Agent	Assistant Professor, Associate Professor, Professor
24	Schlundt, David	Board Agent	Assistant Professor, Associate Professor, Professor
25	Turpeinen, Katrina	Board Agent	Assistant Professor, Associate Professor, Professor
26	Tzonkova, Zdravka	Board Agent	Assistant Professor, Associate Professor, Professor
27	Waymark, Diana	Board Agent	Assistant Professor, Associate Professor, Professor
28	Weghorst, Keith	Board Agent	Assistant Professor, Associate Professor, Professor
29	Alijewiez, Michael	Board Agent ⁴	Not on List (administrative per Employer)
30	Casad, Madeleine	Board Agent	Not on List (administrative per Employer)
31	Catesby Yant, Anna	Board Agent	Not on List (administrative per Employer)
32	Baskauf, Steven	Board Agent	Not on List (administrative per Employer)
33	Bjork-James, Sophie	Board Agent	Not on List (administrative per Employer)
34	Butt, Neil	Board Agent	Not on List (administrative per Employer)
35	Davies, Christopher	Board Agent	Not on List (administrative per Employer)
36	Decuir Todd, Tara	Board Agent	Not on List (administrative per Employer)
37	Delassus, Sarah	Board Agent	Not on List (administrative per Employer)
38	Falconi, Heraldo	Board Agent	Not on List (administrative per Employer)
39	Grundstrom, Erika	Board Agent	Not on List (administrative per Employer)
40	Hines, Andrew	Board Agent	Not on List (administrative per Employer)
41	Koch, John	Board Agent	Not on List (administrative per Employer)
42	Murphy, Patrick	Board Agent	Not on List (administrative per Employer)
43	Muse, Courtney	Board Agent	Not on List (administrative per Employer)
44	Quarry, Justin	Board Agent	Not on List (administrative per Employer)
45	Ridge, Daniel	Board Agent	Not on List (administrative per Employer)
46	Romero, Aurora	Board Agent	Not on List (administrative per Employer)
47	Russell, Carrie	Board Agent	Not on List (administrative per Employer)

⁴ The Board Agent challenged voters in rows 29 through 51 because the eligibility list provided by the Employer did not contain these names. See CHM 11338.2(b) “The Board agent must challenge anyone whose name is not on the voter list...” As explained in further detail below, the Employer did not include these names on the eligibility list because the Employer believes they should be excluded as “administrators” pursuant to the unit exclusions.

	<u>NAME</u>	<u>CHALLENGED BY</u>	<u>REASON</u>
48	Sandoz, Mary Lynn	Board Agent	Not on List (administrative per Employer)
49	Schade, Silke	Board Agent	Not on List (administrative per Employer)
50	Selcke, Gretchen	Board Agent	Not on List (administrative per Employer)
51	Qin, Tina	Board Agent	Not on List (administrative per Employer)

In his Report on Challenges, the Acting Regional Director ordered that a hearing be conducted to give the parties an opportunity to present evidence regarding the challenged ballots. As the hearing officer designated to conduct the hearing and to recommend to the Regional Director whether to overrule or sustain the challenged ballots, I presided over the hearing, heard testimony, and received into evidence relevant documents on July 6-12, August 1-2, and August 15, 2017.⁵ I permitted the parties to file briefs and have fully considered the briefs filed by both parties.

III. THE EMPLOYER’S OPERATION

The Employer is a private university with an approximately 330-acre campus in Nashville, Tennessee. The University is composed of 10 individual schools offering undergraduate, graduate, and professional degrees to students. As set forth in the Faculty Manual, the University is committed to a shared University governance model, which includes collaboration between Faculty and Administration.⁶ The University has a Board of Trust that approves all major academic, personnel, and financial decisions, including all faculty or personnel appointments, such as appointments or promotions to tenure; financial decisions concerning the University’s operating budget; additions and changes in schools, departments, or degree programs; and naming University buildings and spaces. The Board of Trust also selects the Chancellor, currently Nicholas Zeppos, who serves as the Chief Officer of the University. Next in the governing hierarchy is Provost Susan Wentz, who reports to the Chancellor. Additionally, there are numerous Vice Chancellors responsible for further duties. A dean leads each of the 10 schools and most of these deans report to the Provost.

The College of Arts and Science is 1 of the 10 schools comprising the University, and is the only school at issue in this matter. The current Dean of the College is Lauren Benton. At the time of the preelection proceedings, there were approximately 634 individuals with faculty appointments in the College. Of these individuals, 379 were tenured or on the tenure track and 255 were on the non-tenure track. An individual must hold a “faculty appointment” to the College and to a particular department or program in order to teach a course at the College and

⁵ During the post-election hearing, Petitioner’s Exhibit 5 was identified and offered into evidence. I overruled the Employer’s objection to the exhibit, but neglected to state on the record that I received it into evidence. To correct this oversight, I accept and receive into evidence Petitioner’s Exhibit 5.

⁶ The Faculty Manual is a document voted on by the faculty that contains terms and conditions of employment. The Faculty manual explains the various job titles, sets forth faculty responsibilities, and conveys the rights according to faculty. Such faculty rights include benefits, internal grievance procedures, and due process. The Faculty Manual only applies to those employees who are appointed to the faculty of Vanderbilt University.

use the appropriate university systems for grading and other teaching processes.⁷ Each academic year is divided into the Fall and Spring Semesters. Tenured and tenure-track faculty are required to teach a 2-2 load, meaning teaching two classes in the Fall and two in the Spring. Non-tenure track faculty members are generally required to teach a 3-3 load, meaning three classes each semester. In some instances, faculty can receive what is called a “course reduction” and teach fewer classes than required. For example, if a tenured faculty member receives a one-course reduction, this faculty member teaches one class in one semester and two classes in the other. Similarly for non-tenure track professors, a one-course reduction means the professor teaches two classes in one semester and three classes in the other. As indicated in the unit description, the Petitioner seeks to represent only non-tenure-track faculty with a primary appointment in the College of Arts and Science. This petition does not involve tenured or tenure-track faculty or any faculty at any other school.

There are 35 different degree-granting units in the College of Arts and Science: 21 departments, 12 programs, and 2 centers.⁸ Generally, the Dean appoints a faculty member as “chief administrator” to lead each degree-granting unit. The faculty member leading each degree-granting unit holds a separate title linked with the type of unit they lead: department chair leads a department, program director leads a program, and center director leads a center.⁹ The Faculty Manual describes department chairs as holding administrative terms of office and Dean Benton described their roles as the chief administrator of a department. A department chair is responsible for overseeing the academic affairs of the unit, including supervising other faculty; interacting with the Dean’s office; initiating requests for faculty appointments; making recommendations for faculty reappointments, promotions, and tenure; completing yearly evaluations of faculty; submitting merit pay recommendations; and handling department budgets. Faculty do not apply for these positions, rather the Dean appoints faculty to the positions. Department chairs typically receive a reduction in their required teaching load and an additional stipend in exchange for the extra duties required of the position.

In addition to department chairs, various departments have other faculty titles for those who perform further duties assisting the chair in administrating the needs of the department. For example, in almost every department there are faculty members serving as the director of undergraduate studies and director of graduate studies. These directors’ primary roles are to schedule courses, manage faculty schedules, and handle student concerns. Directors of graduate or undergraduate studies typically receive a reduction in their required teaching load in exchange

⁷ The only exception to this rule is that graduate students do teach classes, but they are not listed as the instructor on record for the class and instead are assigned to a faculty member and teach under their guidance. Graduate students do not receive faculty appointments and are not subject to the Faculty Manual.

⁸ Degree-granting units refer to academic groupings or subjects that students concentrate on to earn a degree. For example a student earns a Bachelor’s Degree in Biology by completing required courses in the Biological Sciences Department. While in the process of earning this degree, the University would refer to such a student as an undergraduate student majoring in Biology, sometimes shortened to “undergraduate major” or “Biology major.”

⁹ Collectively throughout this Report, I refer to the various degree granting units as departments and the chief administrators of these departments as chairs to avoid confusion and repetition of the chair/director and department/program/center dichotomy.

for the additional administrative duties required of the position. However, there is no evidence that these directors receive a stipend similar to the department chairs.

Along with the department chairs and directors of undergraduate/graduate studies, some departments have other faculty positions that require additional work and are compensated with course reductions. The evidence from the hearing makes it clear each department operates independently from the others and has different internal hierarchies, but in general these other faculty positions deal with coordinating large courses or lab classes, assisting a chair or director of a specific program, or advising students more than usual. Depending on the amount of time and responsibility for the respective position, these faculty members receive course reductions as well, but there is no evidence they receive a stipend.

IV. THE CHALLENGED BALLOTS

The parties resolved some of the challenged ballots themselves through withdrawals and stipulations. In the Report on Challenges, the Acting Regional Director approved the Petitioner's request to withdraw its challenge to voters Joseph Conrad and Chalene Helmuth. Thus, there is no challenge to their eligibility to vote and their ballots will be opened and counted. At the beginning of the hearing, the Employer requested to withdraw its challenge to voter Yifat Crouvi and I approved the withdrawal. There is no challenge to Yifat Crouvi's eligibility to vote and I thus recommend her ballot be opened and counted.

During the hearing, the parties stipulated that the following Assistant Professors, Associate Professors, and Professors share a community of interest with the unit and therefore their ballots should be opened and counted: Marcel Bischoff, Keaton Hamm, Giusy Mazzone, Robert McRae, Rares Rasdeaconu, Aleksandr Reznikov, Andrew Sale, Tizoc Chavez, Suzanne Globetti, Maria Jorge, Neil Kelley, William Robinson, David Schlundt, Katrina Turpeinen, Zdravka Tzonkova, Dianna Weymark, and Keith Weghorst.¹⁰ I approve the parties' stipulation and thus recommend that the challenges to these 17 individuals be overruled and their ballots be opened and counted. Additionally, the parties stipulated that voter Rebecca Panter is a post-doctoral scholar and she does not share a community of interest with the Unit.¹¹ I also approve this stipulation and thus recommend the challenge to Panter's ballot be sustained and her ballot not be opened and counted.

¹⁰ I listed these voters in the order corresponding to their row number from the table on page three of this Report, which correspond to the row numbers from the same chart issued by the Acting Regional Director in the Report on Challenges. During the hearing, the parties and I referred to voters based on these row numbers and I continue to use that order here for continuity.

¹¹ Both the stipulation regarding the Assistant Professors, Associate Professors, and Professors as well as the stipulation regarding Rebecca Panter are contained in Board Exhibit 2, which also provides the specific facts to which the parties stipulated regarding the community of interest factors. Furthermore, although the preelection decision referred to the post-doctoral voters as "fellows," the parties also used the term "post-doctoral fellows" and "post-doctoral scholars" interchangeably. As the stipulation in Board Exhibit 2 specifies that Rebecca Panter is a "post-doctoral scholar," that is the term I use throughout this report.

In their respective briefs, the Employer and the Petitioner each withdrew an additional challenge. The Petitioner withdrew its challenge to voter Matthieu Jacquemet and the Employer withdrew its challenge to voter Pavneet Aulakh. I approve those withdrawals and as there is no challenge to their eligibility to vote, I recommend that the ballots of Matthieu Jacquemet and Pavneet Aulakh be opened and counted.

After taking into account the challenges the parties resolved, 28 challenged ballots remain and these challenges remain determinative of the result of the election.

I have divided these 28 challenged ballots into three groups. First, I will address the group the Employer challenged because they are “no longer employed” and therefore outside of the eligibility period. Second, I will address the group the Employer did not include on the voter list because the Employer asserts they are excluded from the unit due to their administrative status. Third and last, I will address the group the Employer alleges are statutory supervisors under the Act.

The Report on Challenges in this matter instructs me to resolve the credibility of witnesses testifying at the hearing and to make findings of fact. In assessing the credibility of witnesses, I have taken into account all relevant factors, including the demeanor and interests of the witnesses; inherent probabilities; whether the witnesses’ testimonies are corroborated or consistent with documentary evidence and/or admitted facts; and drawn reasonable inferences from the record as a whole. See, e.g., *Daikichi Corp.*, 335 NLRB 622, 633 (2001), enfd. 56 Fed. Appx. 516, 2003 WL 728947 (D.C. Cir. 2003); *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006); and *New Breed Leasing Corp. v. NLRB*, 111 F.3d 1460, 1465 (9th Cir. 1997), cert. denied 522 U.S. 948 (1997). Unless otherwise specified, my summary of the record evidence is a composite of the testimony of all witnesses, including in particular testimony by witnesses that is consistent with one another, with documentary evidence, or with undisputed evidence, as well as testimony that is uncontested. Omitted testimony or evidence is either irrelevant or cumulative. A total of 16 witnesses testified over the course of this hearing.¹² As a whole, I found the witnesses to be credible insofar as their testimonies appeared to be truthful answers to the questions asked; I generally detected no deception in witness responses to questions asked on either direct or cross examination.

The burden of proof rests on the party seeking to exclude a challenged individual from voting. *Sweetener Supply Corp.*, 349 NLRB 1122 (2007), citing *Golden Fan Inn*, 281 NLRB 226, 230 fn. 24 (1986). Even though the Board agent challenged ballots because the voters were not on the voter list, it is the party seeking to establish their ineligibility that bears the burden of proof. *Id.*, citing *Arbors at New Castle*, 347 NLRB 544, 545-546 (2006). The burden of

¹² The Employer called 15 witnesses to testify in this proceeding. The Petitioner did not call any witnesses. Based on some scheduling difficulties and the Petitioner’s desire not to present its case until after the Employer rested its case, I called one witness, Professor Mary Lynn Sandoz. Professor Sandoz attended the first three days of the hearing, but she had conflicts for the remaining hearing days and did not think she would be present. In an attempt to expedite the hearing without unnecessary delays, I chose to call Professor Sandoz to the stand on the third day of the hearing in order to get her testimony on the record. Professor Sandoz turned out to be the only challenged voter to testify at this hearing. None of the witnesses other than Professor Sandoz are part of the unit or are alleged to be part of the unit.

establishing supervisory status rests on the party asserting that status. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 711-712 (2001); *Oakwood Healthcare*, 348 NLRB 686 (2006); *Benchmark Mechanical Contractors*, 327 NLRB 829 (1999). Any lack of evidence is construed against the party asserting supervisory status. *Elmhurst Extended Care Facilities*, 329 NLRB 535 fn. 8 (1999). Conclusory statements without supporting evidence do not establish supervisory authority. *Volair Contractors*, 341 NLRB 673 (2004).

