

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5**

CAIR-FOUNDATION, INC. d/b/a  
COUNCIL ON AMERICAN-ISLAMIC  
RELATIONS

Employer

and

Case 05-RC-186732

SERVICE EMPLOYEES INTERNATIONAL  
UNION, LOCAL 500 AFFILIATED WITH  
SERVICE EMPLOYEES INTERNATIONAL  
UNION, CTW, CLC

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Service Employees International Union, Local 500, affiliated with Service Employees International Union, CTW, CLC (the Petitioner),<sup>1</sup> seeks to represent the employees in the voting groups and units described below:<sup>2</sup>

Voting Group A: All full-time and regular part-time non-professional employees employed by CAIR-Foundation, Inc. d/b/a Council on American-Islamic Relations (the Employer) at its facility in Washington, D.C., including technical support employees, administrative assistants, office managers, archivist and multimedia employees, communications coordinators, donations coordinators, Maryland outreach managers, coordinators, staff accountants, events managers, legal support employees, project managers, directors of development, directors of government affairs, and directors of chapter development; *excluding* directors of islamophobia, directors of chapter development, directors of communication, controllers, national information technology directors, executive directors, professional employees, managerial employees, guards, and supervisors as defined in the Act.

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<sup>1</sup> The parties stipulated, and I find, the Petitioner is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act.

<sup>2</sup> The parties stipulated that Project Manager Laura Jaghlit may vote subject to challenge. The parties agreed that Jaghlit is a non-professional employee; thus, she may vote subject to challenge in Voting Group A. The Petitioner represented that it was willing to proceed to an election in any unit that I found to be appropriate.

Voting Group B: All full-time and regular part-time professional employees employed by the Employer at its facility in Washington, D.C., including senior attorneys and staff attorneys<sup>3</sup>; excluding directors of islamophobia, directors of chapter development, directors of communication, controllers, national information technology directors, executive directors, non-professional employees, managerial employees, guards, and supervisors as defined in the Act.

A hearing on this petition was held before a hearing officer of the National Labor Relations Board to determine: (1) whether the Employer is a religious institution exempt from the Board's jurisdiction; and (2) whether three director-level employees are professional employees. The Employer contends it is a religious organization exempt from the Board's jurisdiction.<sup>4</sup> The Employer argues that it meets the three-part test in *University of Great Falls v. NLRB*, 278 F.3d 1335 (2002), and the two-part test in *Pacific Lutheran University*, 361 NLRB No. 157 (2014). The Employer further contends the following three classifications (and individuals who occupy them) are professional employees: Director of Development, Radouane Majidi; Director of Chapter Development, Lori Saroya; and Director of Government Affairs, Robert McCaw.<sup>5</sup> The Petitioner contends the Employer does not meet the standard to be considered a religious institution exempt from the Board's jurisdiction, and the three contested positions are not professional employees under the Act.

Based upon the record testimony, documentary evidence, post-hearing briefs, and legal standards discussed below, I find that the Employer is subject to the Board's jurisdiction. Furthermore, I find the Director of Chapter Development is a professional employee, and the Director of Development and the Director of Government Affairs are non-professional employees.

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<sup>3</sup> The petitioned-for unit includes professional employees, and any election held in this case should permit professional employees to determine whether they wish to be included in a unit with non-professional employees in accordance with *Sonotone Corp.*, 90 NLRB 1236 (1950).

<sup>4</sup> The parties stipulated, and I find, the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board. The Employer is a non-profit organization, with and office and place of business in Washington, D.C., the Employer's facility, and is engaged in the social and political advocacy of the civil liberties of American Muslims nationwide, including from its headquarters facility currently located at 453 New Jersey Avenue SE, Washington, D.C. During the 12-month period ending October 31, 2016, the Employer has conducted its business operations described herein in Washington, D.C., and the Board asserts plenary jurisdiction over enterprises in Washington, D.C. In conducting its operations during the period described above, the Employer purchased and received at its Washington, D.C. facility products, goods, and materials valued in excess of \$5,000 directly from points outside the District of Columbia.

<sup>5</sup> The parties stipulated that two individuals are professional employees within the meaning of Section 2(12) of the Act, and should be included in Voting Group B, and that five individuals are supervisors within the meaning of Section 2(11) of the Act and should be excluded from both Voting Group A and B and from any unit I find appropriate. See Board. Exhibit 2, paras. 8-9.

## I. Facts

### a. *Jurisdiction*

The Employer is a non-profit civil rights and advocacy organization.<sup>6</sup> According to its by-laws and public website,<sup>7</sup> the Employer's mission is "to enhance understanding of Islam, encourage dialogue, protect civil liberties, empower American Muslims, and build coalitions that promote justice and mutual understanding through civil rights, government affairs, media relations, research, internships, publications, education (conferences, seminars, workshops), voter registration, outreach, and interfaith." The Employer's by-laws further delineate the Employer's purpose to four identified areas: public relations; education; civil rights; and grant-giving. The by-laws do not refer to religious practices. The Employer has nine members on its Board of Directors. While the by-laws do not require these board members to be of any religion, all of the Employer's board members practice the Islamic faith. Additionally, the by-laws state that the Employer "is organized and shall be operated exclusively for religious, educational and charitable purposes within the meaning of sections 170(c)(2)(B), 501(c)(3), 2055(A)(2), 2106 or 2522(a)(2) of the Internal Revenue Code." In describing the Employer's vision and mission, Nehad Hammad, the Employer's National Executive Director, expressed that "speak[ing] out, to be good, to interact with others, to have a dialogue, to cooperate with others" are examples of the promotion of Muslim values, as well as religious practices of in the Islamic faith.<sup>8</sup>

On its public website, the Employer states that its "vision is to be a leading advocate for justice and mutual understanding."<sup>9</sup> The Employer lists its core principles, including its support for "free enterprise, freedom of religion, and freedom of expression," its commitment to "protecting the civil rights of all Americans, regardless of faith," its promotion of certain domestic and foreign policies, its affinity for "groups religious or secular, that advocate justice and human rights in America and around the world," and its advocacy for "dialogue between faith communities both in America and worldwide." The Employer also expresses its belief that "the active practice of Islam strengthens the social and religious fabric of our nation." The Employer describes itself as "a grassroots civil rights and advocacy group ... [and] civil liberties organization ... [that] has worked to promote a positive image of Islam and Muslims in America ... [and seeking] to empower the American Muslim community and encourage their participation in political and social activism." Finally, the Employer's website provides a short description for its services in civil rights work, government affairs, media relations, action alerts, research, education, voter registration, outreach and interfaith relations, and its publications.

