UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

UNIVERSITY OF SOUTHERN CALIFORNIA

Employer

and **Case 31-RC-356388**

UNITED FACULTY-UAW

Petitioner

DECISION AND DIRECTION OF ELECTION

University of Southern California ("Employer" or "USC") is a private research University. On December 10, 2024, the United Faculty-UAW ("Petitioner") filed a petition in Case 31-RC-356388 under Section 9(c) of the National Labor Relations Act ("Act") seeking to represent all full-time, part-time and/or adjunct Research-track, Teaching-track, Practitioner-track, and/or Clinical-track faculty (collectively referred to as "RTPC Faculty " and/or "Non- Tenure Track Faculty") employed by the University of Southern California. From January 6 through 7, and 16 through 30, 2025, a hearing was held before a Hearing Officer of the National Labor Relations Board ("Board") regarding these facilities.

The following issues were litigated at the hearing: (i) whether the non-tenure track faculty members in the petitioned-for unit should be excluded as managerial employees; (ii) whether the non-tenure track faculty members in the petitioned-for unit should be excluded as supervisory employees; and (iii) whether non-tenure track faculty members in the petitioned-for unit share a sufficient community of interest. The Petitioner and the Employers (collectively, "the parties") were provided the opportunity to call, examine, and cross-examine witnesses; to introduce into the record evidence of the significant facts to support their contentions; and to orally argue their respective positions and/or submit written arguments prior to the close of the hearing.

As detailed below, the Employer contends that the petitioned-for unit is inappropriate because the employees are managerial and/or supervisory employees and they do not share a community of interest. The Petitioner contends that the petitioned-for unit is appropriate because the employees in the unit share a community of interest and because the Employer has failed to demonstrate that they are managerial and/or supervisory employees.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the Board. I have carefully considered the entire record, the parties' arguments, and relevant Board law. For the reasons discussed below, based on the record and relevant Board law, I find that employees in the following classifications are neither managerial nor supervisory employees and that they share a community of interest: all full-time, part-time and/or adjunct Research-track, Teaching-track, Practitioner-track,

Clinical-track, and/or Continuing Appointment track faculty (collectively referred to as "RTPC Faculty " and/or "Non- Tenure Track Faculty") employed by the University of Southern California. Accordingly, I find that a unit consisting of these employees is appropriate within the meaning of Section 9(b) of the Act and, I am directing a secret ballot election among the employees in the unit found appropriate above.

I. FACTS

A. Background

The University of Southern California is a private university governed by a Board of Trustees. USC is academically divided into approximately 24 colleges, schools, or other academic units, including the libraries. All members of the petitioned for unit have an appointment in one of these colleges, schools, or other academic units. Each school or academic unit may contain a combination of research track, teaching track, clinical track, practitioner track, and continuing appointment track.

USC's Board of Trustees is vested with ultimate authority over the affairs of the University. The President of the University is elected by the Board of Trustees and is delegated responsibility for the academic programs of the University. Additionally, the Board of Trustees elects eight senior vice presidents that report directly to the President. The Provost is the Chief Academic Officer of USC and also reports directly to the President. In addition to the Provost, there is a Senior Vice President for Health Affairs, a position that oversees the academic affairs for the health sciences schools.

Each college, school, or other academic unit is led by a dean or director, who are each appointed by the President and serve as the chief academic officer for their school. Each school or academic unit also has a department chair or program director who reports to a dean or director. Within each school there are various vice deans as well as chairs or directors for each department within the school. The chair is typically the direct supervisor of any member of the faculty.

Seven of the schools are health-focused schools that report up to the Senior Vice President for Health Affairs: the Leonard Davis School of Gerontology, the Suzanne Dworak-Peck School of Social Work, the Herman Ostrow School of Dentistry, the Keck School of Medicine, the USC Chan Division of Occupational Science and Occupational Therapy, and the USC Division of Biokinesiology and Physical Therapy.

There are 17 other schools that report to the USC Provost: the Dornsife College of Letters, Arts, and Sciences ("Dornsife"), the Leventhal School of Accounting ("Leventhal"), the School of Architecture, the Roski School of Art & Design ("Roski"), the Marshall School of Business ("Marshall"), the Iovine and Young Academy for Arts, Technology, and the Business of Innovation ("Iovine"), the School of Cinematic Arts, the Annenberg School for Communication and Journalism ("Annenberg"), the Rossier School of Education ("Rossier"), the Gould School of Law ("Gould"), the USC Libraries, the Thornton School of Music ("Thornton"), Bovard College, the Sol Price School of

Public Policy ("Price"), the Glorya Kaufman School of Dance ("Kaufman"), the Viterbi School of Engineering ("Viterbi"), and the School of Dramatic Arts. In the Provost's office is the Vice Provost for Academic Programs, tasked with oversight over most academic programs across the University. There is also a Vice President for Enrollment Management who, with the Dean determines how many incoming students will be admitted to each school.

As stated above, the petitioned for unit includes all full-time, part-time and/or adjunct research-track, teaching-track, practitioner track, and/or clinical-track faculty, as well as continuing appointment track (collectively referred to as "RTPC Faculty" and/or "Non-Tenure Track Faculty"). Petitioner is not seeking any employees employed permanently outside of Los Angeles County. Further, Petitioner is not seeking to include RTPC faculty who work in the medical school or the part-time/adjunct faculty in the School of Cinematic Arts, who are already represented. The proposed unit encompasses more than 2,500 faculty members. Explicitly absent from this unit description are tenured and tenure-track faculty. Tenured faculty are those who have achieved tenure, meaning they can only be removed or demoted from their faculty appointment for cause and are essentially guaranteed employment until retirement. Tenure-track faculty are those who are being considered for tenure.

All tracks of RTPC Faculty—research-track, teaching-track, practitioner-track, clinical-track, and/or continuing appointment-track faculty—may be either full-time, part-time, or adjunct. All have the same duties and responsibilities when teaching a course.

Research-track faculty teach at least one course per semester and perform research. This research is generally completed in labs. Research faculty are typically paid through grants.

Teaching-track faculty also teach and engage in research. Typically, this would include researching, writing published material such as articles, book chapters, or manuals, as well as attending conferences and giving presentations. Faculty who teach courses also advise students on directed research projects.

Practitioner-track faculty primarily teach courses. There is very little distinction between practitioner-track and teaching-track. It seems there is variation between schools over the titles, but the primary responsibility for practitioner-track is to teach courses. Some practitioner-track faculty will tutor or mentor students in a one-on-one basis outside of teaching in the classroom.

Clinical-track faculty regularly teach courses as well as engage in research. These faculty primary work in the health sciences and as part of their duties instruct and supervise students in the various health clinics performing patient care.

Library faculty, generally classified as continuing-appointment track faculty, teach courses as well as provide workshops and presentations. These faculty attend conferences and engage in research and scholarship in the library field.

USC defines adjunct RTPC Faculty as having a full-time job outside of USC, while part-time RTPC Faculty do not work a full-time job somewhere else. Part-time and adjunct RTPC Faculty often work for USC for many years. Adjunct RTPC Faculty teach one course in an academic year but are routinely granted permission from their respective dean to teach more than one course in an academic year. Part-time RTPC Faculty can teach up to 75 percent time in any given semester.

Every full-time RTPC Faculty contract has a university service component, unless the employee is appointed to an administrative position, like a Program Director or Department Chair. USC considers service to be working for the University in some manner outside of the standard teaching, research, and/or clinical duties. The RTPC Faculty determine how to fulfill this requirement and then report it to USC. RTPC Faculty may fulfill this requirement by participating in department-level committees, school admissions committees, or faculty committees; by advising a student organization; directing the research of individual students; or performing administrative work for a program or department.

Part-time RTPC Faculty may have a service component and do have the ability to participate in service. Research faculty typically do not have service requirements, though they can and do serve on committees.

B. Academic Senate and University Committees

i. Academic Senate

The Academic Senate represents all faculty, including RTPC faculty on university-wide issues with the ability to pass resolutions through a voting process. The resolutions serve as recommendations for USC's administration but are not binding. The Academic Senate convenes committees for specific issues. Each school has its own voting members on the Academic Senate. The more faculty a school has, the more members it can appoint to the Senate. Currently, RTPC faculty members hold 62 out of 82 (76%) of the voting seats on the Academic Senate. Part-time as well as full-time RTPC faculty serve on the Academic Senate.

The Senate's Executive Board serves as the direct communication to USC's administration. Former President of the Academic Senate explained that the Senate's resolution-making ability has no force of authority and that there is no instance where USC has implemented a request made by the Academic Senate through resolution or otherwise. The Academic Senate has made several recommendations and requests in the past five years that have all been rejected or ignored by USC. These requests ranged from implementing a uniform cost of living increase for faculty to a request that a policy change to the grading system be announced to faculty via email.