The Employer, therefore, bears the burden to establish that the remaining 28 challenged voters are ineligible to vote. Of these 28 challenges, the Employer contends 6 voters are no longer employed and are outside the eligibility period. The Employer asserts 23 voters are excluded by the unit description due to their administrative status.¹³ The Employer further asserts 11 of these 23 voters are ineligible to vote because they are statutory supervisors under the Act.

A. Eligibility Period Challenges

The Employer challenged voters whose faculty appointments had expired, had confirmed faculty appointments at another school, had not applied for openings at the University for the upcoming school year, or otherwise had significant notice that their respective appointments would end at the end of the 2016 to 2017 academic year. The voters challenged for this reason are Diana Bell, Russell Boutelle, Keegan Finberg, Randall Kenan, and Killian Quigley. The Employer also challenged the ballot of voter Daniel Ridge, asserting the University did not reappoint him to a faculty position for the 2017 to 2018 academic year and also that he is an administrator and should be excluded from the unit.¹⁴ The Employer asserts these individuals no longer share a connection to the unit because they have no reasonable prospect of future employment.

To explain how I determined whether these challenged voters are eligible voters, I will examine the Acting Regional Director’s preelection decision and analyze the evidence presented in the hearing under the relevant case law.

To begin, in her preelection decision, the Acting Regional Director explained that the parties stipulated to a voter eligibility formula limiting eligibility to those petitioned-for faculty who were currently teaching at least one class. Furthermore, the Acting Regional Director adopted the Petitioner’s suggestion that the eligibility include a one-semester “look back” period to include faculty teaching at least one class during the Spring 2017 semester, as the probability of the election occurring during the summer months appeared likely. Hence, the final voter eligibility formula permits all unit employees who were currently teaching at least one class at

¹³ As discussed below, the Employer challenges Professor Daniel Ridge’s ballot for two reasons, first that his contract had ended leaving him no expectation of future employment and therefore outside of the eligibility period, and second that his position is administrative and thus excluded by the unit description.

¹⁴ I address Daniel Ridge’s eligibility to vote in this section, and cover the question of his administrative status later on in my report.

the time of the election, or taught at least one class during the Spring 2017 semester, to vote. The decision also listed various reasons an employee would be ineligible to vote, including if an employee had “quit or been discharged for cause since the designated payroll period.” The decision did not specify a payroll period, but rather used the eligibility formula to limit the unit. The election began on May 15, 2017 when the Regional Office deposited the ballots in the mail, and concluded with the ballot count on June 6, 2017.

Regarding the challenges to these six voters, it is undisputed these professors each taught at least one class in Spring 2017. The Employer also put forth undisputed evidence that these professors either had a finite appointment or had other notice well in advance of the election that the Employer would no longer employ them for the 2017 to 2018 academic year. It is further undisputed that none of the six challenged voters will teach a class at the University for the upcoming academic year. The Employer did not provide any evidence that it had discharged the six professors for cause or that they had quit. Instead, the evidence submitted at hearing showed the Employer had appointed these six professors to limited faculty appointment terms that expired at the conclusion of Spring 2017 semester. The Employer argued the nature of the specific faculty appointments made it clear that none of these six professors had any expectation of a renewal of their contract and nothing in the record disputes this contention.

The Employer appointed Professors Bell, Boutelle, Finberg, Kenan, and Quigley for the “academic year.” Multiple witnesses testified the academic year generally ends mid-May, after the conclusion of exams and after professors turn in grades. However, the Employer pays the salaries for 9-month appointments over a 12-month period. Thus, the Employer still pays professors during the summer months between the academic years. The Employer appointed Professor Ridge to a one-year term starting on August 16, 2016, and therefore not ending until approximately August 15, 2017.

The NLRB Rules and Regulations Section 1032.67(k) states, “In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail.” An employee is eligible to vote in a representation election if the employer employs the employee on the established eligibility date and the employee otherwise meets the unit definition. See *Plymouth Towing Co.*, 178 NLRB 651, 657 (1969); *Beverly Manor Nursing Home*, 310 NLRB 538 (1993). Furthermore, in academic settings, “terminal contract faculty members who are not being rehired after the expiration of their current contracts share a community of interest during their employment with, and are properly included in, an overall faculty bargaining unit.” *Goucher College*, 364 NLRB No. 71, 2016 WL 4259124 (2016), *Manhattan College*, 195 NLRB 65, 66 (1972); see also *University of Vermont*, 223 NLRB 423, 427 (1976) (“faculty members with terminal contracts will be eligible to vote in the election herein provided that they are still employed as faculty members on the date of the election”).

The Employer correctly noted that one of the factors in crafting an eligibility formula is striking a balance between the need for an ongoing connection to the unit and concern over disenfranchising voters. *Columbia University*, 364 NLRB No. 90, slip. op. at 21-22, 2016 WL 4437684 (2016). There the Board noted a concern for considering those voters who have a “reasonable prospect of future employment.” *Id.*, slip. op. at 22. The Employer’s evidence showed that none of these six professors will be teaching in the upcoming 2017-2018 school

year, and none of these professors had any expectation that they would continue their employment with the University following the conclusion of the 2016-2017 school year. However, the Acting Regional Director’s preelection decision set forth an eligibility formula that did not specify that voters must have a reasonable prospect of future employment. Rather, the Acting Regional Director crafted a “look back” period to balance these various policy considerations. The Acting Regional Director found that allowing faculty to vote if they taught one class in Spring 2017 or were currently teaching at the time of the election was the proper way to balance the policy considerations. The only relevant exclusions from this eligibility period were for those employees who had quit or been discharged for cause. There was no exception to the eligibility formula to exclude those voters who had not had their contracts renewed. Furthermore, the offer letters for these six professors make it clear they would continue to receive paychecks past the conclusion of the academic year, and there is no evidence these employees did not receive a paycheck from the Employer during June 2017. As with other elections in non-academic settings, just because an employee is not working at the time of the election does not mean the employee is not entitled to vote in the election if they fit the definitions of the eligibility period. *Steiny & Co.*, 308 NLRB 1323 (1992), and *Trump Taj Mahal Casino*, 306 NLRB 294 (1992).

Therefore, these six employees meet the eligibility formula under the Acting Regional Director’s preelection decision. I find that voters Diana Bell, Russell Boutelle, Keegan Finberg, Randall Kenan, and Killian Quigley are eligible voters and recommend their ballots be opened and counted as there are no other challenges to their eligibility. Voter Daniel Ridge is also an eligible voter and the Employer’s challenge to his ballot for that reason is overruled. I address the question of Professor Ridge’s exclusion from the unit as an administrator below.

B. Administrative Status Challenges

The Board Agent challenged the 23 voters discussed in this section because the Employer did not include their names on the voter list. The Employer omitted them from the voter list and challenged their votes because the Employer believes they are administrators who are excluded from the unit. The purported administrators are Michael Alijewiez, Christopher Davies, Andrew Hines, Aurora Romero, Anna Catesby Yant, Mary Lynn Sandoz, Neil Butt, John Koch, Madeleine Casad, Sophia Bjork-James, Courtney Muse, Justin Quarry, Daniel Ridge, Carrie Russell, Gretchen Selcke, Steven Baskauf, Tara Decuir Todd, Sarah Delassus, Heraldo Falconi, Patrick Murphy, Erika Grundstrom, Silke Schade, and Tina Qin.¹⁵

To explain how I reached my decision on these challenged voters, I will first review the unit description in the Acting Regional Director’s preelection decision and the parties’ positions on how the term “administrator” should be defined. Next, I will analyze the intent of the Acting Regional Director in excluding “administrators” from the unit and whether the Acting Regional Director defined “administrator.” As the Acting Regional Director did not clearly define “administrator” or explain her intent regarding the unit exclusions, I will then analyze the Employer’s business practices to determine if there is an understood definition of “administrator”

¹⁵ I list these voters in the order I address them in this report. I organize and address the challenged voters in an order based on their respective job duties or titles, such as advisors, coordinators, or directors, for example.

at the University that clarifies whether the University differentiates between “administrator” and “faculty” and what those distinguishing features are. Lastly, I will discuss the challenged voters and explain how I determined they are not excluded administrators and thus they are eligible to vote.

As set forth in the preelection decision, the appropriate unit is:

Included: All full-time and part-time non-tenure-track faculty employed by Vanderbilt University with a primary appointment in the **College of Arts and Science**.

Excluded: All faculty of other Schools and Colleges, all tenured faculty, tenure-track faculty, emeritus faculty, research faculty who are not teaching courses, adjunct faculty, clinical faculty, **all administrators (including deans, directors, provosts, and chairs who may have teaching assignments)**; faculty who are paid by entities other than Vanderbilt University (including governments, and other organizations), visiting faculty paid by their home institutions, athletic coaches, all other employees employed by the University, including those who teach a class or course and are separately compensated for such teaching; managers, confidential employees, office clerical employees, professional employees, guards, and supervisors as defined in the National Labor Relations Act.

(Emphasis added)

In compiling the voter list for this election, the Employer did not include any faculty members on the list that the Employer considered to be administrators. Vice Provost John Geer testified that in creating the list, the Employer interpreted the term “administrator” to refer to two types of faculty. First, “administrator” referred to all faculty members who hold one of the titles designated in the parenthetical phrase next to administrators: “deans, directors, provost, and chairs.” Second, “administrators” referred to any faculty who hold other administrative positions and receive compensation for those administrative duties either through an additional monetary payment or by receiving a reduction in teaching load. The Employer argued that the Acting Regional Director’s preelection decision did not define “administrator” and therefore, the Employer interpreted the exclusion in a reasonable manner consistent with the operations of the University. Thus, the Employer excluded any faculty members from the voter list if the faculty met either of its definitions of “administrator.”¹⁶

All 23 challenged voters hold faculty appointments to the College of Arts and Science. I further grouped the challenged voters according to their various titles. Professors Alijewiez,

¹⁶ As an initial point, Dean Benton testified some employees who perform clerical work are referred to as administrators, but these employees are specifically nonfaculty administration and do not teach any classes. Examples of these nonfaculty administration titles are executive assistant, staff administrator, and administrative support. None of the challenged voters are alleged to be this type of clerical administrator; however the University uses the term “administrator” to describe these types of employees.

Davies, Hines, and Romero are all CASPAR advisors.¹⁷ Professors Baskauf, Todd, Delassus, Falconi, Murphy, Grundstrom, Quarry, and Schade are “coordinators” within their respective departments. Professors Casad, Yant, Butt, Sandoz, Koch, Muse, Ridge, Russell, and Selcke all are either directors, assistant directors, or associate directors within their departments. Professor Bjork-James is involved with developing and administering a new collaborative interdisciplinary program. Dr. Qin is a librarian with a faculty appointment to teach one class in the Chemistry department.

The Employer asserts that any faculty member with one of the titles “deans, directors, provost, and chairs” should be excluded because the plain language of the unit description clearly covers these titles. Additionally, the Employer argues that because the exclusion parenthetical uses the word “including,” this list of titles is not an exhaustive list and other types of faculty who do not have one of the specific titles may also be excluded if they have administrative duties. The Employer suggests separating administrative faculty from other faculty by looking at whether the faculty member receives compensation for his or her administrative duties in the form of a course reduction or monetary compensation. This would create a clear line between administrative faculty and other faculty who may perform administrative work on a less regular or official basis.

However, the Petitioner argues the excluded language specifically excludes “administrators,” not faculty performing administrative duties. The Petitioner asserts that “administrator” is a term-of-art in the higher education sector, and excluding administrators from faculty units is common practice.¹⁸ The Petitioner argues that “administrator” indicates managerial and supervisory authority. Citing to multiple authorities, including an online publication by the United States Department of Labor for occupational outlooks for postsecondary education administrators, the Petitioner claims it is common knowledge that “administrator” refers to individuals that primarily engage in the management of college-wide areas such as admissions, registrar, and academics.¹⁹ The Petitioner’s citations make clear that a distinguishing feature in higher education is whether an employee’s principal activity is administrative and not primarily instructional, and whether such administration is directly related to management policies or general business operations of the college or university.²⁰

¹⁷ CASPAR stands for “College of Arts and Science Academic Advising Resource Center.” I discuss the significance of this designation below.

¹⁸ The Petitioner cited the case numbers for 36 representation cases from the past few years, all of which listed “administrators” as excluded from the unit.

¹⁹ Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, 2016-17 Edition, Postsecondary Education Administrators, on the Internet at <https://www.bls.gov/ooh/management/postsecondary-education-administrators.htm> (visited August 27, 2017).

²⁰ Donna M. Desrochers and Rita Kirshstein, *Labor Intensive or Labor Expensive? Changing Staffing and Compensation Patterns in Higher Education*, Delta Cost Project at American Institutes for Research, Issue Brief (Feb. 2014), at 6, on the Internet at http://www.deltacostproject.org/sites/default/files/products/DeltaCostAIR_Staffing_Brief_2_3_14.pdf (visited August 29, 2017).

Turning to the intent of the Acting Regional Director in her preelection decision, the parties did not stipulate to the unit description in this proceeding; rather the Acting Regional Director crafted it following a preelection hearing. Although the unit exclusion list does match the Petitioner’s initial petitioned-for exclusions, the Acting Regional Director is the only drafter and therefore, the Acting Regional Director’s intent controls this analysis.

Throughout the preelection decision, the Acting Regional Director consistently differentiates between “faculty” and “administrators.” For example, when discussing the faculty governance for the College of Arts and Science, the Acting Regional Director notes there are 14 faculty committees, all of the committees in the College have at least “one administrator member,” and only 4 petitioned-for faculty serve on the committees (out of the 89 faculty serving). Additionally, the Acting Regional Director states that both “administrators and non-tenure track faculty” testified in the preelection hearing. Thus, the Acting Regional Director clearly draws a difference between “faculty” and “administrators” as separate categories of employees. Therefore, the use of the term “administrator” in the exclusions cannot be read to mean faculty who have administrative duties, as there is a difference between “faculty” and “administrators.”

Unfortunately, the Acting Regional Director did not define “administrator” despite indicating there must be some difference between “administrator” and “faculty.” While my goal is to look at the Acting Regional Director’s intent in resolving the challenges before me, I cannot determine the definition of “administrator” from the four corners of the Acting Regional Director’s preelection decision. However, as stated in her decision, the Acting Regional Director ordered the election for the described unit based on evidence presented at the preelection hearing. This evidence included specific details about the University’s organizational structure and employment practices. Therefore, I will analyze the record from the post-election hearing on these same factors to determine whether the challenged voters are excluded administrators.