The Employer's letterhead includes a header that reads, "In the Name of God, the Compassionate, the Merciful."<sup>10</sup> According to Hammad, the header is there to identify the Employer as a religious organization, and the header is the opening verse of every chapter of the Quran. The header does not appear anywhere on the Employer's pamphlets for educators, law

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<sup>6</sup> Tr. 19.

<sup>7</sup> Employer's Exhibit 4; see also Employer's Exhibit 9.

<sup>8</sup> Tr. 109.

<sup>9</sup> Employer's Exhibit 9.

<sup>10</sup> Employer's Exhibit 8.

enforcement, or employers, but it appears on the first page of the Employer's employee handbook. According to Hammad, the header appears on all of the Employer's press releases.

Hammad testified at length about the Employer's role in conducting educational services in the fields of religion, culture, education, society, and history concerning Islamic issues. These services are provided to both Muslims and non-Muslims alike. Hammad described the Employer's role in explaining the Islamic faith itself. In this regard, Hammad testified that he (as well as other key staff learned in the Islamic faith) have conducted religious ceremonies and prayer services in mosques, for the Muslim community. There is a weekly ceremony held every Friday in a traditional Islamic center or in a designated prayer room in the United States Capitol, and five daily prayers, three of which (the midday, afternoon, and early evening prayers) often occur in the Employer's office, in groups, conducted by the Employer's staff.<sup>11</sup> Hammad also testified that the Employer's educational services focus on how the Islamic faith fits within the social and political system in the United States. The Employer principally advances its mission of enhancing the public's understanding of the Islamic faith through its distribution of materials to the public. In order to enhance the public's understanding of Islam, the Employer has several programs, including the CAIR library project, also known as Explore the Islamic Culture and Civilization, and the Share the Quran program. The Employer's largest program is its Explore the Islamic Culture and Civilization program, which involves the distribution of religious and non-religious materials explaining Islamic faith, its history, and the American Muslim community to the public. The Employer second-largest program involves its distribution of copies of the Quran, the Muslim holy text, to the public, primarily to non-Muslims, to learn about the Islamic faith. Hammad acknowledged the Share the Quran project is purely educational, and the Employer was not attempting to proselytize.

The Employer also provides employers, educators, school officials, law enforcement, and healthcare professionals with guides in understanding Islamic religious practices, so that these entities can accommodate Muslim employees, students, or patients; the Employer's goal is for these institutional parties to have a better understanding of the Islamic faith of their constituents and maintain culturally-sensitive environments,<sup>12</sup> as well as to prevent discrimination and allow for accommodations for the religious practices of Muslim individuals. These pamphlets contain quotes from the Quran, provide a "Glossary of Muslim Terms," and explain various Muslim religious practices and how to accommodate such practices and prevent discrimination. Hammad explained that informing the American public about the Islamic faith is a religious obligation, and distributing these publications is both a religious and educational exercise.

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<sup>11</sup> According to Hammad, the daily prayers and the Friday ceremony are required as a religious obligation for Muslims, but the Employer's employees are not obligated to participate in the voluntary prayers and are not subject to discipline by the Employer for not attending. Participation in the prayers is not part of employees' job descriptions. The Employer does not ask its employees to participate in these religious acts; Hammad estimated that between three and six individuals typically participate in the daily prayers.

<sup>12</sup> For example, the pamphlets describe objectionable dietary items for Muslims, the Muslim prescription for modest dress and appearance customs, gender relations, and Muslim holidays and the requirement of fasting. The pamphlets are targeted to their particular audience. For example, the pamphlet for law enforcement officials covers aspects such as body searches, entering Muslim homes and mosques, and autopsies.

Additionally, upon request, the Employer may provide live seminars and workshops to the public. On a yearly basis, Hammad estimated that the Employer conducts approximately 100 workshops, two to three seminars, and one conference. Many of the workshops take place in mosques, and include topics such as “know your rights” and bullying. Hundreds of people attend the Employer’s conferences (which occur approximately every year), where topics such as civil rights, media training, civic engagement training, non-profit management, issues within the Muslim community, and upcoming projects are discussed. A banquet is generally held in conjunction with the conference and includes an evening dinner with keynote speakers and community recognition awards. Prayers are held during seminars, workshop, and conferences.

According to Hammad, more than 90 percent of the Employer’s funding comes from the Muslim religious community, including mosques and attendees of mosques. The Employer also receives *sadaqa* funds, an Islamic term meaning charity, and it allocates those funds to the areas or projects requested by the donor. Hammad testified the Employer qualifies for receiving such charitable donations according to major Islamic scholars, and in the view of donors, it is a religious obligation to donate to the Employer. Employees may participate in any of the daily prayers required by the Muslim faith during working hours. Employees are not required to be of the Muslim faith. The Employer does not require its staff members to participate in the prayers, and employees are not disciplined for not participating. The Employer observes Muslim holy days, and they are listed in the employee handbook. The Employer also observes Christian holidays like Christmas, which is also a federal holiday. With the exception of its listing of Muslim holidays and the Employer’s closure, the employee handbook does not include any explicit reference to any term and condition of employment directly related to the Islamic faith.

The Petitioner presented evidence through two staff attorneys who work in the Employer’s Civil Rights Department. One of these attorneys, William Burgess, testified that “the role of religious practice in [his] work, strictly speaking, is zero.” Burgess noted that he represents clients who have religious belief, but his job is to perform legal work. As a staff attorney, Burgess is responsible for writing *amicus curiae* briefs to federal courts in cases the Employer has an interest in. These briefs include the following standard language in their opening paragraph:

The Council on American-Islamic Relations ("CAIR ") is the largest American Muslim civil rights organization in the country, dedicated to protecting the civil rights and liberties of all Americans by defending the United States Constitution. CAIR also engages in public advocacy to promote a greater understanding of Islam among the American public and policymakers.