The Academic Senate convenes a Handbook Committee that offers recommended changes to the employee handbook. These recommendations are voted on by the entire Academic Senate before being sent to the President and Provost. The President has the final say on whether the handbook is changed and the President has approved of all proposed amendments going back approximately 60 years. For the most part these recommendations are suggested ways to accurately reflect existing policy. Substantive recommendations have not been adopted.

ii. University Committees

University committees serve to advise the President on various matters. Membership nominations may come through administrative officials, the Academic Senates' Executive Board, or through self-nomination. All faculty, including RTPC, are eligible to serve on these committees. There are various University committees including the Committee on Finances and Enrollment (COFE); Employer Benefits Advisory Committee (EBAC); University Committee on Curriculum (UCOC); University Committee on Academic Review (UCAR); General Education Committee (GEC); Committee on Academic Policies Procedures (CAPP); and Committee on Professional Responsibility (COPR). Apart from these existing formal committees, all faculty have the technical ability to convene to make decisions. This has never happened as the threshold support for enabling this is very high.

iii. COFE

The Committee on Finances and Enrollment is made up of the Academic Senate's Executive Board and other faculty members and is co-chaired by Vice Provost Martin Levine. Each year COFE recommends a range for a tuition increase and the endowment payout. This recommendation is made after a meeting in which the University's administration presents COFE with all the information the administration finds relevant to decision-making. This presentation includes the University administration's recommendation for endowment payout and tuition. Members of COFE have requested to receive a copy of the presentation prior to the meeting, but the request has been denied. COFE has also requested additional information than what is presented, and this has at times been granted. COFE generally adopts the position of the University's administration as reflected in the presentation. After COVID-19, COFE made a substantive inquiry regarding the University's endowment and was informed by the University's administration that it should not bother with that topic. University Administration has also denied COFE's request to discuss athletic budgets and specific school budgets.

In addition to the annual tuition increase and endowment payout meeting, COFE hears presentations on various areas of USC's compliance with the law. There is no example in the record of COFE providing any recommendations related to these topics.

There are instances where COFE has been tasked with making a recommendation on a specific issue and USC ultimately implemented consistent with COFE's

recommendation. For instance, COFE was presented with whether the University should use its new housing to enroll more students or guarantee housing to all freshman. COFE supported guaranteeing housing over expanding enrollment, which was ultimately what USC chose to do. The record testimony concerning this housing policy indicates that the final decision-making authority rested with either the President, the Board, or a committee of the Board. It isn't clear how the ultimate decision-maker decided to adopt COFE's recommendation. Similarly, COFE was asked whether the University should continue holistic admission policies or admit solely based upon GPA and test scores. COFE favored the existing holistic framework, which was maintained, though the record is silent as to who had the ultimate decision-making authority on this issue or how COFE's recommendation factored into that decision.

iv. EBAC

The Employer Benefits Advisory Committee is composed of administrators, faculty, and staff representatives. This committee serves to advise the administration as it is formulating benefit plans. EBAC has the ability to submit recommendations for health plans, premiums, and coverages, including recommending fertility services be offered, stratification of health care premiums, and adding maternity care programs to the benefits offered. In 2024, the administration presented EBAC with its plan to cut the Tuition Assistance Benefits. EBAC expressed strong opposition to the proposal, but the proposal was implemented. The Academic Senate was not consulted prior to the university implementing the Tuition Assistance benefit cuts.

v. UCOC

RTPC faculty also serve on the University Committee on Curriculum, which reviews (1) every course offered at USC that provides credit and will appear on a USC transcript, (2) every proposed new or modified program consisting of such courses, and every major or minor consisting of such courses, and (3) every new degree in the University (except for the MD program, which is separate for regulatory reasons). The UCOC's work begins with its five subcommittees, each of which focuses on a separate discipline, and is composed of faculty who are subject-matter experts. These subcommittees review and approve curriculum before it is entered into the curriculum catalog. The process is managed within a software program called Curriculog. The committee makes recommendations based on whether it views the proposed curriculum to be in compliance with the curriculum handbook. If proposed curriculum is compliant and doesn't already exist, the committee will recommend its approval.

The Vice Provost tasked with working with UCOC testified that as long as a proposal was done properly, there should be no reason for the committee to not recommend approval. Members of the committee do not consider the substance or merit of the proposal and generally approve unless there is a clerical or typographical error.

vi. UCAR

The University Committee on Academic Review is made up entirely of faculty, including RTCP faculty. The UCAR tracks the scholarly publishing of USC's many departments. UCAR may consult with faculty from outside the university to track and identify academic trends. UCAR may then offer feedback or advice to USC's schools on its findings.

vii. GEC

The General Education Committee includes administrators and faculty members solicited by the administration. Its function is to review proposed changes to USC's general education requirements. When a new course is proposed, the GEC evaluates the proposal based on existing standards and then recommends approval or asks for revisions. Additionally, the committee has made recommendations related to general education requirements in other ways. For example, in 2022 the GEC recommended that a category be introduced into the general education requirements for diversity, equity, and inclusion. Consequently, the existing "citizenship in a diverse world" was renamed "equity in a diverse world" at the GEC's approval.

viii. CAPP

The Committee on Academic Policies Procedures reviews proposals to USC's academic policies and then submits their recommendation in writing to the provost. The committee has received and approved two proposals originating from the Office of Academic Integrity. Both proposals were later implemented by USC. The committee has in at least one case determined not to vote on a proposal because there was a lack of interest. In this instance, because CAPP did not adopt the proposal, it did not move forward and was never adopted by the University.

ix. COPR

The University Committee on Professional Responsibility is comprised of faculty and directly hears appeals from faculty who have had sanctions imposed due to misconduct. Typically, only certain more serious cases are brought before the committee. The committee determines whether the sanctions are consistent with the factual support produced by the University's investigation. The committee then creates a recommendation which is delivered to the Vice Provost for Faculty and Academic Affairs. This recommendation is reviewed by the University's attorney and issued to the faculty member as well. Following the COPR's recommendation and any subsequent review, the University's attorney or a representative of the provost may reduce the penalty, a situation that occasionally occurs. Typically, the Provost will adopt the recommendation of the COPR at this stage.

The committee may recommend penalties such as reductions in compensation and termination. The President or Provost may override or amend these recommendations and have done so.

The faculty member bringing the appeal may also appeal the committee's recommendation. Approximately one third of the committee's recommendations are appealed.

C. Faculty Councils

Each school has a faculty council which may make studies, reports, and recommendations. Unlike the university committees and faculty senate who make their recommendations directly to the President and Provost of the University, these faculty councils make theirs to the dean of the specific school.

Typically, a faculty council is made up of elected faculty representatives, including RTPC faculty, who in addition to serving on the faculty council, also serve in the Academic Senate. The roles of the faculty councils vary from school to school depending on need.

There was testimony provided for many of the school-specific faculty councils including for Viterbi, Dornsife, the School of Architecture; the School of Social Work; the School of Cinematic Arts; the School of Pharmacy; and USC libraries.

i. Viterbi School of Engineering

RTPC faculty may participate and serve on the Viterbi Faculty Council, however they may not be elected chair or consider any issue related to tenure. The council does not have the authority to consider matters related to budget or enrollment. The council may make recommendations on academic policies which are submitted to the vice dean to review, then the executive vice dean, and finally the dean. The dean may implement the recommendation or simply ignore it. There are instances of the dean ignoring recommendations and also reminding the council that they may not make recommendations that conflict with existing policies.

In May 2019, the faculty council recommended a teaching evaluation proposal that was unanimously approved. Following the approval, the dean's office gave departments and programs the option to adopt the proposed teaching evaluation method.

Viterbi also forms a faculty committee within each department to interview RTPC full-time lecturer candidates that have been preselected by the Vice Dean for Faculty Affairs. Following an interview with the candidate, the committee takes a vote on whether to recommend the candidate for hire. The Dean ultimately makes the final hiring decision and has overridden the recommendation of this committee.

There is also an Appointments Promotion and Tenure Committee (APTC) within Viterbi. There are approximately 19 faculty positions on this committee, four of which are for RTPC faculty. For decisions pertaining to RTPC promotions, a five-member panel, which includes three tenured faculty, vote on whether to recommend promotion.

This recommendation is sent to the dean who uses the APTC's recommendation and the department chair's report to make the decision whether to promote.

Faculty within specific departments may vote on recommendations for new department chairs or program directors, however the dean does not have to abide by the recommendation and has rejected a recommendation in the past.

ii. Dornsife College of Arts and Sciences

Dornsife has a Faculty Council which includes RTPC faculty. Within the past five years the Council has requested salary benchmarking data, which the Dean has routinely denied. After the Faculty Senate made a similar request university-wide, the Dean agreed to release the data but never did. Further, the Council unanimously passed a resolution asking to tie merit raises to cost of living, which was denied by the Dean.

The Faculty Council worked with the Dean and other stakeholders to create a template merit review rubric which has subsequently been adopted by some departments with minor adjustments according to need.

Dornsife also has the Dornsife Committee for Appointments, Promotion, and Tenure (DCAPT), in which RTPC faculty participate in the non-tenure components relevant to RTPC faculty. The DCAPT committee reviews RTPC faculty dossiers in order to recommend promotions. DCAPT is one of three assessors for each faculty file, along with the faculty member's department and the Dean of Dornsife. The Dean is responsible for the final decision on promotion and does not automatically endorse DCAPT's recommendation. Further, the Dean's decision may be reviewed and reversed by USC administration.

iii. School of Architecture, School of Social Work, School of Cinematic Arts, School of Pharmacy, School of Dentistry, and Libraries

The various faculty councils at the Schools of Architecture, Social Work, Cinematic Arts, Pharmacy, and the USC Libraries do not engage in matters related to finance or enrollment.