Turning to the evidence, the University sets forth the rights, responsibilities, and status of their faculty in a document called the Faculty Manual. This document pertains only to faculty, not to staff, students, graduate students, or any other individuals at the University. However, in order for the College to officially list an employee as the named “teacher” for a class, the employee must have a “faculty appointment” to a specific department. For example, Vice Provost Geer holds a faculty appointment to the Political Science Department and tries to teach one course per academic year. Dean Benton also holds a faculty appointment as a Professor of History and a Professor of Law and has taught one class in the past two academic years. All employees with a faculty appointment are subject to and governed by the Faculty Manual.

The Faculty Manual mentions both “faculty” and “administration” (including the use of the term “administrative officers”), signaling some sort of difference between the two. For example, in Chapter 1 under the heading, “Administration,” the manual states, “Vanderbilt University is governed by a Board of Trust which appoints the Chancellor as the Chief Officer. The University’s other *administrative officers* serve at the pleasure of the Chancellor and include” the Provost and various Vice Chancellor titles (emphasis added). In the next chapter, titled “University Governance,” the manual states, “Vanderbilt University is committed to a robust model of shared University governance. The *Faculty* and *Administration* cooperate and

collaborate through a number of University committees and the Faculty Senate” (emphasis added). Chapter 3 of the Manual sets out the “Administrative Terms of Office.” This chapter details the specific terms of office and nomination process for chairs of departments, divisional or interdepartmental chairs, and interschool committee chairs. “For colleges or schools with departments, nominations of chairs of departments are made by the Dean.” Next, under Chapter 4, University Committees, the Faculty Manual again draws a distinction between faculty and administrative officers as each group has its own category of membership in committees. Thus, the Employer’s own Faculty Manual draws a distinction between faculty and administration.

In reviewing the various appointment letters for faculty, I recognize several similarities and other important distinctions between the letters issued to the challenged faculty and those issued to other faculty such as department chairs. All of the voters challenged as administrators in this proceeding had their appointment letters admitted into the record. The appointment letter is a document issued to faculty (or potential faculty) officially appointing the professor to his or her respective departments and to a faculty rank. Regarding non-tenure track faculty, the majority of appointments are to the rank of Lecturer, Senior Lecturer, or Principal Senior Lecturer. These appointment letters set forth the terms of the appointment, including the length, compensation, and other employment-related items. All of the appointment letters for the challenged faculty specify that policies set forth in the Faculty Manual constitute part of the contractual relationship between the faculty and the University and are explicitly made a part of the terms and conditions of the faculty appointment. For the voters challenged as administrative, most of their appointment letters explained the additional title or role the faculty would hold (i.e. course coordinator or assistant director) and set forth the course reduction the faculty member received in exchange for these additional duties.²¹ Dean Benton testified the course reduction amount is an attempt to reflect the amount of time the faculty member spends on the additional administrative duties versus his or her normal teaching duties, but acknowledged this was more of an art than a scientific calculation. Vice Provost Geer testified all faculty (tenured, tenure-track, and non-tenure-track) are expected to do some level of service in addition to their teaching duties.²² However, if the faculty are called to do extra service and that service involves a large amount of time commitment above and beyond typical service, the faculty can receive a course reduction. Course reductions are also given to “heads of house” who serve as a faculty resident in an on-campus living community.²³ Regarding these challenged voters and their extra “administrative” duties, Dean Benton testified she did not have direct conversations about

²¹ Some of the appointment letters do not specifically list the professors’ administrative titles or course reductions, but the credible and unrebutted testimony explained how and why these professors did in fact receive a course reduction in exchange for their additional work in excess of their teaching duties.

²² According to the Faculty Manual under the heading “Service:” “Faculty members have obligations that go beyond research, scholarship or creative expression and teaching, particularly in departmental or school activities and University governance. In some disciplines, also of great import is service through University outreach (including patient care at Vanderbilt University Medical Center and other professional services to the University and the community) and contributions to professional and learned societies.”

²³ For example, Professor Chalene Helmuth is the faculty head of the Sutherland House, which is a house for freshman, and due to her duties associated with being head of the house, she receives some course reductions. The specific amount of course reduction is not in the record.

whether the professor would take on the additional duties, but rather the arrangements were typically made as a result of conversations between the department chair and the faculty member in question.

The record also includes appointment letters for six department chairs, one interim department chair, and one department vice chair. These letters are not faculty appointment letters as all the recipients were already tenured or tenure-track faculty. Instead, these appointment letters represent specific appointments to the title of chair, interim chair, or vice chair. These letters all set forth the term of the appointment and note the recipient would receive a course reduction. Yet each letter also notes the recipient would receive an additional monetary supplement (sometimes referred to as an administrative stipend) to their normal salary. Thus, these faculty members received specific extra payment as consideration for the addition of their administrative role. None of the appointment letters for the challenged voters mention a similar stipend. Lastly, each of these letters notes that “administrative service within the College of Arts and Science is at the pleasure of the Dean.” This language regarding “administrative service” is also not present in the appointment letters for the challenged voters. Further, multiple department chairs testified they did not apply to be a department chair; rather, the Dean personally asked them to step into the role. One professor who had served as a director of undergraduate studies and recently became an acting chair explained he did not receive a separate appointment letter when he became director of undergraduate studies as that is something decided at the departmental level, but when he became acting chair he received an appointment letter from the Dean specifically for that role. Thus, these appointment letters demonstrate that the University has a practice of issuing a specific appointment letter for certain administrative roles, and this letter is separate and distinct from a faculty appointment letter. If the appointment letter notes that the administrative service is at the pleasure of the Dean and offers additional monetary compensation as consideration for the administrative duties, such a letter signifies an administrative appointment.

As exemplified by the Faculty Manual and the appointment letters, deans, provosts, and department chairs are types of administrators separate from faculty, regardless of the potential fact that they may also be faculty. These administrators are part of the University governance at the macro level. Administrators’ duties include the tasks of running the University, dealing with policy discussions, and implementing initiatives that affect the entire University or an entire college. For example, Vice Provost Geer explained part of his job is to implement initiatives arising from a strategic plan launched in August 2014. He oversees an “innovation center” with the goal of bringing multiple academic disciplines together. His office is also responsible for making sure the University is following the guidelines for accreditation and completing the steps for that ongoing process. The evidence shows “administrators” are separately compensated for their administrative duties with a monetary stipend, in addition to a reduction in teaching load based on the amount of time needed to attend to their administrative duties. The record overwhelmingly demonstrates that “administrators” have specific duties and control over determining and implementing the central policies of the University.

Therefore, I find that the use of the term “administrator” in the Acting Regional Director’s preelection decision refers to those employees who carry this higher status of

administrator as contemplated by the Faculty Manual, dealing more with management policies or general business operations of the University rather than primarily educating students. One indicator of whether a faculty member is such an “administrator” is whether the Employer appoints the faculty member to an administrator position through an administrative appointment letter, and whether this letter specifies that the administrative service is at the pleasure of the Dean and offers additional monetary compensation for these duties.²⁴ The term “administrator” does not apply to faculty who happen to have administrative duties, if those duties do not encompass ongoing management of the University or College, or if those duties are not set forth in such an administrative appointment letter. In making this finding, I disagree with the Employer’s proposal to distinguish administrators from faculty by looking at whether the faculty member receives any type of compensation for the extra administrative duties because the Faculty Manual and the University’s own practices show there is a difference between merely receiving course reductions versus receiving an administrative stipend for additional duties at the pleasure of the Dean.

My conclusion about what constitutes an excluded administrator at the University contains some overlap with the typical duties and descriptions normally labeled as “managerial” under Board law. Despite this overlap, it is possible for a member of the faculty to be classified as an excluded administrator but not as a managerial employee. As explained above, some faculty such as department chairs would be considered excluded administrators, but there is nothing in the record before me indicating whether such administrative faculty would also be managerial employees under the standard in *Pacific Lutheran University*, 361 NLRB No. 157, slip op. at 22, 2014 WL 7330993 (2014). Therefore, just because a faculty member is not a managerial employee does not mean that the person is not an excluded administrator. As previously discussed, the Acting Regional Director in her preelection decision found the petitioned-for unit of non-tenure track faculty were not managerial employees because they did not exercise control or make effective recommendations regarding academic programs, enrollment management, finances, academic policy, and personnel policy under the *Pacific Lutheran University* standard. See *id.* Furthermore, neither party challenged any voters on the basis that the voters are managerial employees and thus not eligible voters. Based on these facts, there is no need to make a finding on whether the challenged voters are managerial; rather it is possible for a challenged voter to be an excluded administrator regardless of any managerial status. Thus, I will analyze the individual challenged voters and their job duties to determine whether they are excluded administrators or whether they are faculty members who happen to have some administrative duties not rising to the level of “administrator.”

Furthermore, I agree with the Employer’s argument that the use of the word “including” in the parenthetical indicates that the various “administrator” titles are not expressly limited to “deans, directors, provosts, and chairs.” An employee with a title other than “dean, director, provost, or chair” could still be an excluded administrator, provided the employee falls within the

²⁴ I cannot make a finding as to all the various indicators of “administrator” status as the evidence at the hearing did not involve discussions of categorizing other employees of the University. For example, the University Provost is undoubtedly an “administrator” as contemplated by the Faculty Manual, but Provost Susan Wentz’s appointment letter (if there is one) is not in evidence. Additionally, since Dean Benton technically reports to Provost Wentz, I doubt Provost Wentz’s appointment letter states that she serves at the pleasure of the Dean.

administrator parameters explained above. Conversely, an employee’s title alone does not automatically confer administrator status; there must be additional evidence to support a finding that the employee has the higher administrative status contemplated by the Faculty Manual and administrator appointment letters. Thus, a defined administrator with one of the listed titles or some other title (for example Vice-Chair) would be excluded from the unit, but a professor with one of the listed titles (for example Director) is not an excluded administrator unless the professor also has the college-wide responsibilities and status indicating that the professor is an excluded administrator.

As the unit specifically excludes administrators, I will now analyze each of the 23 challenged voters in this category to determine whether their employment responsibilities align with this category of “administrators” or with the included unit of faculty.

a. Michael Alijewiez, Christopher Davies, Andrew Hines, and Aurora Romero

The Employer asserts that Professors Michael Alijewiez, Christopher Davies, Andrew Hines, and Aurora Romero are excluded administrators because they serve as CASPAR advisors. CASPAR stands for “College of Arts and Science Academic Advising Resource Center.” CASPAR is a specific program created to advise freshman and sophomore students. Generally, the College hires past Ph.D. graduates as CASPAR advisors for a one year appointment that can be renewed for up to three years. These employees are hired as faculty and given a faculty appointment to a relevant department. They each teach one class an academic year and receive a five-course reduction. Each CASPAR advisor serves as the principal advisor for a selected group of students. Their advising duties include helping the students navigate the core curriculum academic requirements and assisting with the selection of a major. While CASPAR advisors takes on a larger advising role than other professors, multiple witnesses testified that all faculty can serve as faculty advisors to students and many departments also assign professors to serve as advisors for groups of students.

For Professors Alijewiez, Davies, and Romero, their respective appointment letters first appoint them to the title of Pre-major Academic Advisor for a one-year term, and note that the position is “administratively located in the Office of the Dean of the College of Arts and Science.” The letters note the appointment has an annual salary. The next paragraphs of the three appointment letters appoint the professors to their various departments (English, Philosophy, and Germanic and Slavic languages, respectively) with the rank of Lecturer. The letters also note the position is not on the tenure track and involves no additional financial obligation on the part of the College. The Employer introduced into evidence two appointment letters for Professor Hines. The first letter reappointed him to the Department of English as a non-tenure track full-time Lecturer for the 2016-2017 academic year. However, in January 2017, the Employer offered Professor Hines a chance to become a CASPAR advisor and therefore he received a new appointment letter. This letter again appointed him to the English department for the Spring 2017 semester, and it also appointed him to a Pre-major Academic Advisor effective January 1, 2017 through May 31, 2017. Like the other CASPAR advisors, the letter states the position was “administratively located in the Office of the Dean of the College of Arts and Science.” Professor Hines received a two-course reduction and therefore only taught one class in Spring 2017. His letter further notes his salary would be paid in five equal installments. Nothing in the

record indicates whether his salary changed from his initial appointment teaching three classes a semester to the CASPAR appointment teaching only one class. None of the CASPAR appointment letters mention anything about an administrative stipend or additional monetary supplement to their salary and none of them include language about serving at the pleasure of the Dean. All of the CASPAR appointment letters specifically state the professors are faculty subject to the Faculty Manual.

Professors and CASPAR advisors Michael Alijewiez, Christopher Davies, Andrew Hines, and Aurora Romero are clearly non-tenure track faculty with primary appointments in the College. These advisors are recently graduated Ph.D. students and their primary responsibilities are to help guide undergraduate students through the first two years of school. They are not responsible for managing or running the College or the University. Unlike excluded administrators, they do not receive monetary compensation for their administrative duties. While they do not seem to be separately paid for their teaching duties, it is undisputed that the College pays them. They are faculty subject to the Faculty Manual. Accordingly, I find that Michael Alijewiez, Christopher Davies, Andrew Hines, and Aurora Romero are non-tenure track faculty with primary appointments in the College of Arts and Science, and that they are not administrators within the meaning of the exclusions provision for this unit. As a result, I find that they are eligible voters and recommend that their ballots be opened and counted.

b. Anna Catesby Yant

The Employer appointed Professor Anna Catesby Yant to the College's faculty with the title of Pre-major Academic Advisor and Assistant Director of CASPAR for a three-year term. Her appointment letter specifies the appointment is a non-tenure track, 12-month position that is administratively located in the Office of the Dean of the College of Arts and Science. Additionally, this letter reappointed Professor Yant to the rank of Senior Lecturer in the Anthropology department. The appointment letter specifies Professor Yant's teaching load is only one course per year. Her letter incorporates the Faculty Manual as part of the terms and conditions of her employment. Like the CASPAR advisors, Professor Yant's teaching appointment is a non-tenure track appointment and her appointment letter specifies her teaching load involves no additional financial obligation on the part of the College. Nothing in her appointment letter mentions anything about an administrative stipend or additional monetary supplement to her salary and the letter does not include language about serving at the pleasure of the Dean.