The record includes evidence of internal communications between the prior Director of the Civil Rights department, Jennifer Wicks, and the Director of Chapter Development regarding one of the chapters initiating a project that would provide an explanation of Sharia law. Wick’s response questioned whether the focus of the project was “consistent with [the Employer’s] mission as a Muslim civil rights organization and not a Muslim religious organization.”<sup>13</sup>

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<sup>13</sup> Petitioner’s Exhibit 7.

Additionally, the Employer's Communication Director, Ibrahim Hopper, stated in an article that "CAIR is not a Fatwa-issuing body. It is a human rights organization and we work with everyone in the US regardless of their faith or sect."<sup>14</sup> Burgess also testified the Employer has been involved in civil rights issues regarding non-Muslims, including helping write a religious accommodation request to the New Hampshire State Prison for Men on behalf of a Christian woman who wore a head scarf for religious beliefs. Staff Attorney Maya Sayed from the Civil Rights department also testified that she views the Employer as a civil rights organization.

The record includes employee job descriptions, including job descriptions for the Director of Development,<sup>15</sup> as well as the Director of Chapter Development.<sup>16</sup> The job descriptions were devoid of any reference to religious activities. However, the job description for the Director of Development included the "desire work for the protection of civil rights and improving understanding of Islam in America," and "[f]amiliarity, knowledge and experience working with the American Muslim community is desired. According to Hammad, he has asked applicants for particular positions—such as those positions that involve community outreach and the addressing of a Muslim community at religious ceremonies, if they are qualified and experienced in conducting Islamic religious services. Hammad testified that only Ahmed Diwani (an admitted supervisor) and Radouane Majidi, the Director of Development, have performed religious services for the Employer.

**b. *Professional Employees***

The Employer has thirty regional offices, also referred to as chapters, and a national headquarters in Washington, D.C. According to Hammad, the chapters run as independent entities, but sign an affiliation agreement with the Employer to operate by using the Employer's name, brand, policies, and programs within a particular city or state. Although independent, the chapters are guided by the national headquarters. Hammad, as the National Executive Director, is the highest-ranking employee in the Washington, D.C. office, the only office involved in this proceeding. Hammad testified the Employer's Washington, D.C. office is divided into the following departments: Executive Director's Office or Administration; Communications; Accounting; Department to Monitor and Combat Islamophobia; Civil Rights; Community Outreach; Donation; Government Affairs; Information Technology; Quran Project; Development; Chapter Development; and Event Management.

The Director of Development, Radouane Majidi, is responsible for developing strategies and programs for fundraising and community outreach. According to Hammad, Majidi intended to fundraise millions of dollars for the Employer last year at a local, regional, and national level, which covers about fifty percent of the total revenue the Employer raises per year. Hammad further testified Majidi gathers information about communities to help devise and revise campaign techniques. According to the job description for Majidi's position, the "development director is a senior level position responsible for expanding and cultivating donor relationships,

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<sup>14</sup> Neither the Petitioner nor Employer produced Hooper to testify at the hearing.

<sup>15</sup> Petitioner's Exhibit 4.

<sup>16</sup> Petitioner's Exhibit 5.

managing the organization's planned giving program, and coordinating major and minor gifts.”<sup>17</sup> Majidi also trains community members, including mosque leaders, on the Employer’s history, programs, and services. Majidi reports directly to Hammad, and holds the only position within the Development Department. No employees report to Majidi. Hammad testified that Majidi exercises independent judgment when developing his strategies and fundraising techniques. According to Hammad, the position requires good communication skills, knowledge of fund management and fundraising techniques and abilities, good marketing skills, public speaking and negotiation skills, knowledge of the community, and a reputation within the Muslim community. Hammad states an advanced degree is not required, but preferred. Majidi has a Master’s Degree in Public Administration Management.

The Director of Chapter Development is Lori Saroya. Hammad testified that Saroya is responsible for developing and starting new chapters, ensuring chapters are complying with the affiliation agreement and federal and local non-profit laws, enforcing the affiliation agreements when necessary, conducting trainings for chapters on best practices and compliance, organizing activities and programs between headquarters and chapters, providing legal recommendations to the Board, and conducting legal seminars in communities. Hammad further testified that the position requires a Juris Doctorate degree, and knowledge of the management of non-profits, community outreach, and the drafting and filing of legal documents, including all internal and governmental paperwork necessary for creating a chapter.

The Director of Government Affairs, Robert McCaw, is responsible for overseeing the advocacy work on Capitol Hill, including lobbying issues regarding the civil rights of Muslim Americans, building coalitions with other civil rights and advocacy organizations, collaborating with other organizations to formulate position papers to Congress, and monitoring legislation or proposed legislation. McCaw also advises the National Executive Director and the Communications Department on the position the Employer should take with regard to issues pertaining to the Muslim community, and prepares the Employer’s national action plan in civic engagement and political work. McCaw represents the Employer in coalitions and acts as the spokesperson for the Employer in the media and other public events such as conferences and interfaith events. McCaw designs and prepares national surveys of potential Muslim voters, designs the script for automated telephone calls, and put together a national voter guide for voters in the most recent election. Additionally, McCaw communicates with the Muslim population to inform them about and encourage participation in the political process. McCaw has a Master’s Degree in Public Policy, which is a requirement of the position. McCaw’s recommendations are based on his own knowledge and experience of the political and legislative process, but consults with other experts in the field, as well as other departments with the organization, including the Civil Rights Department. McCaw communicates with the National Executive Director on a daily basis to keep him apprised of his work.

## **II. Analysis**

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<sup>17</sup> Petitioner’s Exhibit 4.