The School of Pharmacy has an Appointments and Promotions Committee chaired by the Associate Dean of Faculty Affairs. This committee reviews the dossiers of both tenure track and RTPC faculty for promotion. There are RTPC faculty on the committee but they do not participate in tenure decisions.

The School of Dentistry has search committees made up of faculty members of equal or higher ranks than the position they are seeking to fill. The committee is comprised of individuals selected by the Department Chairs. The committees are tasked with reviewing candidates against existing guidelines and policies. These committees send their feedback to the department chair who then meets with the dean who makes the determination whether to hire the candidate.

There are faculty involved in reviewing admission applications to USC. These faculty do not contribute to deciding the number of students admitted to USC.

USC has made various academic program decisions that were inconsistent with the general sentiment of the faculty or that were made without faculty involvement. For example, despite no faculty involvement, USC implemented online programs in the School of Cinematic Arts and the School of Social Work.

D. Physical Locations

USC predominantly is located on either The University Park Campus ("UPC") or the Health Sciences Campus ("HSC"). There are shuttles running between the two campuses every 30 minutes. The commute takes between 15 minutes to one hour by car.

Five of the seven health-focused schools are primarily located at the Health Sciences campus. The 17 non-health-focused schools, as well as the School of Gerontology and the School of Social Work, are primarily located at the University Park Campus. The School of Dentistry and the Chan School of Occupational Science have facilities at both campuses and there are libraries located at both campuses. Most library faculty are assigned to one of the approximately 12 libraries across the two campuses.

Separate from the two campuses is the Wrigley Institute, located on Catalina Island in Los Angeles, CA. RTPC Faculty working at the Wrigley Institute have an appointment with a school at USC and rotate teaching and research duties.

In addition to the Wrigley Institute there are RTPC faculty located at the Information Sciences Institute ("ISI") in Marina del Rey, California in Los Angeles County and the Institute for Creative Technologies, in Playa del Rey, California in Los Angeles County. These faculty may also teach classes at UPC or HSC.

RTPC faculty generally have access to every building at UPC, although certain labs or floors are restricted to only specific RTPC faculty. After a certain time in the evening, many buildings require RTPC Faculty to swipe their key card to gain access. HSC does not have a security perimeter, but a University ID is required to swipe into buildings. RTPC faculty typically are assigned access to one of the multiple parking lots on the school's University Park campus.

E. School Administration

Each school also has at least one human resources staff, with some of the larger schools having large staffs of up to 120, who handle certain administrative functions solely for the school. Each school has either a dedicated faculty affairs position or a position that includes faculty affairs responsibility. These roles perform tasks for all faculty, including RTPC faculty. Each school has its own handbook for faculty policies that apply only within the school. These are separate from the universal Faculty

Handbook and include only the relevant school-specific policies such as rules on eligibility for RTPC sabbaticals that are available only in certain schools, or policies for specialized programs like the Diving Manual for the faculty on Catalina Island. Each school makes independent decisions on compensation of faculty and hiring and promotion of RTPC faculty.

F. Centralized Administration and Common Supervision

USC has many centralized offices and logistical services, including classroom scheduling. There is also an Office of Research and Innovation which coordinates research grants across the University, and a Center for Teaching Excellence which provides training for all faculty across the university, including RTPC faculty. USC also has an Office for Equity, Equal Opportunity, and Title IX (EEO-TIX) for the entire university. The Office of Academic Integrity sets the standards for what constitutes student academic integrity violation University-wide. The Office of Professionalism and Ethics handles ethical issues that arise.

USC has a central Office of Human Resources that reports directly to the President of the University. This office sets the rules, regulations, and policies that are in place for the entire university staff, including RTPC faculty. This office utilizes a program called Workday that allows employees to access paystubs, salary and pay information, vacation and sick time accrual, as well as making changes to their benefit coverage, direct deposit, or contact information. All RTPC faculty sign arbitration agreements with USC.

RTPC Faculty are governed by numerous University-wide policies, many of which are stated in the Faculty Handbook, which applies to all RTPC Faculty. The policies in the USC faculty handbook are general and apply to all faculty, except for one exclusive portion that applies only to the faculty at Keck Medicine. As mentioned above, USC has a centralized system for investigating RTPC Faculty members who allegedly have committed policy violations, the Committee on Professional Responsibility ("COPR"). COPR makes recommendations to the Provost's delegate who makes the final decision as whether to implement any corrective action.

USC has a policy regarding academic freedom which applies to all RTPC faculty. RTPC faculty must universally abide by USC's policies pertaining to Endorsements, Fundraising Coordination, Gifts and Hospitality, Compliance, Cooperation with Compliance Investigations, Misappropriation of University Assets, USC Integrity and Accountability Code, Data Privacy Code, Relations with Industry, including duty to disclose, Protecting Minors, and Political Participation.

There are also centralized grading policies that are applicable to all faculty. At the end of a course, all RTPC faculty input their grades into a website called GRS, which is operated centrally through USC's Registrar's office. USC has a centralized course evaluation system for faculty teaching courses.

A universal tech support hotline, which is staffed 24 hours a day, 7 days a week is available to all RTPC faculty.

All job postings are approved at the provost level and listed on a centralized USC website.

Full-time RTPC Faculty across the University generally share the same promotion path: lecturer, senior lecturer, associate professor, assistant professor, and full professor. All policies and procedures for appointment, reappointment, and promotion are approved by the Provost. For RTPC promotions, if a dean does not agree with the advice of the school's faculty committee, then the President makes the decision, with advice from the University Committee on RTPC promotions.

RTPC Faculty typically receive contracts between one and five years in length. There is no obligation to renew a contract and unless there is a written renewal, the appointment ends at the expiration of the contract period. USC can terminate contracts early with 90-day notices if there is a "bona fide need to do so" based on "cutbacks in external funding," "substantial program change or departmental reorganization or substantial resource limitations," "poor performance," or termination for cause.

G. Skills and Training

All RTPC participate in teaching in some manner. Many RTPC Faculty also perform research in tandem with the teaching.

RTPC faculty have advanced education, training, experience, and/or skills necessary to work as faculty at the university level. Most RTPC Faculty have either a master's degree or a terminal degree, which includes a PhD, an EdD degree, or an MFA. In Viterbi, the Dean prefers that all RTPC Faculty have at least a master's degree or higher-level degree in a STEM field. The University does not have a policy requiring RTPC Faculty hold certain degrees, which enables successful practitioners, entrepreneurs, or technology experts without higher degrees to teach USC courses. Many RTPC faculty are trained in a second discipline. For example, faculty at the law school, the School of Gerontology, The School of Pharmacy, The School of Architecture, and Annenberg School of Communication and Journalism have training in multiple disciplines and may teach outside their primary discipline in more than one school.

Typically, class times are between 10:00am-5:00pm, Monday-Friday, but classes may be scheduled outside of that window. Teaching at the university requires the requisite skills for creating the content of a course, creating a syllabus, preparing for class instruction, teaching the class, mentoring students, grading student work, as well as other responsibilities, including holding office hours. USC provides a sample syllabus template for RTPC faculty.

As faculty, all RTPC Faculty are required to monitor and report violations of the academic integrity policy by students, in accordance with standards set by the Office of Academic Integrity. Similarly, all RTPC Faculty are required to report relevant instances of harassment or discrimination to the University's EEO-TIX office.

RTPC staff are offered an orientation for new employees that covers employee benefits and resources. Among these resources, the Center for Teaching Excellence offers online materials and semester-long or year-long courses on professional development. All RTPC faculty participate in mandatory cybersecurity training.

RTPC Faculty perform tasks on a computer using the USC internet connection or, when not on campus, using USC's VPN program. Additionally, all RTPC Faculty are provided a USC email address, may request and receive work phone numbers, and utilize computer software provided by USC, including Microsoft Office, Google Drive, Microsoft OneDrive, Slack, Microsoft Teams, and Zoom.

USC offers IT equipment for use in classrooms, as well as all the specialized technical equipment required for disciplines with equipment needs, such as dentistry, cinema, music, and labs.

H. Functional Integration

USC offers joint degree programs that require cooperation between faculty from various schools. USC generally encourages interdisciplinary events, research, and collaboration through grants and by the Center for Teaching Excellence.

I. Frequency of Contact

The USC Games Program combines RTPC faculty from at least Viterbi, the School of Cinematic Arts, the Thornton School of Music, and the Roski School of Design. These RTPC faculty members attend biweekly Games Program faculty meetings and attend off-site retreats together.

RTPC faculty may fulfill their service requirement through participation in The Academic Senate, Academic Senate Committees, and other University-level faculty committees. These provide regular contact between RTPC faculty of all tracks and all schools. RTPC Faculty across all categories interact at on-campus cafes, restaurants, recreational facilities, and the University Club.