Associate Dean Charles Andre Christie-Mizell, a former CASPAR Director, testified about Professor Yant's duties as the Assistant Director of CASPAR. Professor Yant assists in running the CASPAR program. This includes filling in for the CASPAR Director as needed (for example, when the CASPAR Director is on leave), helping to interview job candidates, and assisting with the selection of CASPAR advisors. Professor Yant trains and oversees the advisors. Like the CASPAR advisors, Professor Yant also advises a selected group of students. Associate Dean Christie-Mizell testified that Professor Yant reports to CASPAR Director Andrea Hearn, and then Director Hearn reports to Associate Dean Christie-Mizell. Associate Dean Christie-Mizell testified that he generally meets every other week with Director Hearn, and

that Director Hearn really sets the tone and pace of the CASPAR team, but that Professor Yant does play a role in the decisions.

Professor Yant is clearly a non-tenure track faculty with a primary appointment in the College. Her duties as Assistant Director for CASPAR do not involve ongoing management or otherwise running of the College or the University. Director Hearn truly runs the CASPAR program with Professor Yant's assistance. Unlike excluded administrators, Yant does not receive any additional monetary compensation for her advising and administrative duties. While she does not seem to be separately paid for her teaching duties, it is undisputed that the College pays her. She is a faculty member subject to the Faculty Manual. Therefore, I find Anna Catesby Yant is a non-tenure track faculty member with a primary appointment in the College of Arts and Science, and she is not an administrator within the meaning of the exclusions provision for this unit. I will analyze the Employer's contention that Professor Yant is a statutory supervisor, and therefore excluded from the unit on that basis, in a later section of this Report.

c. Mary Lynn Sandoz, Neil Butt, and John Koch

The University debate program is an extra-curricular activity in which students compete in debate competitions around the region and country. Students do not receive course credit for participating in debate. In the 2016 to 2017 academic year, approximately 25 students competed in debate. Three professors run the debate program: Director of Forensics Mary Lynn Sandoz, Director of Debate Neil Butt, and Associate Director of Debate John Koch. The Employer contends the unit exclusions language automatically excludes Professors Sandoz and Butt based on their titles of "Director." However, as noted above, the unit specifically excludes "administrators" with the various titles, not faculty with these titles. The Employer further asserts these three professors are administrators because of their responsibility in administering and running the debate program, including authority and input in faculty hires for the debate program.

One of these three faculty members always travels with the debate team and represents the University. These three professors coach and train the students for the debate competitions. All three professors are appointed faculty (either Lecturer or Senior Lecturer) in the Communications Department on non-tenure tracks. They each teach three courses a year and receive a three-course reduction in their teaching load due to their duties for the debate program. None of the three professors' appointment letters mentions any additional monetary compensation or administrative stipend in exchange for these duties with the debate team and the letters do not include language about serving at the pleasure of the Dean. All three of their appointment letters incorporate the Faculty Manual as part of the terms and conditions of their employment.

Professor Sandoz and Professor Butt spend the majority of their time on the debate program and they essentially run it together with the assistance of Professor Koch. However, other than the prestige of having a well-regarded debate team, there was no evidence that the running of the debate program is an integral part of running the College or University. The debate program is within the Communications Department, and Professor Bonnie Dow served as

the Chair of this Department.²⁵ Chair Dow testified that she trusted and expected Professor Sandoz to essentially run the debate program. Although Professor Sandoz has authority to spend money from the debate program budget, Chair Dow explained that Professor Sandoz consults with her on budget issues and Chair Dow typically attends the meetings with the finance director to set the budget for the debate program. When it came time to hire Professor Koch, although Professors Sandoz and Butt had an enormous amount of input in the search and evaluation process, Chair Dow put in the formal request to the Dean to hire Professor Koch.

Professors Sandoz, Butt, and Koch are clearly non-tenure track faculty with primary appointments in the College. Their duties as Director of Forensics, Director of Debate, and Associate Director of Debate (respectively) do not involve ongoing management and running of the College or the University. Unlike excluded administrators, these professors do not receive any additional monetary compensation for their roles in running the debate program. They are faculty members subject to the Faculty Manual. Therefore, I find Professors Mary Lynn Sandoz, Neil Butt, and John Koch are non-tenure track faculty with primary appointments in the College of Arts and Science, and that they are not administrators within the meaning of the exclusions provision for this unit. As a result, I find that Professor Koch is an eligible voter and recommend his ballot be opened and counted. Regarding Professors Sandoz and Butt, I will analyze the Employer's additional contention that Professors Sandoz and Butt are statutory supervisors, and therefore excluded from the unit on that basis, in a later section of this Report.

d. Madeleine Casad

Professor Madeleine Casad holds a three-year faculty appointment as Senior Lecturer in the Cinema & Media Arts Program and she also serves as the Digital Humanities Coordinator. This appointment is not on the tenure track. Her teaching load is one course each semester and she receives a two-course teaching reduction per semester for her work as the Digital Humanities Coordinator.²⁶ The Digital Humanities Center is a research center that does not offer a major or grant degrees. The Center supports research of humanities using digital tools. This is a new center in the College and Professor Casad's responsibilities as Coordinator include helping set up the Center, developing and running academic programs for the Center, chairing the Center's faculty steering committee, and promoting outreach through the Center. Dean Benton explained the faculty steering committee chaired by Professor Casad is responsible for overseeing the Center. The faculty steering committee also selects graduate students who receive fellowships from the Center and selects the post-doctoral fellows employed in the Center. Professor Casad's appointment letter specifies that when the College chooses a Director for the Digital Humanities

²⁵ Professor Dow served as Chair of the Communications department for approximately 10 years. Her term as chair ended in July 2017 and she is now the Dean of Humanities in the College of Arts and Science. She is a tenured faculty member and thus is not part of the unit.

²⁶ The specific course reduction is not mentioned in her first appointment letter. In Professor Casad's revised appointment letter, Dean Benton outlined expectations for future academic years that would include Professor Casad continuing to teach one course per semester, and receive a three-course reduction for her duties in the Digital Humanities Center, and would either be assigned an additional course or some other mix of teaching or administrative duties.

Center, Dean Benton anticipates appointing Professor Casad as Associate Director, which would carry a similar set of responsibilities as she is currently handling. Nothing in Professor Casad's appointment letters mention any additional monetary compensation or stipend for her work as the Digital Humanities Coordinator and the letter does not include language about serving at the pleasure of the Dean. Professor Casad's appointment letter incorporates the Faculty Manual as part of the terms and conditions of her employment

Professor Casad is clearly a non-tenure track faculty with a primary appointment in the College. While she does chair the committee in charge of the Center, she is not the director of the Center and the expectation is that she will become the Associate Director if and when the College appoints a director. Her duties as Digital Humanities Coordinator do not involve ongoing management and running of the College or the University. Unlike excluded administrators, she does not receive any additional monetary compensation for the additional duties as Digital Humanities Coordinator. She is a faculty member subject to the Faculty Manual. Therefore, I find Madeleine Casad is a non-tenure track faculty member with a primary appointment in the College of Arts and Science, and she is not an administrator within the meaning of the exclusions provision for this unit. I will analyze the Employer's contention that Professor Casad is a statutory supervisor, and therefore excluded from the unit on that basis, in a later section of this Report.

e. Sophia Bjork-James

Professor Sophia Bjork-James holds a three-year faculty appointment as an Assistant Professor of the Practice of Anthropology in the Department of Anthropology in the College of Arts and Science. This position is not on the tenure track. Her appointment letter specifies that her teaching load would be a 3-3 load but with a one-course reduction per year in order to develop and administer a new collaborative program with the Sociology and American Studies Departments. With a one-course reduction, Professor Bjork-James teaches five classes each academic year.²⁷ Professor Bjork-James' appointment letter does not specify any additional monetary compensation or stipend for this role in developing and administering the new collaborative program and the letter does not include language about serving at the pleasure of the Dean. Her letter incorporates the Faculty Manual as part of the terms and conditions of her employment.

Professor Beth Conklin, the Chair of the Anthropology Department, testified at length about this new collaborative program and Professor Bjork-James' duties regarding it. Chair Conklin explained this is a brand new initiative and there is no real program structure in place yet. Specifically, Professor Bjork-James has only been employed since the start of the Spring 2017 semester, and thus the bulk of her work on this project so far has been researching similar programs at other universities, having conversations with faculty about the program, and meeting regularly with Chair Conklin regarding the vision for the program. Chair Conklin repeatedly stressed how preliminary everything had been thus far. Because of this, Chair Conklin could not testify with specificity about Professor Bjork-James' future duties regarding this program, as

²⁷ Professor Bjork-James took her one-course reduction in the Spring 2017 and only taught two classes that semester.

those duties are under development. Chair Conklin did explain that Professor Bjork-James' duties regarding this project are currently similar to the normal and expected service that faculty are expected to perform.

Professor Bjork-James is clearly a non-tenure track faculty with a primary appointment in the College. Her duties for the new collaborative program with the Sociology and American Studies Departments do not involve ongoing management and running of the College or the University. Unlike excluded administrators, she does not receive any additional monetary compensation for her administrative duties. She is a faculty member subject to the Faculty Manual. Therefore, I find Sophia Bjork-James is a non-tenure track faculty member with a primary appointment in the College of Arts and Science, and she is not an administrator within the meaning of the exclusions provision for this unit. As a result, I find that she is an eligible voter and recommend that her ballot be opened and counted.

f. Courtney Muse

Professor Courtney Muse holds a faculty appointment as a Senior Lecturer in the Center for Medicine, Health, and Society and she serves as the Director of Undergraduate Advising in the Center. Her most recent appointment letter specifies this appointment is not on the tenure track. Her appointed teaching load is a 3-3 requirement reduced to a 2-2 load based on her services as the Director, which means that she teaches four classes each academic year. Professor Muse's appointment letter does not specify any additional monetary compensation or stipend for this role as Director of Undergraduate Advising and the letter does not include language about serving at the pleasure of the Dean. Her letter incorporates the Faculty Manual as part of the terms and conditions of her employment.

The Center for Medicine, Health, and Society is a degree-granting Center with increasing popularity among students. As the Director of Undergraduate Advising, Professor Muse serves as the principal advisor for the undergraduate students seeking a degree from the Center. Most faculty in the Center advise about 25 to 30 students, but Professor Muse directly advises anywhere between 100 and 250 students based on the time of the year. She also created a department-specific handbook for students to explain the various degree tracks and course requirements in the Center. The Acting Chair for the Center, Dominique Behague, testified that Professor Muse is thought of as the expert on advising; she knows more about the various orders and tracks for the courses and can answer most questions about course credit and the like. Acting Chair Behague also explained the key difference between Professor Muse and the other faculty regarding their advisor duties is primarily that Professor Muse advises a larger number of students and therefore spends more time in the advisor role.

Professor Muse is clearly a non-tenure track faculty with a primary appointment in the College. Her duties as Director of Undergraduate Advising do not involve ongoing management and running of the College or the University. Unlike excluded administrators, she does not receive any additional monetary compensation for these administrative duties. She is a faculty member subject to the Faculty Manual. Therefore, I find Courtney Muse is a non-tenure track faculty member with a primary appointment in the College of Arts and Science, and she is not an

administrator within the meaning of the exclusions provision for this unit. As a result, I find that she is an eligible voter and recommend that her ballot be opened and counted.

g. Justin Quarry

Professor Justin Quarry holds a faculty appointment as a Senior Lecturer in the Department of English and he serves as the Program Coordinator for the Undergraduate Creative Writing program. His most recent appointment letter specifies that his appointment is not on the tenure track. His appointed teaching load is 3-2 with a one-course reduction in order to fulfill his duties as Program Coordinator. Professor Quarry's appointment letter does not specify additional monetary compensation or stipend for his role as Program Coordinator and the letter does not include language about serving at the pleasure of the Dean. His letter incorporates the Faculty Manual as part of the terms and conditions of his employment.

Professor Quarry's role as Program Coordinator is to build better community among the College's creative writing majors and to recruit students to choose creative writing as a major. Professor Dana Nelson, Chair of the English Department, testified about Professor Quarry's duties as Program Coordinator. The English Department created this position to assist the Director of Creative Writing. Quarry organizes social and informational events for students interested in creative writing, including workshops, readings, and assisting in finding internships for students. He even requested an additional course reduction based on the amount of work he was doing as the Program Coordinator, but Chair Nelson turned down this request. Chair Nelson explained that when Professor Quarry requested this additional course reduction, they discussed the duties he was doing and Chair Nelson believed some of the additional duties Professor Quarry had taken on were outside the scope of his position as Coordinator and were best left to other faculty to take on as part of their specific duties or as general service to the University. Chair Nelson specifically asked Professor Quarry to continue to be an "idea man" but that the ideas needed to be brought to her so she could best determine which faculty could implement them.

Professor Quarry is clearly a non-tenure track faculty with a primary appointment in the College. His duties as Program Coordinator for the Undergraduate Creative Writing Program do not involve ongoing management and running of the College or the University. Unlike excluded administrators, he does not receive any additional monetary compensation for these administrative duties. He is a faculty member subject to the Faculty Manual. Therefore, I find Justin Quarry is a non-tenure track faculty member with a primary appointment in the College of Arts and Science, and he is not an administrator within the meaning of the exclusions provision for this unit. As a result, I find that he is an eligible voter and recommend that his ballot be opened and counted.

h. Daniel Ridge

Professor Daniel Ridge held a faculty appointment as a Lecturer in the Department of French and Italian and as Assistant Director of the W.T. Bandy Center for Baudelaire and

Modern French Studies.²⁸ His most recent appointment letter specifies this appointment was not on the tenure track. He had 3-2 appointed teaching load with a one-course reduction in order to fulfill his duties as the Assistant Director of the Bandy Center. Professor Ridge's appointment letter does not specify additional monetary compensation or stipend for this role as Assistant Director and the letter does not include language about serving at the pleasure of the Dean. Professor Ridge's appointment letter specifically states that his duties at the Bandy Center consist of five hours per week for the 2016 to 2017 academic year. His letter incorporates the Faculty Manual as part of the terms and conditions of his employment.

The Bandy Center is not a degree-granting center. It is a collection of rare books and other documents regarding 19th century French literature and culture. The Center organizes several academic events and conferences and Professor Ridge assists in organizing and running these events. Professor Robert Barsky serves as Director of the Center. Professor Ridge worked with Director Barsky in evaluating proposals from scholars seeking to study at the Bandy Center. The Employer eliminated the position of Assistant Director for the Bandy Center and for the upcoming academic year it is still unclear who will be taking on the various duties Professor Ridge had undertaken.