**a. Jurisdiction**

**1. Legal standard**

Much of the Board's jurisprudence concerning its jurisdiction over employers affiliated with a religion stems from cases involving church-affiliated schools. In the seminal case on the subject, *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), the Supreme Court stated that the National Labor Relations Act must be construed to exclude teachers in church-operated schools because to do otherwise "will necessarily involve inquiry into the good faith of the position asserted by the clergy-administrators and its relationship to the school's religious mission." 440 U.S. at 502. The Court concluded that the Board's assertion of jurisdiction over teachers in church-operated schools would "give[] rise to entangling church-state relationships of the kind the Religion Clauses sought to avoid." *Id.* at 503 (quoting *Lemon v. Kurtzman*, 403 U.S. 602, 616 (1971)). The Court stated there was a "conflict of functions" in the way a teacher under religious control and discipline would teach purely secular subjects. *Id.* at 501. The Court further stated that after an investigation by the Board into unfair labor practices at a religious school, "[i]t is not only the conclusions that may be reached by the Board which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions." *Id.* at 502. Additionally, the Court reasoned that because "nearly everything that goes on" at a school affects teachers' terms and conditions of employment, "[i]nvariably the Board's inquiry will implicate sensitive issues that open the door to conflicts between clergy-administrators and the Board, or conflicts with negotiators for unions." *Id.* at 503. Accordingly, the Court concluded that it saw "no escape from conflicts flowing from the Board's exercise of jurisdiction over teachers in church-operated schools and the consequent serious First Amendment questions that would follow." *Id.* at 504.

In the cases following *Catholic Bishop*, the Board began to evaluate the primary purpose or function the employees played in "propagat[ing] a religious faith." *Jewish Day School*, 283 NLRB 757, 761 (1987). In *Jewish Day School of Greater Washington, Inc.*, the Board broadened *Catholic Bishop's* standard. 283 NLRB 757 (1987). There, the Board stated:

[w]e think it reasonable to infer that the Court [in *Catholic Bishop*] simply intended the term 'church-operated schools' to be a shorthand description of schools whose purpose and function in substantial part are to propagate a religious faith. We note in this connection that a school's affiliation with a religious organization may be one factor to consider in determining its purpose, but nowhere did the Court indicate that a school's religious purpose ends with the severance of that affiliation.

*Id.* at 761. After examining the school's articles of incorporation,<sup>18</sup> the employer's recruitment manual,<sup>19</sup> and the testimony of the chairman of the education committee,<sup>20</sup> the Board concluded

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<sup>18</sup> The articles of incorporation stated that among its chief aims are to teach religious subjects "in accordance with the Jewish faith with the purpose of giving each student a thorough Jewish education."

<sup>19</sup> The employer's recruitment manual stated that each child is encouraged to "identify with the Jewish people."



that because jurisdiction “would create the same significant risk of constitutional infringement that the Supreme Court foresaw in *Catholic Bishop*,” it was precluded from asserting jurisdiction in *Jewish Day*. *Id.* at 761. See also *Nazareth Regional High School*, 283 NLRB 763 (1987) (dismissing complaint and finding school was religious under *Jewish Day*, noting mostly lay board of trustees, daily Mass, morning prayer read over public address system, and mandatory religious instruction).

The Board will generally not assert jurisdiction over noncommercial, nonprofit religious organizations.<sup>21</sup> This is true even if the employees at issue perform secular tasks, so long as they are employees without whom the employer could not accomplish its religious mission. Following this principle, the Board has declined to assert jurisdiction over custodians employed by a Catholic school and church;<sup>22</sup> maintenance workers employed by a church;<sup>23</sup> nursing home workers employed by a religious order that serviced only Order members;<sup>24</sup> and broadcast engineers employed by a noncommercial, religious radio station.<sup>25</sup>

In contrast, where the organization involved is not a religious organization itself, but a commercial or otherwise secular organization with a religious component, the Board will exercise jurisdiction over the employer if the specific employees at issue do not further the organization’s religious mission.<sup>26</sup> In *Hanna Boys Center*, the Board asserted jurisdiction over child care workers at a nonprofit boys’ home founded by priests. 284 NLRB 1080, 1080-1082 (1987), *enfd.* 940 F.2d 1295 (9th Cir. 1991). The Board reasoned that the home did not require staff or enrollees to be Roman Catholic; that it provided minimal religious instruction; and that the child care workers at issue were not involved in the boys’ religious or secular teachings. See also *Ecclesiastical Maintenance Services*, 325 NLRB 629, 630 (1998) (finding where the Board asserted jurisdiction over nonprofit maintenance corporation founded by a church because did not have a religious mission and employees performed secular tasks).

In *Catholic Social Services*, the Board found it had jurisdiction over a nonprofit childcare facility with ties to a religious organization. *Catholic Social Services*, 355 NLRB 929 (2010). In reaching its decision, the Board noted that the purpose and function of the facility was secular. *Id.* at 929. In addition, the employees were not required to follow the practices of the Catholic faith. *Id.* at 930. Accordingly, the Board concluded that asserting jurisdiction would not create the same “serious constitutional questions” noted by the Supreme Court in *Catholic Bishop*. *Id.* Alternatively, the Board also applied the test set forth by the D.C. Circuit in *University of Great*

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<sup>20</sup> The chairman of the education committee testified that the education committee seeks to promote “an intense Jewish religious education.”

<sup>21</sup> *Motherhouse of the Sisters of Charity*, 232 NLRB 318 (1977); *Board of Jewish Education of Greater Washington, D.C.*, 210 NLRB 1037 (1974).

<sup>22</sup> *St. Edmund’s High School*, at 1260-1261.

<sup>23</sup> *Riverside Church*, 309 NLRB 806, 806 (1992).

<sup>24</sup> *Motherhouse of the Sisters of Charity*, 232 NLRB 318, 319 (1977).

<sup>25</sup> *Faith Center – WHCT Channel 18*, 261 NLRB at 107 (Board declined to assert jurisdiction over an “electronic church of the air,” whose purpose and function was indistinguishable from “conventional” churches, and relied solely upon its extensive broadcast facilities to accomplish its religious mission).

<sup>26</sup> *St. Edmund’s Roman Catholic Church*, 337 NLRB 1260-1261.