RTPC Faculty have access to any USC library. All RTPC Faculty may also use the health centers at UPC and HSC for medical care. All RTPC Faculty may use the recreational facilities including gyms, a running track, and a swimming pool.
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J. Interchange

Some RTPC faculty have joint appointments, meaning they teach in more than one school. RTPC Faculty without joint appointments may also teach classes in multiple schools. This is typically when faculty teach a general education course, which would be housed in Dornsife, or when the RTPC serves as a guest lecturer. Specifically, RTPC Faculty in the writing program at Dornsife teach writing courses in other schools. At least one RTPC faculty member in the School of Cinematic Arts has taught a course for the Masters in Visual Digital Anthropology Program at Dornsife. Library Faculty teach courses across schools.

RTPC Faculty may begin at USC as adjunct or part-time RTPC Faculty before moving into full-time positions. Some Faculty, particularly at the Dental School will perform clinical duties one semester, switch to research the next semester, and then may even switch to teaching duties in subsequent semester. Similar track changes, while not as routine, are common in the School of Pharmacy.

K. Terms and Conditions

Most RTPC Faculty work nine months of the year according to the academic calendar, which begins in late August and ends in late May, with a winter break in December and January. Full-time and part-time RTPC Faculty on academic-year contracts are paid on a salary basis for nine months of work, with the option for this salary to be paid out over twelve months. Some RTPC Faculty have fiscal-year contracts that last 12 months. Some RTPC faculty choose to work during the summer for which they can receive additional compensation. RTCP Faculty are all paid through the USC payroll system, including grant-funded research-track faculty. RTCP faculty are paid once per month around the 25th day of each month. RTPC Faculty are generally exempt from overtime. USC provides full-time RTPC overload pay, which is compensation beyond a faculty member's base salary for teaching more courses or units in an academic year than constitutes a full teaching load. Some RTPC faculty who teach on Catalina Island have the ability to receive room and board as part of their compensation.

All schools follow the semester system, with a Fall semester between August and December and Spring semester from January to May. USC requires faculty to assign either a final exam or a cumulative final assessment, such as a project, at the end of a semester. Final exam schedules are strictly set by USC based on the time and day of the week the class meets to make sure there are no scheduling conflicts. All RTPC Faculty have the same deadline to submit grades.

In May, USC has a main commencement ceremony for all undergraduate and graduate students across the entire University and all RTPC Faculty are invited to attend the main ceremony, wear their full cap and gown regalia, and walk in the procession.

All full-time RTPC Faculty and part-time and adjunct RTPC Faculty who work at least 50% time are eligible for identical benefits. For healthcare, USC offers all

benefits-eligible RTPC Faculty, except those working at Keck, the same healthcare plan options, including a PPO, an EPO, and an HMO, with different premiums for each plan, depending on whether the employee chooses an individual, spouse, or family plan. USC also offers all benefits-eligible RTPC Faculty two options for dental insurance.

All benefits-eligible RTPC Faculty receive retirement benefits which include USC contributing an amount equal to 5% of the employee's salary into a Vanguard 401k retirement plan, with an additional 5% contribution match. All RTPC Faculty are offered a Metlife life insurance plan. All RTPC faculty are offered childcare benefits, including ten weeks of paid parental leave and equal access to on-campus day care center and a fixed number of days of emergency childcare when an employee's primary childcare is not available. All RTPC faculty are eligible for tuition assistance, which extends to other participating universities. Academic year RTPC Faculty do not receive vacation days but those on year-long fiscal year contracts are provided vacation days.

L. Purported Supervisory Duties

RTPC faculty may serve as Principal Investigators, the title given to individuals—typically scientists—running a research project via a grant or contract. The Principal Investigator I usually has some responsibilities for the overall research team. A full professor from the Keck School of Medicine provided testimony related to her role as a Principal Investigator in the Medical School, but the record does not contain evidence about the duties and authority of Principal Investigators in the proposed bargaining unit.

USC offers guaranteed funding to graduate students, which may involve assigning the student to work as a Teaching Assistant ("TA"). A TA receives an official employment letter and assists faculty in teaching and administering courses at the University. Some TAs teach laboratory sections or small discussion sections as part of their duties. The employment terms of TAs are established before the semester. The faculty the TA works with cannot assign the TA additional work or reward a TA. Testimony provides that TAs function slightly differently depending on the school. The record contains testimony relevant to purported supervisory duties only for Dornsife College, the School of Cinematic Arts, the School of Dentistry, and the School of Pharmacy.

i. Dornsife College

Dornsife College collects feedback from faculty related to TAs to identify areas where TAs may need support. Similar to TAs, Research Assistants or RAs, are assigned to a principal investigator and the testimony related to the two was often combined. TA assignments are not done by RTPC faculty, they are typically assigned by the Director of Undergraduate Studies, Associate Dean of Curriculum and Instruction, Assistant to the Dean of Graduate Education, and the Dean of Graduate Education. TAs independently track their students' work and progress but grades are issued by faculty.

At Dornsife, if an issue arises between the TA and the faculty member, except in very minor cases, the faculty member does not address it with the TA but may report

issues to the department chair, their director of undergraduate studies, their director of graduate studies, the dean of graduate education or other administrators. TAs are not terminated for poor performance because their work is tied to their enrollment in a graduate program. Administrators would not remove TAs from their assignment based on reports from faculty without conducting their own investigation. The only testimony provided on the relevance of a faculty member's recommendation related to TA termination is that the faculty member's opinion would be respected. TAs are not eligible for promotions or any type of merit-based wage increases.

ii. School of Cinematic Arts

The School of Cinematic Arts administration assigns TAs to courses without faculty involvement. Typically, TAs perform small tasks to assist students and the faculty member. Any issue that faculty may have with a TA would be brought to the department chair. Faculty do not have the ability to discipline or remove a TA from their course.

iii. School of Dentistry

The School of Dentistry is divided into separate practices which are overseen by a director, a treatment coordinator, and an administrative assistant. There are RTPC faculty serving as practice directors. Practice directors do not hire administrative staff but do utilize administrative staff in place at the school for help with the daily schedule. The administration of the School of Dentistry determines whether to assign TAs.

The School of Dentistry operates clinics offering dental services to the public, including mobile vans providing dental services. RTPC faculty teach students in a hands-on matter how to perform dental work on live patients.

iv. School of Pharmacy

The School of Pharmacy is overseen by an Executive Director of Community Pharmacies and a CEO. There are five pharmacies and a sixth forthcoming. Each pharmacy has a director. Some directors are filled by adjunct faculty not included within RTPC faculty. Any RTPC faculty working in a pharmacy take a two-hour harassment training required for all teachers within the school.

II. THE PARTIES POSITIONS

A. Employer's Position

The Employer contends that it is unique among universities in how it is run. It argues that faculty, including the RTPC faculty at issue here, are managerial employees due to the structure of USC's shared governance. USC describes the three pillars of shared governance at the University: the Academic Senate, USC's University-Wide Committees, and School Faculty Councils. It is through these bodies that USC argues RTPC faculty are managerial employees using both the *Yeshiva* and *Pacific Lutheran*

frameworks. USC argues that all USC faculty are aligned with management and exercise effective control in all five areas of decision-making identified by the Board in *Pacific Lutheran*: Academic Programs, Enrollment Management, Finances, Academic Policies, and Personnel Policies.

The Employer contends that all RTPC faculty are considered supervisors under Section 2(11) of the Act because they participate in effective recommendations of hiring other RTPC faculty through their participation in committees. USC further argues that specifically, research faculty are Section 2(11) supervisors because they direct the work of research assistants, graduate students, and staff in labs; Teaching Faculty are Section 2(11) supervisors because they actively supervise TAs; Practitioner Faculty supervise student workers; and Clinical Faculty supervise clinical students and staff in the clinics.

Finally, USC argues that the Petitioner has not met its burden to show a community of interest in the petitioned-for unit. The Employer characterizes the proposed unit as wildly disparate, spread across 23 schools and 15 different locations. The Employer argues that the unit spans different reporting chains, have varied work hours, have varied compensation and fringe benefits, and at least eight different job classifications, when part-time and full-time distinctions are taken into account.

B. Petitioner's Position

The Petitioner has taken the position that the proposed unit shares a sufficient community of interest such that it is appropriate for the purposes of collective bargaining. The Petitioner noted that the Board consistently finds units comprised of faculty from multiple schools within a university to be appropriate, as is the case here. The Petitioner argues that the employees in the unit are functionally integrated through their support of the University's mission, specifically educating students. Further, the Petitioner asserts that the unit receives common supervision through the university's structure. All RTPC Faculty report to a department Chair or a Program Director, who reports up to the Dean of their school, college, or other academic unit, who then reports to the Provost and President. Petitioner argues that the power and responsibilities of Deans, Department Chairs and Program Directors are fundamentally the same across schools. Petitioner further notes that USC has a centralized Office of Human Resources and EEO-TIX. The Petitioner highlights the overlapping skillset that members of the petitioned for unit share, noting that all positions require a form of advanced education, training, experience, and/or skills. The Petitioner presented evidence from the record demonstrating interchange that occurs among RTPC across the various schools by holding joint appointments in multiple schools, transfer between schools, teaching in multiple schools, collaborating across schools in cross-disciplinary programs, receiving and attending common trainings, and serving on university-wide committees. It highlighted the shared fringe benefits across schools for the RTPC, the shared academic calendars and schedules, and the universal University handbook policies that apply to all RTPC faculty.