At the time of the election, Professor Ridge was clearly a non-tenure track faculty with a primary appointment in the College. His duties as Assistant Director for the Bandy Center did not involve ongoing management and running of the College or the University. Unlike excluded administrators, he did not receive any additional monetary compensation for these administrative duties. He was a faculty member subject to the Faculty Manual. Therefore, I find Daniel Ridge is a non-tenure track faculty member with a primary appointment in the College of Arts and Science, and he is not an administrator within the meaning of the exclusions provision for this unit. As a result, I find that he is an eligible voter and recommend that his ballot be opened and counted.

i. Carrie Russell

Professor Carrie Russell holds a faculty appointment as a Senior Lecturer in the Department of Political Science and she serves as a Pre-Law Advisor. Professor Russell also serves as the Director of Undergraduate Studies for the Department. Her most recent appointment letter specifies her faculty appointment is not on the tenure track. Her appointment letter sets her annual teaching load as 3-3. However, Professor Russell teaches four courses each year, receiving one-course reduction for her services as a Pre-Law Advisor and one-course reduction for her services as the Director of Undergraduate Studies. Professor Russell's appointment letter does not specify additional monetary compensation or stipend for her roles as Pre-Law Advisor or Director of Undergraduate Studies and the letter does not include language about serving at the pleasure of the Dean. Her letter incorporates the Faculty Manual as part of the terms and conditions of her employment. Vice Provost John Geer, who at the time was Chair of the Political Science Department, first appointed Professor Russell as Director of Undergraduate Studies in approximately 2012. While she continues to serve as Director of

²⁸ As discussed earlier in the report, the Employer did not reappoint Professor Ridge to this position for the 2017 to 2018 academic year and he is no longer employed by the Employer.

Undergraduate Studies for the Department of Political Science, her most recent reappointment letter to Senior Lecturer does not specify this additional title.²⁹

As Director of Undergraduate Studies, Professor Russell manages the undergraduate political science program. Her duties include scheduling the courses, assigning students to faculty advisors, and dealing with the course catalog content. She handles the department's responsibilities towards the undergraduate students. As the Pre-Law Advisor, Professor Russell is the primary faculty member for undergraduate students contemplating a career in law. She advises on how to get into law school, what type of undergraduate courses to take or LSAT prep courses to take, and she maintains a university-wide website for pre-law advising.

Professor Russell is clearly a non-tenure track faculty with a primary appointment in the College. While her duties as Director of Undergraduate Studies do have a large role in how the Political Science Department is run and organized, she is only compensated by a reduced teaching load and there is no evidence that she receives monetary compensation in return for her administrative work. Furthermore, unlike excluded administrators, the Dean of the College did not appoint her to this position and her appointment letter does not specify that her administrative service is at the pleasure of the Dean. She is a faculty member subject to the Faculty Manual. Therefore, I find Carrie Russell is a non-tenure track faculty member with a primary appointment in the College of Arts and Science, and she is not an administrator within the meaning of the exclusions provision for this unit. As a result, I find that she is an eligible voter and recommend that her ballot be opened and counted.

j. Gretchen Selcke

Professor Gretchen Selcke holds a faculty appointment as a Senior Lecturer in the Program of Latino and Latina Studies. Her appointment letter specifies this appointment is not on the tenure track. Her appointed teaching load is 3-3 but she received a two-course reduction each semester to do administrative work in the Latino and Latina Studies Program and to work on the *Afro-Hispanic Review*, an academic journal published by the department. She teaches one course per semester. Professor Selcke's appointment letter does not specify additional monetary compensation or stipend for these roles and the letter does not include language about serving at the pleasure of the Dean. Her letter incorporates the Faculty Manual as part of the terms and conditions of her employment.

Professor Selcke assists the Director and Associate Director of Latino and Latina Studies with running the program. This is a degree-granting interdisciplinary program. She helps organize events for students and prospective students. She organizes travel and other logistics when visitors for the program or program events come to campus. She also manages the program's webpage. For the upcoming academic year she will be the Assistant Director of the Latino and Latina Studies Program and will be doing the same duties as this past academic year. Regarding her work as managing editor of the *Afro-Hispanic Review*, Professor Selcke helps train the student assistant editors, works with the Director regarding the layouts for the journal,

²⁹ This most recent reappointment letter is dated March 31, 2015.

serves as another set of eyes for actually editing publications in the journal, and assists with other steps in getting the journal to publication.

Professor Selcke is clearly a non-tenure track faculty with a primary appointment in the College. Her duties as for the Program of Latino and Latina Studies and as editor for the *Afro-Hispanic Review* do not involve ongoing management and running of the College or the University. Unlike excluded administrators, she does not receive any additional monetary compensation for these administrative duties. She is a faculty member subject to the Faculty Manual. Therefore, I find Gretchen Selcke is a non-tenure track faculty member with a primary appointment in the College of Arts and Science, and she is not an administrator within the meaning of the exclusions provision for this unit. As a result, I find that she is an eligible voter and recommend that her ballot be opened and counted.

k. Steven Baskauf

Professor Steven Baskauf holds a faculty appointment as a Principal Senior Lecturer in the Department of Biological Sciences. His most recent appointment letter specifies this appointment is not on the tenure track. His appointed teaching load is fulfilled by teaching the introductory laboratories typically consisting of eight one-credit lab sections in the Fall semesters and seven one-credit lab sections in the Spring semesters. Neither of his appointment letters introduced into the record specify a specific amount of course reductions he received, but he is the Laboratory Coordinator and receives the equivalent of about one-course reduction per year.³⁰ Professor Baskauf's appointment letter does not specify additional monetary compensation or stipend for this role as Laboratory Coordinator and the letter does not include language about serving at the pleasure of the Dean. His letter incorporates the Faculty Manual as part of the terms and conditions of his employment.

The Biological Sciences department offers lab courses required for its majors. This is a very large department and although the instructor of record for the lab courses is Professor Baskauf, the classes are actually taught by graduate student teaching assistants.³¹ Professor Baskauf oversees and trains the teaching assistants as well as three laboratory support staff. He coordinates which teaching assistant covers which lab classes and ensures the labs are properly staffed with the materials needed for that week's experiments. Professor Baskauf also develops the syllabi, curriculum, practicum, and exams for these lab courses.

Professor Baskauf is clearly a non-tenure track faculty with a primary appointment in the College. His duties as Laboratory Coordinator do not involve ongoing management and running

³⁰ A 3-3 teaching load generally refers to classes worth three credits. Therefore the standard load requires nine credits a semester, or 18 a year. Professor Baskauf teaches nine credits in the Fall and seven in the spring for a total of 16 credits.

³¹ Graduate students who teach classes and receive compensation for their teaching are sometime referred to as "teaching assistants" or "teaching fellows." Certain departments distinguish "teaching assistants" from "teaching fellows," but other departments use the terms interchangeably. As the difference between a "teaching assistant" and "teaching fellows" is not relevant to this proceeding as the Employer asserts they are both employees, I will refer to all graduate students who receive compensation for teaching classes as "teaching assistants" for clarity.

of the College or the University. Rather, his duties as Laboratory Coordinator involve the same duties other faculty members have instructing students. Unlike excluded administrators, he does not receive any additional monetary compensation for these administrative duties. He is a faculty member subject to the Faculty Manual. Therefore, I find Steven Baskauf is a non-tenure track faculty member with a primary appointment in the College of Arts and Science, and he is not an administrator within the meaning of the exclusions provision for this unit. I will analyze the Employer's contention that Professor Baskauf is a statutory supervisor, and therefore excluded from the unit on that basis, in a later section of this Report.

l. Tara Decuir Todd

Professor Tara Decuir Todd holds a faculty appointment as a Senior Lecturer in the Department of Chemistry and she also serves as Recitation Coordinator. Her most recent appointment letter specifies her appointment is not on the tenure track. Her appointment letter specifies that her teaching load is the equivalent of a full-time course load, but she received a one-course reduction for serving as the Recitation Coordinator. Professor Todd's appointment letter does not specify additional monetary compensation or stipend for this role as Recitation Coordinator and the letter does not include language about serving at the pleasure of the Dean. Her letter incorporates the Faculty Manual as part of the terms and conditions of her employment.

In the Chemistry department, the freshmen chemistry class is a large class with 150 to 220 students. The class requires a lecture, lab, and a one-hour recitation class each week. The recitation class is a smaller class to provide more direct instruction and feedback to students. The recitation sections are led by teaching assistants who answer questions in the small group format. Professor Todd oversees these teaching assistants and designs the curriculum for these recitation classes. She distributes quizzes and collects the grades for each session.

Professor Todd is clearly a non-tenure track faculty with a primary appointment in the College. Her duties as Recitation Coordinator do not involve ongoing management and running of the College or the University. Unlike excluded administrators, she does not receive any additional monetary compensation for these administrative duties. She is a faculty member subject to the Faculty Manual. Therefore, I find Tara Decuir Todd is a non-tenure track faculty member with a primary appointment in the College of Arts and Science, and she is not an administrator within the meaning of the exclusions provision for this unit. I will analyze the Employer's contention that Professor Todd is a statutory supervisor, and therefore excluded from the unit on that basis, in a later section of this Report.

m. Sarah Delassus

Professor Sarah Delassus holds a faculty appointment as a Senior Lecturer in the Department of Spanish and Portuguese. Her appointment letter specifies this appointment is not on the tenure track. Her appointed teaching load is five courses for the academic year and her letter specifies that she will coordinate Spanish 202. Thus, she receives a one-course reduction from the standard 3-3 course load. Professor Delassus' appointment letter does not specify additional monetary compensation or stipend for this role as Spanish 202 coordinator and the

letter does not include language about serving at the pleasure of the Dean. Her letter incorporates the Faculty Manual as part of the terms and conditions of her employment.

Spanish 202 is a required course for Spanish majors and is comprised of an oral and written component. Professor Delassus coordinates the oral portion of the class. This class has multiple sections each semester. As coordinator, Professor Delassus designs the course and compiles the textbook and teaching materials. She creates the exams and oversees the teaching assistants and other senior lecturer faculty who are assigned to teach the class. She ensures that each section is taught in a similar way so the students have similar educations for the class.

Professor Delassus is clearly a non-tenure track faculty with a primary appointment in the College. Her duties as Spanish 202 Coordinator do not involve ongoing management and running of the College or the University. Unlike excluded administrators, she does not receive any additional monetary compensation for these administrative duties. She is a faculty member subject to the Faculty Manual. Therefore, I find Sarah Delassus is a non-tenure track faculty member with a primary appointment in the College of Arts and Science, and she is not an administrator within the meaning of the exclusions provision for this unit. I will analyze the Employer's contention that Professor Delassus is a statutory supervisor, and therefore excluded from the unit on that basis, in a later section of this Report.

n. Heraldo Falconi

Professor Heraldo Falconi holds a faculty appointment as a Senior Lecturer in the Department of Department of Spanish and Portuguese. His appointment letter specifies this appointment is not on the tenure track. His most recent appointment letter specifies that he will teach the equivalent of six courses annually. However, Professor Falconi is also the Coordinator for the written section of Spanish 202 and for those duties he receives one-course reduction. Professor Falconi's appointment letter does not specify additional monetary compensation or stipend for this role as Spanish 202 coordinator and the letter does not include language about serving at the pleasure of the Dean. His letter incorporates the Faculty Manual as part of the terms and conditions of his employment.

Similarly to Professor Delassus, Professor Falconi coordinates the written portion of Spanish 202. He designs the course and is responsible for creating the instruction content and examinations for the course. He trains the teaching assistants and other lecturer faculty in how to teach the course appropriately so that each section is receiving similar instruction.

Professor Falconi is clearly a non-tenure track faculty with a primary appointment in the College. His duties as Spanish 202 Coordinator do not involve ongoing management and running of the College or the University. Unlike excluded administrators, he does not receive any additional monetary compensation for these administrative duties. He is a faculty member subject to the Faculty Manual. Therefore, I find Heraldo Falconi is a non-tenure track faculty member with a primary appointment in the College of Arts and Science, and he is not an administrator within the meaning of the exclusions provision for this unit. I will analyze the Employer's contention that Professor Falconi is a statutory supervisor, and therefore excluded from the unit on that basis, in a later section of this Report.

o. Patrick Murphy

Professor Patrick Murphy holds a faculty appointment as a Senior Lecturer in the Department of Spanish and Portuguese. His most recent appointment letter specifies this appointment is not on the tenure track. His appointed teaching load is the equivalent of six courses with a one-course reduction for his work as Coordinator for the introductory Spanish course. Professor Murphy's appointment letter does not specify additional monetary compensation or stipend for this role as program coordinator and the letter does not include language about serving at the pleasure of the Dean. His letter incorporates the Faculty Manual as part of the terms and conditions of his employment.

Professor Murphy is the course coordinator for the introduction Spanish course. This course is very large with multiple sections for students. Professor Murphy's role as coordinator is to oversee the work of all the instructors for this introductory course. Professor Murphy assists in compiling the textbook with other professors, and he designs the exams, structures the course, and trains everyone to teach the course so that the students receive unified instruction in this introductory course, regardless of which section they are in.

Professor Murphy is clearly a non-tenure track faculty with a primary appointment in the College. His duties as Coordinator for introductory Spanish do not involve ongoing management and running of the College or the University. Unlike excluded administrators, he does not receive any additional monetary compensation for these administrative duties. He is a faculty member subject to the Faculty Manual. Therefore, I find Patrick Murphy is a non-tenure track faculty member with a primary appointment in the College of Arts and Science, and he is not an administrator within the meaning of the exclusions provision for this unit. I will analyze the Employer's contention that Professor Murphy is a statutory supervisor, and therefore excluded from the unit on that basis, in a later section of this Report.

p. Erika Grundstrom

Professor Erika Grundstrom holds a faculty appointment as a Senior Lecturer in the Department of Physics and Astronomy and she also serves as the Laboratory Coordinator. Her most recent appointment letter specifies this appointment is not on the tenure track. Her appointment letter states that her teaching load will be the equivalent of a full-time load. However, Professor Grundstrom receives a three-course reduction in her annual teaching load based on her duties as the Laboratory Coordinator. Professor Grundstrom's appointment letter does not specify additional monetary compensation or stipend for this role as Laboratory Coordinator and the letter does not include language about serving at the pleasure of the Dean. Her letter incorporates the Faculty Manual as part of the terms and conditions of her employment.