*Falls*,<sup>27</sup> and still concluded it would have jurisdiction over the employer. The Employer did not explicitly inform the public that the institution provides “a religious educational environment,” and it could point to nothing like the statement in the University of Great Falls' mission statement “offer[ing] students a foundation for actively implementing Gospel values and the teachings of Jesus within the Catholic tradition.” 278 F.3d at 1345.<sup>28</sup> Citing the Eighth Circuit in *St. Louis Christian Home*, 251 NLRB 1477, 1479 (1980), *enforced*, 663 F.2d 60 (8th Cir. 1981), the Board reasoned that the evidence “demonstrates that the [e]mployer provides high quality and critical, but wholly secular, social services to children ‘of all backgrounds with social and emotional needs,’ consistent with its stated mission to do so ‘[a]s a visible expression of God's loving community and consistent with the example of Jesus Christ.’”

More recently, in *Pacific Lutheran University*, the Board adopted a two-part test to determine when it may exercise jurisdiction over faculty members teaching at a self-identified religious college or university. 361 NLRB No. 157 (2014). In describing the two-part test, the Board stated:

[T]he Act permits jurisdiction over a unit of faculty members at an institution of higher learning unless the university or college demonstrates, as a threshold matter, that it holds itself out as providing a religious educational environment, and that it holds out the petitioned-for faculty members as performing a specific role in creating or maintaining the school's religious educational environment.

In *Seattle University*, 364 NLRB No. 84 (2016), the Board applied *Pacific Lutheran* to determine whether to exclude teachers of religion or theology from an otherwise appropriate faculty bargaining unit at a self-identified religious university. There, the Board explained:

The threshold showing is designed to be a “minimal” burden on the university, as its self-presentation in its mission statements, course catalogues, or website references will suffice to satisfy the requirement that the school “holds itself out as providing a religious educational environment.” *Id.*, slip op. at 6-7. In the second step of the test, the Board considers how the university deals with and holds out the faculty in the petitioned-for unit. Again, seeking to avoid intrusive

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<sup>27</sup> In *University of Great Falls*, the Court of Appeals for the D.C. Circuit held that the Board should decline to assert jurisdiction over an educational institution if it: (1) “holds itself out to students, faculty and community as providing a religious educational environment;” (2) “is organized as a nonprofit;” and (3) “is affiliated with, or owned, operated, or controlled, directly or indirectly, by a recognized religious organization, or with an entity, membership of which is determined, at least in part, with reference to religion....” 278 F.3d 1335, 1343 (D.C. Cir. 2002) (citations and internal quotations omitted). While the Employer relies on the D.C. Circuit’s *University of Great Falls*, I am bound by the Board’s precedent in *Pacific Lutheran University*, 361 NLRB No. 157 (2014).

<sup>28</sup> In *St. Louis Christian Home*, the Eight Circuit affirmed the Board’s assertion of jurisdiction over a home for neglected children. There, the Eight Circuit stated “[t]he Christian Church may perceive its religious mission to include caring for unfortunate children, but the actual business of the Home and of its employees does not involve a religious enterprise comparable to a church-operated school.” 663 F.2d at 64. The focus of the employer’s commercial activities was helping children regardless of religion, the employees were hired on non-sectarian basis, and the employer’s operation of the home was not focused on the propagation of religion. *Id.*; see also *World Evangelism*, 248 NLRB 909, 913 (1980), *enforced*, 656 F.2d 1349 (9th Cir. 1981) (jurisdiction over religious related entity proper where commercial activities unrelated to church).

inquiry into the religious tenets of the institution, the Board looks primarily at the school's own statements, particularly job advertisements and descriptions, employment contracts, employee handbooks, and similar documents. *Id.*, slip op. at 8-9. The test boils down to “whether a reasonable prospective applicant [for a faculty position] would conclude that performance of [her] faculty responsibilities would require furtherance of the college or university's religious mission.” *Id.*, slip op. at 9.

The Board found the employer did not meet its burden of demonstrating that the petitioned-for contingent faculty, as a whole, performed a specific religious function. The contingent faculty was not hired to advance the religious goals of the institution, are not required to be Catholic or to take any part in any religious activities on or off campus, and religion was not mentioned in their employment contracts. However, the Board found that employer did meet its burden with regard to the contingent faculty in the employer's Department of Theology and Religious Studies and in the School of Theology and Ministry. These faculty members “would expect that their performance of responsibilities would require furtherance of the University's religious mission.” The faculty in this department taught courses with religious content, had expertise in Catholic theology, other faith-based traditions, or other aspects of the religious experience, and their department conferred degrees in divinity and ministry. The Board reasoned that “integrating the institution's religious teachings into coursework” is a prime example of serving a religious function that would lead the Board to decline jurisdiction over faculty.

The Board recently shed further light on the scope of its jurisdiction where a religious organization is the employer in *Saint Xavier University*, 365 NLRB No. 54 (2017). In that case, the Board decided to continue to assert jurisdiction over “nonteaching employees of religious institutions or nonprofit religious organizations unless their actual duties and responsibilities require them to perform a specific role in fulfilling the religious mission of the institution.” *Id.* at slip op. 1. Thus, the Board’s jurisdiction is informed by the type of employer involved, such as a religious organization, and the type of employee involved, such as those employees who play a critical role in the employer’s religious mission.

***2. Application – The Employer is not a Religious Organization Exempt from the Board’s Jurisdiction.***

Assuming that the standards adopted by the Board in *Pacific Lutheran University* are applicable to the Employer, I find the Employer did not meet its burden under *Pacific Lutheran University* of establishing that it holds itself out as providing a religious educational environment, or that it otherwise does not fall under the jurisdiction of the Act.<sup>29</sup> Alternatively, even if I were to apply the three-prong test set forth in *University of Great Falls*, the Employer would still not meet its burden of establishing that jurisdiction would not be warranted.

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<sup>29</sup> Even if the Employer met its burden under the first prong in *Pacific Lutheran*, the Employer has failed to establish that the petitioned-for unit performs a specific role for the Employer that is the equivalent of *Pacific Lutheran’s* second prong of creating or maintaining the school's religious educational environment. The few employee job descriptions that were introduced into evidence are void of any references to religious practices or the promotion of the Muslim religion. Instead the job descriptions list secular duties and responsibilities.