The Petitioner argues for the appropriateness of including part-time RTPC faculty as they are similarly compensated, participate in university government, and share similar

working conditions. Further, none of the petitioned for faculty are eligible for tenure. Generally, the part-time faculty are integrated into the University's mission and the general working conditions are similar.

Furthermore, it is the Petitioner's view that all Los Angeles County locations have appropriate geographic boundaries for the unit. This would include both the UPC and HSC campuses as well as buildings leased in downtown Los Angeles, Marina del Rey, Playa del Rey, and Catalina Island. The Petitioner notes that University management does not divide its functions by campus or building, but instead it is either centralized or school-based. The Petitioner also argues that employee interchange and contact between the campuses is frequent.

With respect to the Employer's assertion that the faculty in the petitioned-for unit are managerial employees, the Petitioner argues that under the appropriate *Yeshiva* and *Pacific Lutheran University* test, the University has not met its burden to assert that the petitioned for unit has managerial status. The Petitioner contends that there is no evidence of any unit member participating in an "effective" recommendation academic programs, finances, enrollment management, academic policy, and personnel policies. The Petitioner acknowledges the University's theory that various university-wide and school-specific faculty bodies engage in managerial activities, however, the Petitioner argues that the record evidence does not adequately demonstrate effective recommendation because the committees have a negligible role in decisions at the university level. The Petitioner highlights Employer witness testimony demonstrating that many academic program decisions at the school level are frequently made without faculty involvement or against faculty objections, and that recommendations by faculty bodies related to finances are always rejected, which reflects that financial decisions are the purview of the administration and Board of Trustees

The Petitioner also rejects the University's collective supervisory authority theory, citing *Fordham University*, where the Board found that the role faculty play on governance committees does not confer supervisory status. 193 NLRB 134, 135 (1971). Further, the Petitioner rejects any theory conferring supervisory status on any individuals in the petitioned for unit. The Petitioner describes Employer witness testimony on this issue as sweeping and conclusory. The Petitioner also argues that any relevant testimony regarding the supervisory status of faculty with respect to TAs demonstrates that the faculty do not have supervisory authority in any of the relevant indicia, and that there is no record evidence of faculty in the petitioned-for unit overseeing RAs.

III. DISCUSSION

A. Managerial Status of the Petitioned-for Employees

i. Legal standard

The Board defines managerial employees as those who "formulate and effectuate management policies by expressing and making operative the decisions of their

employer." *NLRB v. Bell Aerospace Co.,* 416 U.S. 267, 288 (1974) (quoting *Palace Laundry Dry Cleaning Corp.,* 75 NLRB 320, 323 fn. 4 (1947) (quotation marks omitted)). The burden of proving managerial status rests on the party seeking to exclude individuals as managers. *University of Great Falls,* 325 NLRB 83, 93 (1997), *aff'd* 331 NLRB 1663 (2000), *rev'd on other grounds*, 278 F.3d 1335 (D.C. Cir. 2002). In *NLRB v. Yeshiva University*, the Supreme Court established a standard for evaluating when faculty members are managerial employees excluded from the Act. 444 U.S. 672, 683-86 (1980). The Court explained that managerial employees are those who are "aligned with management," such that they "represent management interests by taking or recommending discretionary actions that effectively control or implement employer policy." *Id.* at 683. The individual must actually exercise authority—mere paper authority is not sufficient. *Pacific Lutheran University*, 361 NLRB 1404, 1421 (2014).

In *Pacific Lutheran,* the Board set forth a framework for analyzing the managerial status of university faculty in accordance with the *Yeshiva* decision. In determining whether university faculty are managerial employees, the Board considers the faculty's participation in five areas of decision-making: academic programs, enrollment management policies, finances, academic policies, and personnel policies and decisions. Id. at 1417. The Board gives greater weight to the first three "primary" areas of consideration "as they affect the [u]niversity as a whole," and less weight to the "secondary, i.e., less important" areas. Id. at 1417, 1420. The Board conducts this examination "in the context of the university's [decision-making] structure and administrative hierarchy, as well as the nature of the employment relationship of the faculty in issue." Id. at 1417.

Faculty will be found to be managerial employees under the *Pacific Lutheran* standard if they exercise actual control over or make effective recommendations regarding the primary and secondary areas of consideration. 361 NLRB at 1421. The Board clarified that a finding of actual control or effective recommendation requires "specific evidence or testimony regarding the nature and number of faculty decisions or recommendations in a particular decision-making area, and the subsequent review of those decisions or recommendations, if any, by the university administration prior to implementation, rather than mere conclusory assertions that decisions or recommendations are generally followed." *Id.* Thus, effective recommendations are those that "must almost always be followed by the administration," such that they "routinely become operative without independent review by the administration." *Id.* To constitute "effective" recommendations, they must almost always be followed by the administration. *Pacific Lutheran*, above at 421, referencing *Ithaca College*, 261 NLRB 577, 578 (1982) (recommendations were "invariably" followed), and other decisions. Recommendations are also "effective" if they routinely become operative without independent review by the administration." Ibid, referencing *Lewis & Clark College,* 300 NLRB 155, 163 (1990).

In *Elon University*, 370 NLRB No. 91 (2021), the Board modified a segment of the analysis established in *Pacific Lutheran*. In instances wherein a committee effectively recommends or controls actions in a decision-making area, the Board will no longer

apply the "subgroup majority status rule" requiring proof that the disputed subgroup constitutes a majority of the committee. Rather, it will determine (i) whether the faculty body exercises effective control over the noted decision-making areas, referenced above, and (ii) whether the disputed subgroup is included in the managerial faculty body. If both inquiries are satisfied, then the faculty members in the subgroup at issue constitute managerial employees, regardless of whether they exert majority control within specific faculty bodies. *Id*. slip op. at 12-13.

ii. Analysis

1. Academic Programs

The Board determined the area of "Academic Programs" covers matters such as the college's curricular, research, major, minor and certificate offerings, and related requirements. *Pacific Lutheran University*, 361 NLRB 1404, 1427 (2014).

Here, RTPC faculty involvement in decision-making about academic programs takes place to some degree on the University Committee on Curriculum (UCOC), the University Committee on Academic Review (UCAR), The General Education Committee (GEC), and the University Research committee. USC also provided evidence that generally faculty, including RTPC faculty, can deliver feedback and provide suggestions at the school level over academic programs. However, the record reflects that it was the higher-level administration officials that recommended and approved of these changes originating from the school level.

The UCOC reviews (1) every course offered at USC that provides credit and will appear on a USC transcript, (2) every proposed new or modified program consisting of such courses, every major or minor consisting of such courses, and (3) every new degree in the University (except for the MD program, which is separate for regulatory reasons). The committee makes recommendations based on whether it views the proposed curriculum to be in compliance with the curriculum handbook. If proposed curriculum is compliant and doesn't already exist, the committee will recommend its approval. The Vice Provost tasked with working with UCOC testified that as long as a proposal was done properly, there should be no reason for the committee to not recommend approval. Members of the committee do not consider the substance or merit of the proposal and generally approve unless there is a clerical or typographical error. This type of review does not rise to the level of actual or effective control over the university course work.

The UCAR committee tracks the scholarly publishing of USC's many departments. UCAR may consult with faculty from outside the university to track and identify academic trends and then offer feedback or advice to USC's schools on its findings. However, the committee makes no decisions that control the University's academic programs.

The GEC reviews proposed changes to USC's general education requirements. When a new course is proposed, the GEC evaluates the proposal based on existing

standards and then recommends approval or asks for revisions. Additionally, the committee has made other recommendations related to general education requirements, such as recommending a category focused on diversity, equity and inclusion in 2022. While that recommendation was adopted by renaming the existing "citizenship in a diverse world" requirement to "equity in a diverse world," the record doesn't reflect the extent to which the administration exercised any review of the GEC's recommendation prior to implementation. Nor is it clear whether the change was substantive or merely a change to the description of the existing requirement. Therefore, there is insufficient evidence that this committee has ever exercised any actual or effective control over an academic program.

Similarly, there is no evidence that the University Research Committee has ever exercised any substantive actual or effective control over USC's research.

In *Pacific Lutheran* the board asserted that, "specific evidence or testimony regarding the nature and number of faculty decisions or recommendations in a particular decision-making area, and the subsequent review of those decisions or recommendations, if any, by the university administration, prior to implementation, rather than mere conclusory assertions that decisions or recommendations are generally followed" is necessary to establish actual control or effective recommendation sufficient to make faculty managerial employees. *Pacific Lutheran University*, 361 NLRB 1404, 1421. Accordingly, the record evidence here is not sufficiently detailed or specific to find that the faculty on these committees exercise actual control or effective recommendation over the university's academic programs.

2. Enrollment Management Policies

The Board determined that the decisional area of, "Enrollment Management Policies" covers the size, scope, and make-up of the university's student body. *Pacific Lutheran University*, 361 NLRB 1404, 1427 (2014).

Here, COFE has taken up issues tangential to enrollment management, such as considering the effect new legislation and Supreme Court rulings may have on existing USC policies. In these instances, COFE considered the University's position that no changes were necessary and therefore did not recommend or contribute any guidance or changes to existing policies.