Professor Grundstrom is responsible for coordinating the astronomy labs. Each semester there is typically a large astronomy course of about 150 students. Part of this course is a laboratory component that meets every week. Each lab is only about 15 to 20 students, so there are about eight labs each week. Two teaching assistants run each lab and Professor Grundstrom

coordinates these assistants. She determines the teaching materials for the labs, ensures the teaching assistants know what they are supposed to do for the week, works with the other lab coordinators to assign teaching assistants to the various labs, and collect the grades for the various lab activities.

Professor Grundstrom is clearly a non-tenure track faculty with a primary appointment in the College. Her duties as Astronomy Lab Coordinator do not involve ongoing management and running of the College or the University. Unlike excluded administrators, she does not receive any additional monetary compensation for these administrative duties. She is a faculty member subject to the Faculty Manual. Therefore, I find Erika Grundstrom is a non-tenure track faculty member with a primary appointment in the College of Arts and Science, and she is not an administrator within the meaning of the exclusions provision for this unit. I will analyze the Employer's contention that Professor Grundstrom is a statutory supervisor, and therefore excluded from the unit on that basis, in a later section of this Report.

q. Silke Schade

Professor Silke Schade holds a faculty appointment as a Senior Lecturer in the Department of Germanic and Slavic Languages. Her most recent appointment letter specifies this appointment is not on the tenure track. Her teaching load in her appointment letter specifies a 3-3 load with a one-course reduction per semester for duties including overseeing the teaching assistants and managing the program and curriculum development. Thus, Professor Schade taught two classes each semester. Professor Schade's appointment letter does not specify additional monetary compensation or stipend for this role and the letter does not include language about serving at the pleasure of the Dean. Her letter incorporates the Faculty Manual as part of the terms and conditions of her employment.

Professor Lutz Koepnik is the Chair of this department and testified as to Professor Schade's duties. He explained that her title was complicated, but that essentially Professor Schade directs the German Language program and oversees the teaching assistants. Chair Koepnik agreed that her role could be described as the German Language Coordinator. Professor Schade helps define the German language curriculum and sequencing of the courses required to receive the degree. She helps select which text books are used. She also oversees 10-12 teaching assistants in these different language classes each semester. She meets with the teaching assistants and ensures they are following the syllabi. Professor Schade evaluates incoming students to determine their language proficiency and which class they should start with, and she recently helped develop a new online system to take over this process.

Professor Schade is clearly a non-tenure track faculty with a primary appointment in the College. Her duties as the German Language Coordinator do not involve ongoing management and running of the College or the University. Unlike excluded administrators, she does not receive any additional monetary compensation for these administrative duties. She is a faculty member subject to the Faculty Manual. Therefore, I find Silke Schade is a non-tenure track faculty member with a primary appointment in the College of Arts and Science, and she is not an administrator within the meaning of the exclusions provision for this unit. I will analyze the

Employer’s contention that Professor Schade is a statutory supervisor, and therefore excluded from the unit on that basis, in a later section of this Report.

r. Tina Qin

Dr. Tina Qin holds a faculty appointment as a Lecturer in the Department of Chemistry. Her appointment letter specifies this appointment is part-time. Her appointment letter noted that her position involves no financial or tenure obligations on the part of the College of Arts and Science. Nothing in her letter mentions serving at the pleasure of the Dean. Her appointed teaching load is one course with any additional duties to be discussed with the department chair. Her letter incorporates the Faculty Manual as part of the terms and conditions of her employment.

Dr. Qin is a full-time staff employee of the University Library, but in order to teach a class she has to hold a faculty appointment. This faculty appointment allows her to receive a class roster and be able to submit grades through the College’s system. Dr. Qin is the chemistry librarian for the university and teaches a chemistry literature course for the Department of Chemistry. She teaches students how to use the library and various electronic databases for research purposes. Professor David Cliffler, the current Chair of the Chemistry Department, testified that he believed the University Library system pays for Dr. Qin’s salary at the University, as she does not receive any compensation from the College for her teaching duties. Dean Benton also testified the College does not pay any part of Dr. Qin’s salary and that Dean Benton believed the University Library system handled Dr. Qin’s salary. Dean Benton also testified the University Library system has its own budget separate from the budgets of the 10 Colleges and it pays its staff employees from this library budget.

The Employer asserts Dr. Qin should be excluded from the unit because she is compensated by the University as a staff employee and not a faculty employee. The unit description specifically excludes “all other employees employed by the University, including those who teach a class or course and are separately compensated for such teaching.” In order to teach a course, an employee must be given a faculty appointment. Thus, an “employee” can never teach a course as the nature of having a teaching appointment requires the employee to be a faculty member. All faculty are governed by the Faculty Manual, and Dr. Qin’s appointment letter specifically refers to the Faculty Manual as the document governing the terms and conditions of her appointment. Furthermore, nothing in the unit description requires a “faculty” member to be compensated for their role as faculty in order to vote in the election. Rather, the unit description excludes employees who teach a course and are separately compensated for such teaching. There is no evidence in the record that another University entity compensated Dr. Qin for her teaching separately from her library duties; the Employer only asserted that the College of Arts and Science specifically did not compensate her for her teaching. As clearly laid out in the unit description, eligible to vote are “All full-time and part-time non-tenure-track faculty employed by Vanderbilt University with a primary appointment in the College,” and such a faculty member must have taught at least one class. Therefore, I find Tina Qin is a non-tenure track faculty member with a primary appointment in the College of Arts and Science, and she is not an administrator or “other employee” within the meaning of the exclusions provision for this

unit. As a result, I find that she is an eligible voter and recommend that her ballot be opened and counted.

C. Statutory Supervisor Challenges

The Employer asserts the following 11 voters are statutory supervisors under the Act: Anna Catesby Yant, Mary Lynn Sandoz, Neil Butt, Madeleine Casad, Steven Baskauf, Tara Decuir Todd, Sarah Delassus, Herald Falconi, Patrick Murphy, Erika Grundstrom, and Silke Schade. As summarized in the Acting Regional Director’s Report on Challenges, the Employer initially claimed only one challenged voter was also a statutory supervisor and should be excluded from the unit on that basis. However, during the hearing and based on various witnesses’ testimony, the Employer expanded this claim to challenge 11 employees who were not on the voter eligibility list. The Employer had already challenged these 11 voters based on their administrative duties; I addressed and rejected this argument in the previous section of this Report. As I previously concluded that each of these individuals is otherwise a non-tenure track faculty with a primary appointment in the College of Arts and Science, and is not an administrator within the meaning of the exclusions provision for this unit, my determination as to the supervisory status of each is conclusive as the individual’s eligibility to vote; that is, if any of these faculty are not statutory supervisors, they are eligible voters and their ballots should be opened and counted.

In this section, I will review guiding case law and summarize the parties’ positions on the statutory supervisor challenges. Then I will analyze each of these 11 challenged voters to decide if they are supervisors under the Act. The Employer, as the party asserting these voters are supervisors, has the burden of establishing supervisory status. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 711-712 (2001); *Oakwood Healthcare*, 348 NLRB 686 (2006); *Benchmark Mechanical Contractors*, 327 NLRB 829 (1999).

The Act defines “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 of a merely routine or clerical nature, but requires the use of independent judgment.

The Board and many circuit courts have interpreted this list in the disjunctive and found that the “possession of any one of the authorities listed in [that section] places the employee invested with this authority in the supervisory class.” *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949), see also *Harborside Healthcare*, 330 NLRB 1334 (2000); *Pepsi-Cola*, 327 NLRB 1062 (1999).

“Assign” in the supervisory context generally means the “act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as shift or overtime period), or giving significant overall duties, i.e. tasks, to an employee.”

Oakwood Healthcare, 348 NLRB at 689. Furthermore, any supervisory direction must be both “responsible” and carried out with “independent judgment.” *Id.* Regarding responsible direction, “it 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 also must 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. Finally, acting with independent judgment requires the individual to engage in these actions “free of the control of others and form an opinion or evaluation by discerning and comparing data.” *Id.* at 693. The degree of discretion must be more than “routine or clerical” and such 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.*

The exercise of some supervisory authority, such as inspecting and reporting the work of others, in a routine, clerical, perfunctory, or sporadic manner does not by itself confer supervisory status. Instead, such authority is similar to that of quality control employees and the authority is given based on the alleged supervisor’s higher level of skill and greater seniority. See *Brown & Root*, 314 NLRB 19 fn. 6 (1994); *Somerset Welding & Steel*, 291 NLRB 913, 914 (1988). Section 2(11) of the Act “requires only possession of authority to carry out an enumerated supervisory function, not its actual exercise;” however “the evidence still must suffice to show that such authority actually exists and that its exercise requires the use of independent judgment.” *Barstow Community Hospital*, 352 NLRB 1052, 1053 (2008), citing *Avante at Wilson*, 348 NLRB 1056, 1057 (2006); see also *Chevron Shipping Co.*, 317 NLRB 379, 381 fn. 6 (1995) (conclusory statements without supporting evidence do not establish supervisory authority).

In *Adelphi University*, 195 NLRB 639 (1972), the Board held that it would not exclude college or university faculty members from a professional unit as supervisors merely because they infrequently might exercise supervisory authority over nonunit members. In order to be a statutory supervisor, such faculty would need to have supervisory duties requiring 50 percent or more of their time. *Id.* at 645. The Board later clarified that “professional employees” as well as supervisors, “exercise discretion and judgment, and professional employees frequently require the ancillary services of nonprofessional employees in order to carry out their professional, not supervisory, responsibilities.” *New York University*, 221 NLRB 1148, 1156 (1975). The Board in *New York University* explained:

But that does not change the nature of their work from professional to supervisory, nor their relation to management. They are not hired as supervisors but as professionals. The work of employees that may be “supervised” by professionals in this category is merely adjunct to that of the professional and is not the primary work product. In short, we do not believe that any teacher, lawyer, architect, doctor, editor, etc., whose employer provides him with the services of a typist, secretary, draftsman, or similar support personnel, was intended by Congress to be excluded from the Act by the rote application of the statute without any reference to its purpose or the individual's place on the labor-management spectrum.

Id.

In *Detroit College of Business*, 296 NLRB 318 (1989), the Board found certain faculty members who had an additional role as department coordinators to be statutory supervisors due to their role in evaluating part-time faculty, and their participation in the hiring process by interviewing potential candidates along with other deans. The dean in that case testified about the hiring process and explained that it was a joint decision between her and the coordinator (the challenged unit classification at issue), but that all hires must meet her approval. Furthermore, she testified that no instructor had ever been hired without the consent of a coordinator, and she could only think of two times that a coordinator's hiring recommendations had not been followed. Id. The Board distinguished supervisory authority exercised over unit employees from such authority exercised over non-unit employees, finding that in the latter situation the Board must evaluate whether the supervisory functions being exercised "so allied the individuals with management as to establish a differentiation between them and other employees in the unit." Id. at 320, quoting *Adelphi*, 195 NLRB at 644. Additionally, a key to the issue in *Detroit College of Business* was whether the supervisory functions were part of the individual's "primary work product rather than an ancillary part" of the duties. Id. at 321. The department coordinator in *Detroit College* had been hired not just to teach but also to evaluate and hire part-time faculty, and this factored in the analysis.

In the instant case, the Employer primarily relies on the argument that the alleged supervisors can assign work, evaluate performance, offer counsel, issue discipline, and recommend action concerning the employment status of those who report to them. For most of these alleged supervisors, the Employer argues they supervise teaching assistants who are typically graduate students. The Employer asserts any graduate students and undergraduate students receiving payment for their work as teaching assistants are employees pursuant to *Columbia University*, 364 NLRB No. 90, 2016 WL 4437684 (2016). Under *Columbia University*, university students are considered employees for purposes of collective bargaining under the Act when serving in an academic assistant position. Id.

The Petitioner disagrees and asserts these challenged voters are not supervisors. The Petitioner argues the challenged faculty members do not possess any meaningful authority in the hiring, firing, promotion, or discipline process regarding other employees. Furthermore, the Petitioner notes that the Board and courts have recognized that not "all assignments and directions given by an employee involve the exercise of supervisory authority." *Providence Hospital*, 320 NLRB 717, 725 (1996). The Petitioner asserts the challenged voters are not supervisors even if they train other employees because this training is not evidence of supervisory status, but merely reflects the fact that the challenged voters have greater job experience and skill. Additionally, the Petitioner notes the record indicated that any evaluations conducted by the challenged voters are only part of the overall evaluation process and do not directly impact other employees' status.

Very few employees of the University have sole independent authority to hire or discharge someone. Over and over again, witnesses explained how their departments would work together to make a recommendation regarding personnel decisions, that recommendation would be signed off on by the department chair and then sent to Dean Benton for action. Dean Benton

testified that no individual faculty member has the authority to approve a hire; rather the appointment process begins in faculty steering committees and those recommendations make their way to the Dean's office for approval. Dean Benton explained she worked with the Provost on some of these decisions, but that she can make the decision on whether to hire a new professor or grant tenure to a professor. Even department chairs do not have the authority independently to hire or discharge other professors. Thus, I find that none of the challenged voters have the supervisory authority to hire or discharge other employees.

In the sections below I will explain my findings and analysis of each challenged voter on whether their employment responsibilities involve the exercise of statutory supervisory authority, and if the potential supervisor is allied with management and should therefore be excluded from the unit.

a. Anna Catesby Yant

As discussed above, Professor Yant is a faculty member with a senior lecture appointment in the Anthropology department. Her primary role at the University is serving as the Pre-major Academic Advisor and Assistant Director of CASPAR and this appointment is administratively located in the Office of the Dean of the College of Arts and Science. As the Assistant Director of CASPAR, Professor Yant reports to Professor Andrea Hearn, the Director of CASPAR. The Employer asserts Professor Yant is a supervisor because she oversees the CASPAR advisors with Dr. Hearn and has the authority to direct these advisors when they incorrectly perform their duties. Additionally, the Employer notes that Professor Yant served as the Director of CASPAR while Dr. Hearn was on leave during the past academic year, and in this role Professor Yant also helped to hire a new advisor.

Professor Yant is not solely responsible for any hiring decisions; rather she has a voice in the discussions regarding hiring CASPAR advisors along with Dr. Hearn, Associate Dean Christie-Mizell, and Dean Roger Moore. Professor Yant participates in the interview process with Dr. Hearn, Associate Dean Christie-Mizell, and Dean Moore, and Assistant Dean Christie-Mizell testified how Professor Yant asked insightful questions of potential CASPAR advisors that influenced the eventual outcomes. However, Assistant Dean Christie-Mizell explained the only person with the actual authority to sign off on a new hire is the Dean of the College (currently Dean Benton). As part of her job, Professor Yant helps train the advisors and Assistant Dean Christie-Mizell testified that she offers them assistance and suggests different ways of doing their job. However, Assistant Dean Christie-Mizell also testified that Professor Yant does not generally spend every day going to each advisor and try to figure out what they are doing and how to correct them. He explained she assists Dr. Hearn in making sure everybody is working up to their potential. Assistant Dean Christie-Mizell also explained he has routine meetings with Dr. Hearn to discuss the CASPAR program, but that Professor Yant is typically not at these meetings.