First, the Employer presented insufficient evidence to establish that it holds itself out as a religious organization. The Employer relies on evidence that its mission includes “enhanc[ing] understanding of Islam” to demonstrate that it is a religious organization. However, the evidence reflects the Employer’s purpose and function is secular. The Employer is not run by, or affiliated with, any mosque or other religious organization. Significantly, the Employer’s employee handbook and by-laws do not describe the organization as being involved in any religious practices, proselytizing, requiring employees be of the Muslim faith, servicing only individuals of the Muslim faith, or specifically upholding the values of the Muslim faith. Unlike the employee recruitment manual in *Jewish Day School*, which stated that each child was encouraged to “identify with the Jewish people,” the Employer’s employee handbook contains no similar reference with regard to the Islamic religion. On the contrary, the Employer engages in civil rights advocacy, and its business is not comparable to that of a religiously-operated organization. This is further substantiated by evidence that the Employer advocates on behalf of the civil rights of both Muslims and non-Muslims alike. As evinced by its public website, the Employer is committed to “protecting the civil rights of all Americans, regardless of faith.” More akin to a civil rights advocacy group, I find that the Employer did not sufficiently establish itself as holding itself out as an organization designed to proselytize, educate, propagate, or otherwise adhere individuals to the Islamic faith. While the Employer is correct in its assertion that its by-laws, mission statement, and public website all incorporate a goal of enhancing the public’s understanding of the Islamic faith, and its letterhead incorporates a phrase from the religious text of the Quran, the evidence establishes that the Employer’s purpose is a secular one—to promote a greater understanding of the Islamic faith and Muslim people to people, organizations, and governments, regardless of creed.

The Employer relies on its distribution of guide publications as evidence that it provides a religious educational environment. While these publications include quotes from the Quran and a “Glossary of Muslim terms,” as Hammad testified during the hearing, the primary purpose of these publications is to inform the public, specifically schools, law enforcement, and employers, about the Islamic faith in order to prevent discrimination and accommodate Muslims. While the Employer includes religious phrases in fundraising letters to the public, these phrases are not included in all of its letters, and this evidence is insufficient to establish that it holds itself out as a religious organization. Furthermore, while individual employees may engage in prayer at the workplace and during employer-sponsored events, such as seminars, workshops, and conferences, the evidence demonstrates that employees do so voluntarily, are not reprimanded for non-participation, and engaging in prayer is not part of job description. As Hammad testified, the Employer allows employees to pray at the workplace as an accommodation, and employees are not required to be of the Islamic faith. While the Employer may perceive its religious mission to be informing the American public about the Islamic faith, I conclude that the actual business of the Employer is civil rights advocacy and promoting understanding of the Islamic faith to deter discrimination and encourage accommodations for individuals of this religion, and of others. Additionally, the Petitioner introduced evidence that the Employer advocates on behalf of individuals who are not of the Muslim faith. Finally, contrary to the Employer’s assertion that it provides a religious educational environment, I do not find that the Employer’s activities are the equivalent of the educational institutions analyzed in the Board’s

jurisprudence described above. Rather than operating a school, the Employer is admittedly an advocacy organization. Rather than serving students who choose to attend a church-affiliated school, the Employer's target audience is far broader—the general public, and/or the entire Muslim community in the United States.

Even if the standards articulated in *University of Great Falls v. NLRB*, 278 F. 3d 1335 (D.C. Cir. 2002) were applied, I find that Board jurisdiction would still be appropriate. Similar to the test set forth in *Pacific Lutheran*, the first prong of the test in *University of Great Falls* requires the Employer to demonstrate that it holds itself out to the public as a religious educational institution. For the reasons described above, I find the Employer did not meet its burden with regard to the first prong of the test. The Employer presented evidence that it is organized as a non-profit organization, and thus met its burden with regard to the second prong of the test. However, the Employer failed to show that it is affiliated with, or owned, operated, or controlled, directly or indirectly, by a recognized religious organization, or with an entity, membership of which is determined, at least in part, with reference to religion. The Employer presents itself to the public as a civil rights and advocacy organization, rather than an organization whose goal is to spread or propagate the belief of a particular faith. While all nine of its board members are Muslim, the Employer does not require that adherence to the Islamic faith as a prerequisite to serving as a member of the board of directors. Moreover, the Employer qualifying to receive charitable contributions associated with the Islamic faith does not demonstrate that it is affiliated with a religious organization. Although I note that over 90% of the Employer's funding comes from mosques or individual members of mosques, I find that the evidence is insufficient to conclude that the Employer is operated or controlled by a religious organization in the manner contemplated by *University of Great Falls*.

*Pacific Lutheran University* involved the issue of whether the Board should assert jurisdiction over a religiously-affiliated school. It is not clear whether the principles adopted in that case will be generally applicable to all instances involving the issue of whether an employer is a religious organization exempt from Board jurisdiction. In a number of cases that predate *Pacific Lutheran University*, the Board addressed whether it would exercise jurisdiction over employers that claimed that they were exempt from jurisdiction because of the religious nature of their operations. Generally, where the organization involved is not a religious organization itself, but a commercial or otherwise secular organization with a religious component, the Board will exercise jurisdiction over the employer if the specific employees at issue do not further the organization's religious purpose. *St. Edmund's High School*, 337 NLRB 1260 (2002). In *Hanna Boys Center*, 284 NLRB 1080 (1987), enfd. 940 F. 2d 1295 (9th Cir. 1991), the Board asserted jurisdiction over child care workers at a nonprofit boys' home founded by priests. The Board reasoned that the home did not require staff or enrollees to be Roman Catholic; that it provided minimal religious instruction; and that the child care workers at issue were not involved in the boys' religious or secular teachings.