There is testimony that the University solicited positions from COFE on two enrollment-management related policies before the Provost made a final decision. First, COFE was presented with the question of whether the University should maintain a "holistic" admissions policy or adopt a policy of admitting students solely based on test scores and GPAs. The committee decided that they agreed with maintaining holistic admissions, a policy which remains in effect. Second, COFE was presented with the question of whether the University should expand its undergraduate enrollment or provide guaranteed housing for freshmen. COFE agreed with the University administration's position not to expand enrollment. While the Provost ultimately agreed

with COFE in both cases, there is no evidence of the manner of extent of either COFE's review of these issues, or of the Provost's review of COFE's recommendation. While the specific examples given above arguably relate to enrollment-management, there is insufficient evidence that COFE has made effective decisions about the specific size, scope, and make-up of the student body.

Accordingly, I conclude that the Employer has not met its burden of proving that RTPC faculty have managerial control over enrollment management policies by virtue of their participation on COFE.

3. Finances

When it comes to exercising managerial decision-making over financial duties, the Board considers decisions related to income and expenditures, including what the school charges for its services, *See, e.g., General Dynamics Corp.*, 213 NLRB 851, 860 (1974).

Here, each year COFE recommends a range for the tuition increase for students and the endowment payout. This recommendation is made after a presentation is given during a meeting, which includes all the information the University's administration finds relevant to include in decision-making. This presentation includes the University administration's own range recommendation for endowment payout and tuition. COFE is not granted any relevant information prior to this meeting. Any recommendation made by COFE must be approved by administration. The record does not include specific evidence about the type of review or investigation these recommendations received prior to approval and there is no evidence of a time when COFE has disagreed with the University's initial proposal on tuition increase and endowment payout range. The administration determines the final specific amount of the tuition increase and endowment payout. The University has denied at least two inquiries by COFE into the University's athletic budget endowment.

EBAC submits recommendations for health plans, premiums, and coverages, including recommending fertility services be offered, stratification of health care premiums, and adding maternity care programs. In 2024, when the administration presented EBAC with its plan to cut the Tuition Assistance Benefits, EBAC expressed strong opposition to the proposal, but the proposal was implemented despite the opposition. The Academic Senate was not consulted prior to the university implementing the Tuition Assistance benefit cuts. The record demonstrates that the University's administration has the final decision-making authority on the financial issues that EBAC considers. When there is disagreement between EBAC and the University as there was with the Tuition Assistance Benefits, the University has final say. The record does not include sufficient evidence to establish that EBAC has the ability to make effective recommendations with respect to the University's finances, apart from agreeing with the University's own proposals on healthcare.

Accordingly, I conclude that the Employer has not met its burden of proving that faculty serving on either COFE or EBAC exercise managerial control over finances.

4. Academic Policies

The Board determined that this area covers topics such as teaching and research methods, grading policy, academic integrity policy, course content policy, and research policy. *See Pacific Lutheran* 361 NLRB 1404, 1427 (2014).

The record reflects general testimony regarding the University's CAPP committee, which reviews proposals to USC's academic policies and then submits their recommendation in writing to the provost. There is evidence that the committee has received and approved two proposals originating from the Office of Academic Integrity. Both proposals were later implemented by the Provost, however it was unclear whether the Provost conducted any independent review of the proposal. The Provost did characterize the type of academic policy considered by this committee as "not changing radically year over year." The committee has in at least one case determined not to vote on a proposal because there was a lack of interest in the subject. Considering these facts, although there is some evidence that CAPP is involved in reviewing academic policies, the record is too vague and undefined to conclude that the work amounts to actual or effective control over this area. Similarly, the brief testimony related to RTCP faculty involvement in student appeals to Academic Integrity cases is too vague and unclear to conclude that the work amounts to actual or effective control over this area.

Accordingly, I conclude that the Employer has not met its burden of proving that RTCP faculty have managerial control over academic policies.

5. Personnel Policies and Decisions

The Board determined that this area relates to control over personnel policy, including hiring, promotion, tenure, and leave that is beyond an individual faculty member's classroom or research project. *See Pacific Lutheran* 361 NLRB 1404, 1420 (2014).

The Faculty Handbook Committee, which is a component of the Academic Senate, offers recommended changes to the university wide faculty handbook. Any proposed change to the handbook, as approved by this committee, is voted on by the entire Academic Senate before being sent to the President and Provost for final approval. The testimony provides that the President has approved of all proposed amendments going back approximately 60 years. Testimony characterized these committee recommendations as mere revisions to accurately reflect existing policy. There is insufficient evidence to establish that any substantive recommendations to change policy have been recommended and adopted by the committee. The record does not establish that the Faculty Handbook Committee's work demonstrates actual or effective control over personnel policies and decisions.

The University Committee on Professional Responsibility (COPR) directly hears appeals from faculty who have had sanctions imposed due to misconduct. The committee determines whether the sanctions are consistent with the factual support produced by the University's investigation. The committee then creates a recommendation which is delivered to the Vice Provost for Faculty and Academic Affairs. This recommendation is reviewed by the University's attorney and issued to the faculty member. Following the COPR's recommendation, and any subsequent review, the University's attorney or a representative of the Provost may reduce the penalty, a situation that occasionally occurs. While the Provost will typically adopt the recommendation of the COPR at this stage, the President or Provost may override or amend any COPR recommendations and have done so. Approximately one third of the committee's recommendations are appealed. It is unclear what happens when the committee's recommendations are appealed and who hears that appeal. There is arguable RTCP faculty control over COPR recommendations, however the evidence is generalized, and it is unclear whether the COPR has actual or effective control when each recommendation is routinely reviewed by the administration, the President or Provost can override any decision, and one-third of COPR's decisions are appealed.

There are also various school level committees that are involved, to some degree, in issues related to personnel policies and decisions. Unlike the university committees and faculty senate who make their recommendations directly to the President and Provost of the University, these faculty councils make theirs to the dean of the specific school. These council include RTPC faculty.

There was specific testimony related to RTPC faculty serving on the School of Engineering faculty council. The limited involvement that RTPC faculty are permitted in this school results in a convoluted review process for any recommendation that requires at least three layers of extra review and no promise to implement any recommendation. In fact, there is testimony that in this school recommendations by the council are often ignored. Certain specific recommendations that have been made by the committee and adopted by the dean have then become voluntary policy changes and not mandatory for faculty.

The Dornsife Faculty Council includes RTPC faculty, and the record reflects that this Faculty Council worked with the Dean and other stakeholders to create a template merit review rubric which was subsequently adopted by some departments but was not compulsory. Dornsife also has a Committee for Appointments, Promotion, and Tenure (DCAPT), and RTPC faculty are involved in the non-tenure components relevant to RTPC faculty. The DCAPT committee reviews RTPC faculty dossiers in order to recommend promotions. DCAPT is one of three assessors for each faculty file, along with the faculty member's department and the Dean of Dornsife. The Dean is responsible for the final decision on promotion and does not automatically endorse DCAPT's recommendation. Further, the Dean's decision may be reviewed and reversed by the University's administration. The record evidence concerning DCAPT's involvement in promotions is insufficient to establish actual or effective control.

The School of Pharmacy has an Appointments and Promotions Committee chaired by the Associate Dean of Faculty Affairs. This committee reviews the dossiers of both tenure track and RTPC faculty for promotion. There is one non-administrator RTPC faculty on the committee and they do not participate in tenure decisions. The evidence of RTPC involvement in this committee is limited and is insufficient to establish actual or effective control over School of Pharmacy faculty promotions.

The School of Dentistry has search committees for open appointments, but there is insufficient evidence to establish that this committee has actual or effective control over hiring.

There is no record evidence describing the existence and/or function of faculty councils in any of the other schools at the University.

Considering these facts, there is evidence only of COPR exerting any type of managerial control over personnel policies. However, the evidence reflects COPR's function is narrow and its recommendations are subject to multiple levels of review, including by the University's legal representatives, the office of the Provost and/or President, as well as a formal appeal process. These circumstances do not demonstrate that the RTPC faculty's responsibilities are so aligned with management that the employee represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy. Furthermore, none of the other examples discussed above establish that any other university-wide or school-level committee made up of RTPC faculty possesses actual or effective control over personnel policies. Therefore, I conclude that the Employer has not met its burden of proving that RTCP faculty have managerial control over personnel policies

iii. Conclusion Regarding Managerial Status

In light of the facts analyzed above, and having considered the organization of USC and the employment relationship of these faculty members, I conclude that the petitioned-for RTPC faculty members do not exercise actual control or effective recommendation in any of the primary or secondary areas of consideration set out by the Board in *Pacific Lutheran*, 361 NLRB 1404, 1417.

B. Supervisory Status of the Petitioned-for Employees

i. Legal standard

Supervisory status under the Act depends upon whether an individual possesses authority to act in the interest of the employer in the matters and in the manner specified in Section 2(11) of the Act. The Act, 29 U.S.C. §152(11), 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.