Professor Yant's input and experience is obviously valued by her colleagues in the CASPAR program and she has a voice in the hiring of other faculty. However, she clearly does not have authority to hire personnel on her own and there is no evidence her recommendations are adopted by management without other investigation or input. Additionally, while she helps

train and counsel the advisors, Professor Yant does not actually direct the advisors, or give them independent instructions outside of the department guidelines for advising students. Therefore, I find Anna Catesby Yant is not a statutory supervisor under the Act. As a result, I find that she is an eligible voter and recommend that her ballot be opened and counted.

b. Mary Lynn Sandoz

Professor Sandoz serves as the Director of Forensics. Together with the Director of Debate, Neil Butt, she runs the University's debate team. This is an extra-curricular activity and participating students do not receive course credit. The Employer argues Professor Sandoz is a statutory supervisor because she has supervisory authority because she directs the duties of Professor Butt (the Director of Debate), Professor John Koch (the Associate Director of Debate), and the volunteer assistant coaches. The Employer further notes that Professor Sandoz contributes to Professor Butt's and Professor Koch's performance reviews, and she participated in the hiring decision for the Associate Director of Debate position (Professor Koch's position). Lastly, the Employer argues Professor Sandoz is a statutory supervisor because she assigns work to the administrative assistant for the Communication Studies Department.

Communications Department Chair Bonnie Dow testified that she evaluates Professors Sandoz, Butt, and Koch on both their performance as professors teaching classes, and their performance leading the debate program. Chair Dow testified she does not have firsthand knowledge of Professor Butt and Koch's performance in the debate arena, and instead has conversations with Professor Sandoz in order to properly evaluate their performance. Chair Dow testified that she gives Professor Sandoz's feedback an enormous amount of weight. Chair Dow explained there are no written evaluations given by Professor Sandoz of any other faculty. Regarding hiring decisions, Chair Dow testified that because the Communications Department is fairly small, all of the faculty members have input regarding searching for new faculty. When it came to hiring an Associate Director of Debate, Chair Dow testified Professor Sandoz's input and opinion was very important as she was the Director of Forensics, but that the search committee conducted the interviews and together made a recommendation to hire Professor Koch. This recommendation then went up the approval process to Dean Benton. Chair Dow explained she did not copy Professor Sandoz on the appointment letters for Professor Butt or Professor Koch because Professor Sandoz does not recommend appointments, complete appointment paperwork, or provide salary recommendations. Chair Dow testified she has the perception that Professor Sandoz is the point person for the debate program, so if Chair Dow has an issue to discuss with either Professor Butt or Professor Koch regarding the debate program, she always makes sure to talk to Professor Sandoz about it first. However, Chair Dow also testified her understanding is that the three debate heads work together to make decisions collaboratively.

Professor Sandoz testified during the preelection hearing that she does not have any regular input or control regarding hiring, firing, promotions or other benefits provided to faculty.³² She explained her input has been informally solicited over the years but whether this

³² A copy of Professor Sandoz's testimony from the preelection hearing was admitted in to the record in this proceeding as Joint Exhibit 1.

occurred depended on who was serving as the department chair. Professor Sandoz explained the current chair, Chair Dow, solicits opinions from many of the department faculty including her, but Professor Sandoz does not give feedback on these matters unless asked. In both the preelection hearing and the post-election hearing, Professor Sandoz testified she views the debate professors as a team. She explained they work together as a team and divide up tasks based on expertise and what makes sense to the three of them. Professor Sandoz views the debate program as similar to a course, and the three of them decide together what needs to be done for the year and which one of them should take on the various responsibilities. They all handle coaching duties and divide up the travel trips.

Professor Sandoz makes the decision whether to hire assistant coaches, but most of these positions are filled by unpaid volunteers. She testified they had four unpaid volunteers last year and one assistant coach who was a graduate student teaching assistant in the Divinity School. Professor Sandoz explained there are no graduate students in the Communications Department so they do not have their own department teaching assistants. Therefore, they can only get a graduate student teaching assistant to serve as a debate coach when the teaching assistant is already on the University payroll, interested in serving as a debate coach, and there is a little bit of money in the debate budget to compensate the teaching assistant. Professor Sandoz explained she does not really assign the coaches to individual students or teams, but rather they all get together with the debate directors and work as a group to split up the work. She does not assign coaches to travel to various debates but instead asks for volunteers. Regarding the graduate student coach from this past year, Professor Sandoz testified she did not do any performance evaluation of the student for the University. Additionally, Professor Sandoz testified she worked with the department's administrative assistant in filling out the required paperwork for any students serving as coaches. Professor Sandoz explained the assistant asked her questions about the paperwork and Sandoz would answer. Professor Sandoz explained this type of paperwork is one of the duties of the administrative assistant. Professor Sandoz testified she can only "ask" for the assistant to help her out with the paperwork and did not believe she could "tell" the assistant what to do.

There is no evidence in the record indicating Professor Sandoz can discipline either Professor Butt or Professor Koch and therefore I find she does not have this authority over Professor Butt or Professor Koch. The only other evidence regarding Professor Sandoz's ability to discipline involved an incident with a debate student where the student engaged in improper actions. When this occurred, Professor Sandoz contacted the department chair and, at the chair's direction, she contacted the dean of students. Then the dean of students handled the removal of the student from the debate program.

Based on the extensive testimony regarding Professor Sandoz's duties, she clearly has great input and her opinions are taken seriously regarding the debate program. However, she does not direct the work of other employees with independent authority, and her contributions to the performance evaluations are only through informal consultations with the department chair. She cannot independently promote or discipline other employees. Additionally, her assignment of work to the department administrative assistant is akin to that of a professional employee requiring the services of a clerical employee, in that Professor Sandoz does this in order to carry

out her responsibilities for the debate program and not as a supervisor. See *New York University*, 221 NLRB at 1156. Therefore, I find Mary Lynn Sandoz is not a statutory supervisor under the Act. As a result, I find that she is an eligible voter and recommend that her ballot be opened and counted.

c. Neil Butt

Professor Butt is the Director of Debate. As described above, he runs the debate program in conjunction with Professor Sandoz and Professor Koch. The Employer claims he is a statutory supervisor because he participated in the hiring decision of Professor Koch and he oversees assistant coaches, both paid and unpaid.

Professor Butt also participated in the search committee process to hire an associate director of debate. Chair Dow values Professor Butt's opinion on the hiring process along with Professor Sandoz. However, as with any hiring of any professor lecturer position, the appointment process begins in the department and then is ultimately approved by the Dean's and Provost's offices. Chair Dow explained Professor Butt does not give written evaluations about any faculty. Professor Butt works with the other debate professors in splitting up the debate team work and there is no actual assignment of work to the various assistant coaches as the workload is handled by a volunteer system.

Professor Butt does not have any authority to hire or review the performance of other employees. Additionally, he does not have authority to independently assign or direct work as Director of Debate. Therefore, I find Neil Butt is not a statutory supervisor under the Act. As a result, I find that he is an eligible voter and recommend that his ballot be opened and counted.

d. Madeleine Casad

Professor Casad is the Digital Humanities Coordinator for the Center for Digital Humanities. The Employer argues Professor Casad is a supervisor because she participates in the performance evaluation of a staff member, issues discipline to the staff member, assigns work to the staff member, and does all of this with independent judgment.

As coordinator, Professor Casad helped set up the Center, including developing and running academic programs for the Center, chairing the faculty steering committee in overseeing the Center, and promoting outreach through the Center. Dean Benton testified the only person Professor Casad oversees is a staff person who is assigned to assist in the Center for Digital Humanities. Dean Benton explained Professor Casad can contribute to the staff person's evaluation, and the hiring and firing of the staff member would be governed by the human resources department and not by the Faculty Manual. Dean Benton believes Professor Casad can give oral discipline to the staff member and correct the staff if warranted. She did not know of a specific example of a time that Professor Casad had exercised this authority however. Additionally, Dean Benton testified there had been an issue with a past staff member and there was some reassignment based on Professor Casad's dissatisfaction with the staff person. Dean Benton did not know what role Professor Casad's input played in the reassignment or the specific details of what happened and who made the final decisions on this reassignment.

Professor Casad has not issued any sort of discipline to a staff member or other employee. Other than conclusory statements, the Employer provided no evidence Professor Casad has such authority. Furthermore, regarding her authority to evaluate the staff member, the testimony clearly stated Professor Casad “contributed” to the evaluation, indicating that Professor Casad does not have sole authority or responsibility for such evaluation. Professor Casad’s relationship with the staff member is akin to that of a professional employee requiring the services of a clerical employee and does not rise to the level of a supervisor. See *New York University*, 221 NLRB at 1156. Therefore, I find Madeleine Casad is not a statutory supervisor under the Act. As a result, I find that she is an eligible voter and recommend that her ballot be opened and counted.

e. Steven Baskauf

Professor Baskauf is the instructor of record for a large introductory biology class that has multiple weekly laboratory sessions. He serves as the “laboratory coordinator” for these lab sessions, although this title is not in his appointment letter. The Employer asserts Professor Baskauf is a supervisor because he trains teaching assistants, completes written performance evaluations for the teaching assistants, and supervises laboratory staff including the ability to discipline and evaluate their performance.

As laboratory coordinator, Professor Baskauf develops the syllabi, curriculum, practicum, and exams for the courses. The actual lab classes are taught by teaching assistants. Most of the teaching assistants are graduate students, but there are also some undergraduate students who assist with the lab classes. Professor Baskauf also oversees the approximately 30 teaching assistants and trains them so each lab is consistently taught in the same manner. Additionally, three staff members work in the lab and take direction from Professor Baskauf regarding preparing the materials and equipment for each lab. Professor Baskauf works directly with the staff members to inform them what materials and chemicals are needed for the upcoming week’s lab, and then the staff members order the materials and prepare them so the lab can be run efficiently.

Professor Baskauf serves on the assignment committee with the department chair and the director of graduate studies, and this committee determines which graduate students are assigned to teach the laboratory classes. He trains the teaching assistants on the specifics of how to teach the labs. All graduate students in the biology department have to serve as a teaching assistant for one semester, and teaching these lab courses fulfills that requirement. The teaching assistants receive evaluations from the students through the university-wide evaluation system (which is also used to evaluate professors). Additionally, Professor Baskauf keeps his own notes about the teaching assistants and uses the student evaluations in conjunction with his own notes to help train the teaching assistants. These evaluations, both the student ones and any notes from Professor Baskauf, can be used by future employers when deciding whether to hire the graduate student as a teacher. However, the main component of these evaluations is the student evaluations of the teaching assistant. Evaluating graduate student teaching assistants is a typical requirement of any professor who has a teaching assistant, regardless of the professor’s tenure status.

Regarding the three staff members, Professor Baskauf is instrumental in the process of selecting the staff to work in his lab. He identifies and recruits people to fill these positions, including conducting an interview of the person if necessary. Professor Baskauf does not have direct authority to hire a staff person, but his recommendations for the positions are rarely, if ever, contradicted. The Vice-Chair of the Biology Department, Patrick Abbot, testified his expectation was that Professor Baskauf would fill out the performance evaluations for his lab staff because he is the person who directly views their work and can comment on their performance. Vice-Chair Abbot explained all the professors with labs fill out these evaluations for their lab staff. Only two non-tenure track professors have their own labs, and these are both teaching labs instead of research labs. These two professors are Professor Baskauf and Professor Denise Due-Goodwin. Professor Due-Goodwin is a lab coordinator for a different subject in the department. There was no specific evidence introduced regarding Professor Baskauf's ability or authority to discipline one of his lab staff members. Vice-Chair Abbot testified his understanding and expectation was that Professor Baskauf would be able to have a conversation with a lab staff if the staff member was not performing the job functions correctly. Vice-Chair Abbot thought of only one instance where this occurred, but there was nothing in writing or put into the staff member's personnel file regarding the conversation Professor Baskauf had with that staff member. Furthermore, Vice-Chair Abbot explained that for anything that would require more serious discipline, the department chair would likely get involved.

Professor Baskauf is not a statutory supervisor under the Act because his role as coordinator for the teaching assistants is part of his job as a teacher and his role in directing the laboratory staff is analogous to professionals directing support personnel – neither of which serves to ally his interest with management over the unit. See *Adelphi*, 195 NLRB at 644 (the Board must evaluate whether the supervisory functions being exercised so ally the challenged individuals with management such that there is a difference between the challenged employees and the employees in the unit). Regarding the teaching assistants, Professor Baskauf's role as their coordinator and trainer is to teach these students how to teach. In essence, his role as coordinator is as an educator, not a supervisor. He evaluates the students in the same way professors give grades. Professor Baskauf cannot issue these graduate students any discipline other than the same type of counseling that any professor could offer a student. He is not in charge of hiring or firing the teaching assistants. He directs them in the same way other professors direct students: do the required work to fulfill the requirements to earn a degree. Regarding the laboratory staff, Professor Baskauf's authority over these non-unit employees is clearly the type contemplated by the Board in *New York University* and *Adelphi*. Professor Baskauf's appointment letter makes it plain the Employer hired him to teach as a lecturer. Specifically, he teaches the biology lab courses and teaching graduate students to also be teachers. In order to conduct lab experiments, he requires materials and thus directs his lab staff in the ordering and preparation of the materials. This is very similar to how other professionals direct their support personnel in ordering supplies. The work product is the education, not the laboratory materials and results. Any supervision of the lab staff is ancillary to Professor Baskauf's role as a professor and does not ally him with management and therefore remove him from the unit. Therefore, I find Steven Baskauf is not a statutory supervisor under the Act. As a result, I find that he is an eligible voter and recommend that his ballot be opened and counted.

f. Tara Decuir Todd

Similarly to Professor Baskauf, Professor Todd is the instructor of record for a class with multiple sessions each week. As explained earlier, Professor Todd serves as the Recitation Coordinator in the Chemistry Department and her job is to manage all the chemistry recitation courses. The Employer claims Professor Todd is a supervisor because she instructs teaching assistants on how to teach the classes, conducts performance evaluations of the teaching assistants, and manages any teaching assistant performance issues.