Examining and applying the Board's jurisprudence that predates *Pacific Lutheran University*, the instant case falls more appropriately under the line of cases where the Board has asserted jurisdiction over the commercial operations of nonprofit religious organizations. In those cases, the Board has held that it will exercise jurisdiction where: (1) the employer is

engaged in activities which are commercial in the generally accepted sense; and (2) the relevant employees spend a substantial amount of time on such activities.<sup>30</sup>

The case for asserting jurisdiction over the Employer is even stronger than the cases where the Board has asserted jurisdiction over the commercial operations of nonprofit religious organizations. Unlike the entities over which the Board asserted jurisdiction in those cases, the Employer has no affiliation or connection with an established religious organization. The evidence in this instance establishes that the Employer is not a religious organization itself, but rather exists for the equivalent of a commercial purpose. The employees sought by the petition are not responsible for propagating a religious message. That the Employer's activities are intended to protect the civil rights of practitioners of a particular religion does not transform the Employer into a religious institution or school engaged in the propagation of a religious faith that is excluded from the Board's jurisdiction. The Employer is not engaged in the business of converting individuals to the Islamic faith, holding religious services, or performing a core function necessary to the function of any religion.

In summary, assuming that the standards adopted by the Board in *Pacific Lutheran University* are not applicable to the Employer, because the evidence establishes that the Employer is not an organization that exists to propagate a religious faith, but rather is engaged in a commercial-type activity, and because the relevant employees are substantially engaged in the Employer's commercial-type activity, it is appropriate to assert jurisdiction over the Employer in this case.

Accordingly, I find that the Employer is subject to the Board's jurisdiction and I decline to exempt the Employer from the Board's jurisdiction.

**b. *Professional Employee Status***

**1. *Legal standard***

Section 9(b)(1) of the Act prohibits the Board from determining a unit including both professional and nonprofessional employees to be appropriate unless a majority of the professional employees vote for inclusion in the mixed unit. See *Sonotone*, 90 NLRB 1236 (1950). Section 2(12) of the Act defines a professional employee, in relevant part, as:

any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field or science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a

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<sup>30</sup> See *World Evangelism*, 248 NLRB 909, 914 (1980); *The First Church of Christ*, 194 NLRB 1006, 1008-1009 (1972).

general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

Section 2(12) was meant to apply to small and narrow classes of employees. *The Express-News Corp.*, 223 NLRB 627, 630 (1976). Accordingly, employees must satisfy each of the four requirements set forth in Section 2(12) before they qualify as professional employees within this definition. *Greenhorne & O'Mara, Inc.*, 326 NLRB 514, 517 (1998); *Arizona Public Service Co.*, 310 NLRB 477, 481 (1993). Section 2(12) defines a professional employee in terms of job content and responsibilities that the individual performs, rather than the individual's academic or technical training, job title, or compensation. See *Lincoln Park Zoological Society*, 322 NLRB 263 (1996). Professional employee status turns on the degree of judgment required of the employees in applying the knowledge acquired through a prolonged course of study at specialized schools. *Aeronca, Inc.*, 221 NLRB 326, 327 (1975). Salary is not determinative of professional status. *E. W. Scripps Co.*, 94 NLRB 227, 240 (1951). The fact that a group of employees is predominantly composed of individuals possessing a degree in the field to which the profession is devoted may tend to show that the work they perform requires knowledge of an advanced type. *Western Electric Co.*, 126 NLRB 1346, 1348-1349 (1960). However, this factor is not controlling. All circumstances relevant to the inquiry must be examined. *Express News Corp.*, 223 NLRB 627 (1976).

## **2. Application**

### **i. Development Director Radouane Majidi**

I find the evidence is insufficient to establish that the Development Director, Radouane Majidi, is a professional employee. Majidi did not testify. While Majidi is the head of his department and has a Master's Degree in Public Administration Management, the record only contains general and conclusionary statements regarding his use of discretion and independent judgment when developing his strategies and fundraising techniques. Moreover, according to his job description and Hammad's testimony, Majidi is not required to have an advanced degree, and no evidence was adduced during the hearing demonstrating the contrary. Majidi is not required to have any special licenses or certifications. Additionally, the record does not contain any evidence on how Majidi performs his work, what percentage of time he spends performing work which requires his discretion or independent judgment, or how closely is his work supervised. Accordingly, I find the Development Director, Radouane Majidi, is not a professional employee.

### **ii. Director of Chapter Development Lori Saroya**

I find the evidence is sufficient to establish that the Director of Chapter Development, Lori Saroya, is a professional employee. While Saroya did not testify, Hammad testified that Saroya is responsible for overseeing the legal compliance of the Employer's chapters with their affiliation agreements, providing legal advice to the Employer's Executive Director and Board of Directors, and drafting and filing legal documents, such as the Employer's by-laws and the legal documents required to establish a chapter. All of these responsibilities require the exercise of discretion and independent judgment. Saroya is an attorney, which requires an advanced degree

and license, and Hammad testified that possessing a Juris Doctorate degree was one of the reasons why he hired Saroya. Thus, the Employer relies on Saroya's legal expertise.<sup>31</sup> Accordingly, I find the Director of Chapter Development, Lori Saroya, is a professional employee.

**iii. Director of Government Affairs Robert McCaw**

I find the evidence is insufficient to establish that Director of Government Affairs, Robert McCaw, is a professional employee. McCaw did not testify and a job description for the Director of Government Affairs position was not introduced into evidence. The only document in the record concerning McCaw's position is his LinkedIn page, which describes his job responsibilities. Hammad testified that McCaw has a Master's Degree in Public Policy, which is a requirement of the position. Additionally, McCaw advises the National Executive Director and Communications Department on the position the Employer should take with regard to issues affecting the Muslim community. While Hammad testified that McCaw's makes recommendations that are based on his own knowledge and experience of the political and legislative process, there is also evidence that McCaw works and consults with other departments and resources when reaching his recommendations. Moreover, the record does not contain any evidence on how McCaw performs his work, what percentage of time he spend performing work which requires his discretion or independent judgment, or how closely is his work supervised. Accordingly, I find the Director of Government Affairs, Robert McCaw, is not a professional employee.