An exercise of any one of the indicia listed in Section 2(11) of the Act may warrant a finding of supervisory status. Section 2(11) of the Act also contains the "conjunctive requirement that the power be exercised with 'independent judgment,' rather than in a 'routine' or 'clerical' fashion." *Chevron U.S.A.*, 309 NLRB 59, 61 (1992). To demonstrate independent judgment, the putative supervisor "must at a minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data." *Oakwood Healthcare, Inc.*, 348 NLRB 686, 692 (2006). The putative supervisor must hold the authority in the interest of the employer. *See NLRB v. Kentucky River Cmty. Care, Inc.*, 532 US 706, 712-13 (2001). Finally, when the putative supervisor exercises supervisory authority on a sporadic or isolated basis, the Board will not find supervisory authority. *See Billows Elec. Supply of Northfield, Inc.*, 311 NLRB 878, 879 (1993).

The party asserting supervisory status has the burden of proving its assertion by a preponderance of the evidence. *See Oakwood Healthcare*, 348 NLRB at 694. While the party asserting supervisory status need not show that the authority has been exercised, it must show that the employee "actually possesses" the authority at issue. *See Mountaineer Park*, 343 NLRB 1473, 1474 (2004). Thus, the Board looks to the work actually performed; job titles and job descriptions "are not controlling." *Oakwood Healthcare*, 348 NLRB at 690. Similarly, "purely conclusory" evidence is not sufficient to establish the existence of supervisory authority. *Golden Crest Healthcare Ctr.*, 348 NLRB 727, 731 (2006); *Avante at Wilson*, 348 NLRB 1056, 1057 (2006). "Whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia." *Phelps Cmty. Med. Ctr.*, 295 NLRB 486, 490 (1989).

When evidence of any of the Section 2(11) indicia is established, the analysis shifts to whether the individual exercises that authority using independent judgment. *See Oakwood Healthcare*, 348 NLRB at 692. Independent judgment means that "an individual must at minimum act, or effectively recommend action, free of the control of others." *Oakwood Healthcare*, 348 NLRB at 693. "[A] judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement." *Id*. Finally, the Board has clarified that a judgment is not independent "[i]f there is only one obvious and self-evident choice." *Id*.

The exercise of supervisory authority may be direct or may be evinced through the exercise or effective recommendation of any one of the supervisory indicia. *See Starwood Hotels & Resorts Worldwide, Inc.*, 350 NLRB 1114, 1115 (2007). Regarding the authority to effectively recommend, the Board has held that effective recommendation "generally means that the recommended action is taken without

independent investigation by superiors, not simply that the recommendation is ultimately followed." *Children's Farm Home*, 324 NLRB 61, 61 (1997).

ii. ***Analysis***

Here, the Employer has not met its burden of proving RTPC faculty have supervisory authority. There was limited testimony provided as it pertains to RTPC faculty serving as Principal Investigators, RTPC faculty working with TAs, and RTPC faculty in the dental or pharmacy clinical setting working with students and staff. None of the testimony gives specific evidence of RTPC faculty engaging in any of the section 2(11) indicia.

The only direct testimony provided by a Principal Investigator was from a non-RTPC witness and was specific to the witness' experience in the Keck School of Medicine, which is not included in the petitioned-for unit. Accordingly, I do not find that Principal Investigators are supervisors with the meaning of the Act.

USC offers graduate students work as Teaching Assistants. Each school has different functions for a TA, but a TA's official employment and duties are assigned by administration prior to each semester. TAs at Dornsife independently track their own work. If an issue arises between a RTPC faculty member and a TA it is handled by an administrator, not by the faculty member. TAs may only be removed after an independent investigation by an administrator. Similarly, TAs for the School of Cinematic Arts are assigned work by administrator, with small tasks assisting faculty members. Any issue between a faculty member and a TA would be handled by an administrator. Here, USC argues that RTPC faculty teaching with TAs effectively recommend the transfer, promotion, discharge, assignment, reward, and discipline of TAs and are responsible for directing them. However, USC has not met its burden to establish any of the enumerated indicia. There is no evidence of any RTPC faculty effectively recommending transfer, promotion, discharge, assignment, reward or discipline of TA nor using any independent judgement related to those indicia.

Similarly, all testimony related to RTPC supervising students at the School of Dentistry is related to practical instruction and teaching. The Employer has not met its burden of proving RTPC faculty at the School of Dentistry have supervisory authority.

Finally, the record evidence related to the School of Pharmacy is unclear and vague. There is some testimony that the Executive Director of Community Pharmacies is RTPC faculty, however, no evidence was offered of this person exercising supervisory authority with respect to specific 2(11) indicia. Therefore, the Employer has not met its burden of proving RTPC faculty at the School of Pharmacy have supervisory authority.

USC claims that the faculty in the proposed unit are supervisory by virtue of their participation in both university-wide and school-level committees. However, this theory is not supported by Board law. In its brief USC cites *Boston University,* 281 NLRB 798, 860 (1986), aff'd, 835 F.2d 399 (1st Cir. 1987) for this proposition. However, the faculty

at issue in *Boston University* were tenured or tenure-track faculty, unlike the faculty here and were found to be managerial employees because of their decision-making authority in the areas of academic policies, curriculum, and personnel decisions, which are also lacking here . Further, the Board has settled that group participation in faculty governance does not show individual supervisory status. *Fordham University*, 193 NLRB 134, 135 (1971). Therefore, this theory of shared collective authority fails to show 2(11) supervisory status within the unit.

Accordingly, I do not find that the petitioned-for employees are supervisors within the meaning of the Act.

C. Community of Interest

i. Legal Standard

It is well established that "more than one [bargaining unit] may be appropriate among the employees of a particular enterprise." *Am. Steel Constr. Inc.*, 372 NLRB No. 23, slip op. at 2 (2022) (quotation marks omitted); accord *Overnite Transp. Co.*, 322 NLRB 723, 723, 726 (1996). Additionally, the Act requires that a petitioner seek representation of employees in an appropriate unit, not necessarily the ultimate or most appropriate unit. *Am. Steel Constr. Inc.*, 372 NLRB No. 23, slip op. at 3; *Overnite Transp.*, 322 NLRB at 723. For example, a union need not seek a narrower unit if the broader unit it has petitioned to represent is appropriate—even if the narrower one is equally or more appropriate. *Overnite Transp.*, 322 NLRB at 723–24. Accordingly, in unit-determination cases, the Board first considers the union's petitioned-for unit. If that unit is appropriate, the inquiry ends. *Specialty Healthcare & Rehab. Ctr. of Mobile*, 357 NLRB 934, 941 (2011), aff'd. sub nom. *Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013); *Overnite Transp.*, 322 NLRB at 723–26.

In deciding whether a petitioned-for unit is appropriate, the Board's central consideration is whether the petitioned-for employees share a "community of interest" that renders the unit suitable for collective bargaining. *Am. Steel*, 372 NLRB No. 23, slip op. at 2–4. To determine whether employees share a community of interest, the Board considers whether they: are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *Id.* at 3.

Particularly important in considering whether the unit sought is appropriate are the organization of the employer and the utilization of skills. With regard to organization of the employer, the Board has made clear that it will not approve of fractured units – that is, combinations of employees that are too narrow in scope or that have no rational basis. *Seaboard Marine*, 327 NLRB 556 (1999). However, *all* relevant factors must be weighed in determining community of interest.

ii. Analysis

1. Separate Department

Here, the RTPC faculty are organized into one category, which the University distinguishes from tenure and tenure-track faculty. They are separately identified as a group in the Faculty Handbook. However, RTPC faculty span different disciplinary departments, schools and colleges at USC. Despite the fact that RTPC faculty work throughout the university, in light of their separate employment category, which distinguishes them from staff, student workers, and tenured or tenure-track faculty, I find this factor supports finding a community of interest.

2. Skills and Training

Evidence that employees have similar skills and training contributes to a finding of a shared community of interest. This would include evidence that disputed employees have similar requirements to obtain employment; that they have similar job descriptions or licensure requirements; that they participate in the same employer training programs; and/or that they use similar equipment. *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penny Company*, *Inc*., 328 NLRB 766 (1999); *Brand Precision Services*, 313 NLRB 657 (1994); *Phoenix Resort Corp., d/b/a The Phoenician*, 308 NLRB 826 (1992).

Here, RTPC faculty have similar skills and training. Most RTPC Faculty have either a master's degree or a terminal degree, which includes a PhD, an EdD degree, or an MFA. Although most faculty possess advanced degrees, the University does not have a policy requiring degrees so that experienced practitioners, entrepreneurs, and/or technology experts without higher degrees may also teach USC courses. However, the RTPC faculty must nevertheless demonstrate expertise in their respective discipline to obtain employment.

RTPC faculty all engage in some form of teaching, typically in a classroom. Teaching at the university requires faculty to possess the requisite skills for creating the content of a course, creating a syllabus, preparing for class instruction, teaching the class, mentoring students, grading student work, as well as other responsibilities, including holding office hours. USC provides a sample syllabus template for RTPC faculty teaching courses.

RTPC faculty all receive training on reporting requirements set by university wide offices, including the Office of Academic Integrity and the EEO-TIX office. Upon being hired, RTPC faculty are all offered the same orientation and are required to participate in mandatory training. USC has a Center for Teaching Excellence which provides training for all faculty across the university, including RTPC faculty.