Professor Todd oversees teaching assistants who are themselves responsible for teaching these one hour recitations classes for undergraduate chemistry students. There are about three or four teaching assistants each semester and they each teach five different classes. Teaching assistants are graduate students in the chemistry department who are specifically on an educational track and desire additional teaching experience. As Recitation Coordinator, Professor Todd acts as a liaison between the professors responsible for the corresponding lecture course and the teaching assistants. These professors work together to create the tests and quizzes and Professor Todd distributes these quizzes to the teaching assistants; the assistants in turn administer the quizzes to the students. Professor Todd sits in on the recitation classes for each assistant at least once per semester in order to observe the assistant. Professor Todd is responsible for giving each assistant a practicum instruction grade, even though the assistants do not receive a course credit for teaching these classes. These practicum instruction grades are a way to evaluate the teaching assistants.

Regarding any performance issues with the teaching assistants, Professor David Cliffel, chair of the chemistry department, explained Professor Todd would bring the issue to the attention of the vice chair and the director of graduate studies. If the problem continued, it could end up before Chair Cliffel as well, and they would all discuss whether the teaching assistant/graduate student should continue in the program.

Professor Todd does not supervise the teaching assistants within the meaning of the Act. Rather, her responsibility to them is to train them how to teach; she is an educator. She is not independently giving the assistants instruction, but merely passing along the instructions from other professors. Her evaluations of them are similar to grades given to a student, and these evaluations are not solely used in making future personnel decisions. Furthermore, she has no authority to independently issue discipline to the teaching assistants, as any problems are required to be reported to higher decision makers within the department. Therefore, I find Tara Decuir Todd is not a statutory supervisor under the Act. As a result, I find that she is an eligible voter and recommend that her ballot be opened and counted.

g. Sarah Delassus

Professor Delassus is the coordinator for the oral portion of Spanish 202, which is a required course for Spanish majors and is comprised of an oral and written component. There are multiple sections of each component because this is a popular class. In order to maintain cohesive instruction across the sections, Professor Delassus coordinates the teaching of these sections. The Employer asserts Professor Delassus is a supervisor because she has authority over

teaching assistants and fellow professors to assign work, train them, conduct performance evaluations, and discipline them.

Department Chair Benigno Trigo testified about Professor Delassus' duties as coordinator. There are about four sections of Spanish 202 each semester and each class is a small class of about 18 students. Each section is taught by either a graduate student teaching assistant, or another professor with the rank of lecturer or senior lecturer. Professor Delassus oversees these graduate student teaching assistants and fellow senior lecturer faculty. She does not assign particular instructors to the respective class; that decision is made by the vice chair of the department. She does engage in formal and informal evaluation reports of the instructors, both teaching assistants and professors. Regarding the teaching assistants, Professor Delassus completes a formal evaluation each semester for the teaching assistants. With the other faculty, Professor Delassus only completes a formal evaluation about once a year, with the exception of other faculty who have been teaching the class for many years and therefore a formal evaluation is no longer necessary. The purpose of the written evaluations is to assist the department chair and vice chair in managing the department. Chair Trigo testified the evaluations do not directly affect the hiring of the graduate students or faculty, but that Professor Delassus does assist in the hiring process through her participation on a committee dedicated to the task. Chair Trigo also explained the evaluation process of graduate students and professors also involve student evaluations, and these evaluations hold equal weight to the coordinator evaluations in his decision-making process. Chair Trigo explained that any disciplinary issues with the teaching assistants or professors would be elevated within the chain of command in the department and not solely handled by Professor Delassus. He could not think of an example of when Professor Delassus issued discipline to either a teaching assistant or fellow professor. Chair Trigo explained he believed course coordinators have the independent authority to address a performance issue or attendance issue with a teaching assistant or professor without coming to the chair, but could not provide an example of when this happened.

Professor Delassus also designs the oral Spanish 202 course and compiles the textbook and materials used by the course instructors. However, because the department strives to achieve similar language proficiency and expectations from these courses, any major changes to the course curriculum have to be addressed by a committee rather than by Professor Delassus herself.

Professor Delassus does not have statutory supervisory authority in her role as a coordinator for Spanish 202. The Employer did not demonstrate how Professor Delassus has any authority to discipline the graduate students or other professors. Regarding her role in evaluating them, these evaluations are only a portion of the data the department chair uses to make personnel decisions, and thus do not qualify as "effective recommendations." She does not assign the graduate students and professors any work but merely ensures these teachers are adhering to the same uniform standards. Therefore, I find Sarah Delassus is not a statutory supervisor under the Act. As a result, I find that she is an eligible voter and recommend that her ballot be opened and counted.

h. Heraldó Falconi

Professor Falconi is the coordinator for the written portion of Spanish 202, the second component of Spanish 202 along with the oral portion addressed above in the discussion about Professor Delassus' duties. The Employer argues Professor Falconi is a supervisor because he has authority over teaching assistants and fellow professors to assign work, train them, conduct performance evaluations, and discipline them.

Like Professor Delassus, Professor Falconi oversees graduate student teaching assistants and fellow senior lecturer faculty who are assigned to teach the written Spanish 202 course. According to the record, he designs the course and compiles the textbook and materials used by the course instructors. However, like the curriculum for the oral Spanish 202 class, any major changes to the course curriculum have to be addressed by a committee rather than by Professor Falconi himself.

Department Chair Benigno Trigo testified Professor Falconi's duties as coordinator are essentially identical to Professor Delassus' duties with the exception that there are about 15 sections of the written component of Spanish 202. Chair Trigo could not think of an example of when Professor Falconi issued discipline to either a teaching assistant or fellow professor. Therefore, because the evidence demonstrated Professor Delassus did not meet the criteria to be a statutory supervisor, Professor Falconi also lacks supervisory authority. I find Heraldó Falconi is not a statutory supervisor under the Act. As a result, I find that he is an eligible voter and recommend that his ballot be opened and counted.

i. Patrick Murphy

Professor Murphy is a course coordinator for the introductory Spanish course. As with Spanish 202, the beginning Spanish course is very large with about 18 sections each semester. The Employer asserts Professor Murphy is a supervisor because he has authority over teaching assistants and fellow professors to assign work, train them, and conduct performance evaluations.

As with Professors Delassus and Falconi, Professor Murphy oversees the work of the graduate student teaching assistants and other professors who are assigned to teach the various sections of the introductory Spanish course. Professor Murphy is not solely responsible for creating the textbook used in this class, but he designs the exams, structures the course, and trains the instructors on how to teach the course in order to preserve cohesive instruction across all the sections.

Department Chair Benigno Trigo testified Professor Murphy's duties as coordinator are essentially identical to Professor Delassus and Professor Falconi's duties regarding their authority over the graduate student teaching assistants and the other professors assigned as instructors to the Spanish course. Chair Trigo could not think of an example of when Professor Murphy issued discipline to either a teaching assistant or fellow professor. Therefore, similarly to Professors Delassus and Falconi, the Professor Murphy does not have supervisory authority over the teaching assistants and other professors serving as instructors. I find Patrick Murphy is

not a statutory supervisor under the Act. As a result, I find that he is an eligible voter and recommend that his ballot be opened and counted.

j. Erika Grundstrom

Professor Grundstrom serves as a laboratory coordinator for astronomy classes in the Department of Physics and Astronomy. Each semester there is typically a large astronomy course of about 150 students. Part of this course is a laboratory component that meets every week. Each lab is only about 15 to 20 students and there are about eight labs each week. Each lab is run by two teaching assistants and Professor Grundstrom coordinates these assistants. The Employer asserts Professor Grundstrom is a supervisor because she trains the teaching assistants, directs their work, assigns them to labs, and conducts performance evaluations.

Department Chair Robert Scherrer testified regarding Professor Grundstrom’s specific duties as laboratory coordinator. Professor Grundstrom works with the physics lab coordinator to split up the graduate student teaching assistants so all of the lab classes are covered. She and the other coordinator make these selections based on the pool of graduate students and where they are in the process of earning their degree. Chair Scherrer explained graduate students have to be either a teaching assistant or research assistant in order to receive financial support from the University. Students first serve as teaching assistants and through this process, they find a faculty member willing to take them on as a research assistant. Most of the time, the students will serve as a research assistant for their assigned faculty member until they finish their degree. Professor Grundstrom informs the teaching assistants what the work is for the week so the teaching assistants can actually teach the lab class. Professor Grundstrom has a small orientation at the beginning of the semester for the teaching assistants but does not conduct any further training for them during the semester. Professor Grundstrom does not give any formal evaluations to the teaching assistants regarding their work and Chair Scherrer testified the only evaluations of the graduate students come from the student evaluations filled out by the undergraduate students. If there was an issue with a teaching assistant’s performance, Professor Grundstrom would likely take the issue to the director of graduate studies to try and find a solution. Chair Scherrer testified Professor Grundstrom had never reported a disciplinary issue to him.

Professor Grundstrom does not have supervisor authority over the teaching assistants. While Professor Grundstrom does “assign” teaching assistants to specific classes, she does not have independent authority in these assignments, but instead slots people into the classes based on departmental policy. Additionally, the work Professor Grundstrom “assigns” the teaching assistants is set by the curriculum of the astronomy class and there is no evidence that Professor Grundstrom exercises independent authority in selecting this work and determining how to assign it to the graduate students. She has no authority to independently issue discipline to the teaching assistants. I find Erika Grundstrom is not a statutory supervisor under the Act. As a result, I find that she is an eligible voter and recommend that her ballot be opened and counted.

k. Silke Schade

Professor Schade is the coordinator for the German language program in the Department of Germanic and Slavic Languages. In her role as coordinator, she oversees graduate student

teaching assistants and manages the German language program and curriculum development. The Employer argues she is a supervisor because she exercises independent judgment by assigning work, being responsible for disciplinary action, and participating in performance evaluations.

Professor Lutz Koepnik is the Chair of this department and testified as to Professor Schade's duties. He explained Professor Schade helps define the German language curriculum and the sequencing of the courses required to receive the degree. She helps select which textbooks are used. Professor Schade evaluates incoming undergraduate students to determine their language proficiency and which class they should start with, and she recently helped develop a new online system to take over this process. Regarding her alleged supervisory duties, she oversees 10 to 12 teaching assistants who teach four German language classes each semester. Chair Koepnik testified Professor Schade works with him in determining which teaching assistant will be assigned to which course. She has weekly meetings with the teaching assistants to help them improve their teaching skills and ensure they are following the syllabi. The teaching assistants are all graduate students in the German department and most of them hope to find academic employment after completion of their degree, so experience in teaching a class is very important. The graduate students typically have to spend about seven or eight semesters as a teaching assistant. In order to make sure the graduate students are properly learning how to teach, Professor Schade observes their teaching once or twice a semester and provides feedback to the teaching assistant. She has developed a questionnaire for the entire department faculty to use in evaluating the graduate students' teaching in order for the graduate students to improve this skill. The teaching assistants also receive student evaluations. Chair Koepnik testified Professor Schade does not have the authority to remove a teaching assistant from their position teaching, and if there were a problem with a teaching assistant requiring more than feedback, Professor Schade would likely discuss it with him (Chair Koepnik) and the director of graduate studies to formulate some type of response to the issue. Chair Koepnik testified he "calls the shots" regarding the department as chair, but that he views Professor Schade's advice as critical.

Professor Schade's relationship with the teaching assistants is as an educator rather than as a supervisor. These teaching assistants are all required to teach for multiple semesters in order to graduate from the program and Professor Schade's responsibility is to instruct them how to teach and how to improve as a teacher. She does not exercise independent authority in how the teaching assistants are assigned to various classes as this work is done in conjunction with the department chair. She does not have the authority to discipline the teaching assistants. She participates in their evaluation process but this is akin to giving a grade to a student. The evaluations are also just a component of the total evaluation as the undergraduate students also evaluate the teaching assistants. Therefore, I find Silke Schade is not a statutory supervisor under the Act. As a result, I find that she is an eligible voter and recommend that her ballot be opened and counted.

V. CONCLUSION

Based on the foregoing, I recommend that:

- 1) the Employer's challenges to the ballots of Diana Bell, Russell Boutelle, Keegan Finberg, Randall Kenan, Killian Quigley, Michael Alijewiez, Christopher Davies, Andrew Hines, Aurora Romero, Anna Catesby Yant, Mary Lynn Sandoz, Neil Butt, John Koch, Madeleine Casad, Sophia Bjork-James, Courtney Muse, Justin Quarry, Daniel Ridge, Carrie Russell, Gretchen Selcke, Steven Baskauf, Tara Decuir Todd, Sarah Delassus, Herald Falconi, Patrick Murphy, Erika Grundstrom, Silke Schade, and Tina Qin be overruled and that their ballots be opened and counted;
- 2) the ballots of Marcel Bischoff, Keaton Hamm, Giusy Mazzone, Robert McRae, Rares Rasdeaconu, Aleksandr Reznikov, Andrew Sale, Tizoc Chavez, Suzanne Globetti, Maria Jorge, Neil Kelley, William Robinson, David Schlundt, Katrina Turpeinen, Zdravka Tzonkova, Dianna Weymark, Keith Weghorst, Joseph Conrad, Chalene Helmuth, Yifat Crouvi, Matthieu Jacquemet, and Pavneet Aulakh be opened and counted based on the parties' stipulations and withdrawal of challenges;
- 3) the ballot of Rebecca Panter not be opened and counted based on the parties' stipulation; and
- 4) a revised Tally of Ballots issue.

VI. APPEAL PROCEDURE

Pursuant to Section 102.69(c)(1)(iii) of the Board's Rules and Regulations, any party may file exceptions to this Report, with a supporting brief if desired, with the Regional Director of Region 10 by **November 2, 2017**. A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Exceptions may be E-Filed through the Agency's website but 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 exceptions should be addressed to the Regional Director, National Labor Relations Board, [Regional address].

Pursuant to Sections 102.111 – 102.114 of the Board's Rules, exceptions and any supporting brief must be received by the Regional Director by 4:30 p.m. Eastern Time on the due date. If E-Filed, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date.

Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further time as the Regional Director may allow, a party opposing the exceptions

may file an answering brief with the Regional Director. An original and one copy shall be submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Dated: Thursday, October 19, 2017

A handwritten signature in black ink that reads "Katherine Miller". The signature is written in a cursive style with a large initial 'K'.

KATHERINE MILLER
Hearing Officer