**CONCLUSIONS**

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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<sup>31</sup> While the job description entered into evidence, Petitioner's Exhibit 5, does not list all of the aforementioned job responsibilities, Hammad testified to these responsibilities. Moreover, I am giving more weight to the job duties and responsibilities actually performed by Saroya, than those listed in the position's description.



Under Section 9(b)(1) of the Act, the Board is prohibited from including professional employees in a unit with employees who are not professional, unless a majority of the professional employees vote for inclusion in such a unit. To carry out the statutory requirement, the Board has adopted a special type of self-determination procedure in such an election known as a *Sonotone* election. Under this procedure, a separate voting group encompassing all professionals would elect whether to constitute a separate appropriate bargaining unit or be included in the larger unit with non-professionals. Accordingly, I find that the following constitutes a separate voting group which, depending on the outcome of the election, may constitute either a separate appropriate bargaining unit, or be included in the unit with the non-professional employees:

All full-time and regular part-time professional employees employed by the Employer at its facility in Washington, D.C., including senior attorneys and staff attorneys; *excluding* directors of islamophobia, directors of communication, controllers, national information technology directors, executive directors, non-professional employees, managerial employees, guards, and supervisors as defined in the Act.

I therefore find that the following employees of the Employer may constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time non-professional and professional employees employed by the Employer at its facility in Washington, D.C., including technical support employees, administrative assistants, office managers, archivist and multimedia employees, communications coordinators, donations coordinators, Maryland outreach managers, coordinators, staff accountants, events managers, legal support employees, development directors, directors of chapter development, and directors of government affairs; *excluding* directors of islamophobia, directors of communication, controllers, national information technology directors, executive directors, managerial employees, guards, and supervisors as defined in the Act.

In order to ascertain the desires of the professional employees as to their inclusion in the unit with the non-professional employees, I shall direct separate elections in the following groups:

Voting Group A: All full-time and regular part-time non-professional employees employed by the Employer at its facility in Washington, D.C., including technical support employees, administrative assistants, office managers, archivist and multimedia employees, communications

coordinators, donations coordinators, Maryland outreach managers, coordinators, staff accountants, events managers, development directors, directors of government affairs, and legal support employees; *excluding* directors of islamophobia, directors of communication, controllers, national information technology directors, executive directors, professional employees, managerial employees, guards, and supervisors as defined in the Act.

Voting Group B: All full-time and regular part-time professional employees employed by the Employer at its facility in Washington, D.C., including senior attorneys, staff attorneys, and directors of chapter development, excluding directors of islamophobia, directors of communication, controllers, national information technology directors, executive directors, non-professional employees, managerial employees, guards, and supervisors as defined in the Act.

The employees in Voting Group B will be asked two questions on their ballots:

- (1) Do you wish to be included in a unit with non-professional employees for purposes of collective bargaining?
- (2) Do you wish to be represented for the purposes of collective bargaining by Service Employees International Union, Local 500, affiliated with Service Employees International Union, CTW, CLC?

The choices for each question shall be “Yes” or “No.”

If a majority of the professional employees in Voting Group B vote “yes” to the first question, indicating their wish to be included in the unit with non-professional employees (Voting Group A), they will be so included. Their votes on the second question will then be counted together with the votes of the non-professional employees to determine whether or not the employees in the combined professional and non-professional unit wish to be represented by Service Employees International Union, Local 500, affiliated with Service Employees International Union, CTW, CLC. If, on the other hand, a majority of the professional employees in Voting Group B vote against such inclusion, they will not be included with the non-professional employees. Their votes on the second question will then be separately counted to determine whether or not they wish to be represented Service Employees International Union, Local 500, affiliated with Service Employees International Union, CTW, CLC .

The non-professional employees comprising will be polled to determine whether or not they wish to be represented by Service Employees International Union, Local 500, affiliated with Service Employees International Union, CTW, CLC.

The unit determination is based, in part, on the results of the election among the professional employees. However, the following findings in regard to the appropriate unit are now made:

(1) If a majority of the professional employees vote for inclusion in the unit with the non-professional employees, I find that the following will constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time non-professional and professional employees employed by the Employer at its facility in Washington, D.C., including technical support employees, administrative assistants, office managers, archivist and multimedia employees, communications coordinators, donations coordinators, Maryland outreach managers, coordinators, staff accountants, events managers, legal support employees, development directors, directors of chapter development, and directors of government affairs; excluding directors of islamophobia, directors of communication, controllers, national information technology directors, executive directors, managerial employees, guards, and supervisors as defined in the Act.

(2) If a majority of the professional employees do not vote for inclusion in the unit with the non-professional employees, but do vote for representation apart from them, I find that the following two groups of employees will constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time non-professional employees employed by the Employer at its facility in Washington, D.C., including technical support employees, administrative assistants, office managers, archivist and multimedia employees, communications coordinators, donations coordinators, Maryland outreach managers, coordinators, staff accountants, events managers, development directors, directors of government affairs, and legal support employees; *excluding* directors of islamophobia, directors of communication, controllers, national information technology directors, executive directors, professional employees, managerial employees, guards, and supervisors as defined in the Act.

All full-time and regular part-time professional employees employed by the Employer at its facility in Washington, D.C., including senior attorneys, staff attorneys, and directors of chapter development, excluding directors of islamophobia, directors of communication, controllers, national information technology directors, executive directors, non-professional employees, managerial employees, guards, and supervisors as defined in the Act.

## DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit(s) found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Service Employees International Union, Local 500, affiliated with Service Employees International Union, CTW, CLC?

### A. Election Details

The election will be held on Monday, April 24, 2017, from 12:00 p.m. to 2:00 p.m. in the conference room of the Employer's facility at 453 New Jersey Avenue SE, Washington, DC 20003.

### B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending April 1, 2017, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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

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

### C. Voter List

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

To be timely filed and served, the list must be *received* by the regional director and the parties by **TWO business days after the date of issuance**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a

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

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

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

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

#### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

#### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not

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precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review 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](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Issued at Baltimore, Maryland, this 7<sup>th</sup> day of April 2017.

(SEAL)

/s/ Charles L. Posner

Charles L. Posner, Regional Director  
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