Overall, RTPC are required to possess a significant level of professional experience in the field they are teaching. The subjects taught are different; however, all

RTPC faculty share similar skills and receive similar training to support their teaching responsibilities. RTPC faculty are all trained on university-wide policies and procedures. Thus, this factor favors finding that RTPC faculty share a community of interest.

3. Job Functions and Work Duties

Although there are some differences between the various tracks of RTPC faculty (for example, research-track versus teaching-track), the evidence supports finding that RTPC faculty share similar work and job functions to a significant degree. The primary duties of all RTPC faculty are teaching and mentoring of students, in classroom, research, clinical or library settings. These assignments are made through contracts between one and five years in length. Although the track determines the frequency of teaching with research track teaching one course per semester, adjunct teaching one course per academic year, and others teaching multiple courses per semester, all RTPC faculty have the same duties and responsibilities when teaching a course. Similarly, all tracks can engage in research.

RTPC faculty perform similar duties when preparing for and teaching courses at USC. Teaching requires that RTPC faculty prepare for courses, teach the course typically between 10:00am-5:00pm, Monday-Friday, administer and grade course work, mentor students, and hold office hours. USC has centralized grading policies that are applicable to all faculty. At the end of a course, all RTPC faculty input their grades into a website called GRS operated centrally through USC's Registrar's office. USC has a centralized course evaluation system for faculty teaching courses.

RTPC Faculty perform tasks on a computer using the USC internet connection or, when not on campus, using USC's VPN program, including inputting grades into the university wide grading system. RTPC Faculty are provided a USC email address, may request and receive work phone numbers, and utilize computer software provided by USC, including Microsoft Office, Google Drive, Microsoft OneDrive, Slack, Microsoft Teams, and Zoom to perform their work duties.

In addition to teaching and research, all full-time RTPC Faculty contracts contain a service component that is typically fulfilled by participating in department, school, or faculty level committees.

All RTPC faculty are teaching and mentoring students, regardless of their specific track, department, school or college. Many are also doing research and most must also fulfill their service requirements, which includes serving on committees eligible to RTPC faculty. Therefore, this factor supports finding that RTPC faculty share a community of interest.
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4. Functional Integration

Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. *Transerv Systems*, 311 NLRB 766 (1993).

With respect to functional integration, there is some functional integration to the extent that all RTPC faculty work toward the university's common mission, specifically its "first priority" of educating students. Additionally, undergraduate students at USC must fulfill general education requirements that require taking courses from more than one school or department. In this way, RTPC faculty across all departments, schools and colleges contribute to the education of USC's students in furtherance of this primary goal.

While the Board has recently stated that functional integration requires employes to "work together and depend on one another," *Black Iron Reinforcing*, LLC, 28-RC-290472 at 3 (April 1, 2024) (unpublished), the Board has also acknowledged that employees across university departments (namely teaching and research assistants) are "functionally integrated into a system designed to meet the university's teaching … missions." *Columbia University*, 364 NLRB 1080, 1098 (2016). Therefore, because RTPC faculty do "depend on one another" to some degree and are "functionally integrated into a system designed to meet the university's teaching … missions," this factor supports finding that RTPC faculty share a community of interest.

5. Frequency of Contact

Here, RTPC faculty have contact with each other across different schools and tracks, and between adjunct, part-time, and full-time RTPC faculty.

USC offers joint degree programs that require cooperation between faculty from various schools. Some RTPC faculty have joint appointments, meaning they teach in more than one school. The Games Department has no faculty of its own and shares faculty from other schools. USC generally encourages interdisciplinary events, research, and collaboration through grants and by the Center for Teaching Excellence.

RTPC Faculty without joint appointments may also teach classes in multiple schools as guest lecturers.

RTPC faculty may fulfill their service requirement through participation in The Academic Senate, Academic Senate Committees, and other University-level faculty committees which provide regular contact between RTPC faculty of all tracks and all schools.

RTPC Faculty have access to and may use any USC library, the health centers at UPC and HSC for medical care, and the recreational facilities. Although there was conflicting testimony as to the extent that RTPC faculty interact with each other on campus, RTPC Faculty may make use of on-campus cafes, restaurants, recreational

facilities, and the University Club. In May, USC has a main commencement ceremony for all undergraduate and graduate students across the entire University and all RTPC Faculty are invited to participate in the main ceremony.

Therefore, given the frequency of contact amongst the RTPC faculty, particularly on the various faculty committees, I find this factor weighs in favor of finding a community of interest within the petitioned-for unit.

6. Interchange

Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange "may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills." *Hilton Hotel Corp*., 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. *Executive Resource Associates*, 301 NLRB 400, 401 (1991), citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1081).

Here, the record does not reflect frequent interchange, though some interchange occurs among RTPC faculty between different schools and tracks, and between adjunct, part-time, and full-time RTPC faculty.

For example, RTPC faculty, such as writing program faculty in Dornsife College, will teach writing courses in other schools, and library faculty routinely teach across multiple schools. Additionally, RTPC Faculty may begin at USC as adjunct or part-time RTPC Faculty before moving into full-time positions.

At the Dental School and Pharmacy Schools, faculty may perform clinical duties one semester, switch to research the next semester, and then may even switch to teaching duties in subsequent semesters.

The RTPC faculty engage in limited, infrequent interchange between different departments and schools. Therefore, I do not view this factor as supporting finding a shared community of interest.

7. Terms and Conditions of Employment

The record demonstrates that RTPC faculty share common terms and conditions of employment. Most RTPC Faculty work during the nine-month academic calendar[1]. Full-time and part-time RTPC Faculty on academic-year contracts are paid on a salary basis for nine months of work, with the option for this salary to be paid out over twelve months. RTPC Faculty are all paid through the USC payroll system once per month

[1] Some RTPC Faculty have fiscal-year contracts that last 12 months while others choose to work during the summer for which they can receive additional compensation.

around the 25th day of each month. Importantly, no RTPC faculty are eligible for tenure or considered to be on the tenure track.

RTPC faculty are all subject to the same university-wide Faculty Handbook and are governed by numerous University-wide policies, stated in the Faculty Handbook. The academic responsibilities of faculty are defined and described in the Faculty Handbook as teaching, mentoring, clinical responsibilities, research and artistic work, librarianship, and service. RTPC faculty are required to assign either a final exam or a cumulative final assessment at the end of a semester. Final exam schedules are strictly set by USC and RTPC faculty have the same deadline to submit grades.

All full-time RTPC Faculty and part-time and adjunct RTPC Faculty who work at least 50% are eligible for identical benefits including health insurance, retirement benefits, life insurance, childcare benefits, and tuition assistance. Academic year RTPC Faculty do not receive vacation days, but those on year-long fiscal year contracts are provided vacation days.

There are certain RTPC faculty that enjoy privileges specific to their school or program, such as eligibility for sabbatical or lodging accommodations for those teaching on Catalina Island, but these benefits are quite limited.

Overall, RTPC faculty share most of the same terms and conditions of employment, which are consistently applied. Thus, this factor weighs in favor of finding that RTPC faculty share a community of interest.

8. Common Supervision

In examining common supervision, most important is the identity of employees' supervisors who have the authority to hire, to fire or to discipline employees (or effectively recommend those actions) or to supervise the day-to-day work of employees, including rating performance, directing and assigning work, and scheduling work providing guidance on a day-to-day basis. *Executive Resource Associates*, 301 NLRB 400, 402; *NCR Corporation*, 236 NLRB 215 (1978). The fact that two groups of employees are separately supervised weighs against their inclusion in the same unit. However, separate supervision does not mandate separate units. *Casino Aztar*, 349 NLRB 603, 607, fn. 11. Rather, more important is the degree of interchange, contact and functional integration. Id. at 607.

Here, RTPC faculty across different disciplines are supervised by either a Department Chair or a Program Director, who reports up to the Dean of their school, college, or other academic unit. Therefore, the RTPC faculty within the same department or program share the same supervisor, but faculty do not share common supervision across departments. Overall, this factor does not support finding that RTPC faculty share a community of interest.
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iii. Conclusion Regarding Community of Interest

Based on the foregoing, I conclude that the proposed unit of RTPC faculty is appropriate because they share a community of interest across disciplines, tracks, departments, and schools; between both full-time and part-time RTPC; and across their various work locations. The record establishes that the following factors weigh in favor of finding that the petitioned-for unit shares a community of interest: RTPC faculty are a separate employment category that share similar skills and training, are functionally integrated, have frequent contact with each other, and that share job functions and work duties, and terms and conditions of employment. The Board has found similar facts and similar breakdowns of the factors to be sufficient to establish a community of interest. For example, in *Nova Southeastern University*, 325 NLRB 728 (1998), the Board denied review of a Regional Director's decision finding faculty across several departments/schools constituted an appropriate unit based, in part, on their similar job functions and work, as well as their similar terms and conditions of employment. See also *University of San Francisco*, 265 NLRB 1221, 1223 (1982) (based, in part, on similar responsibilities and terms and conditions of employment, Board found community of interest amongst part-time faculty working across several university colleges/departments); *Phoenix Resort Corp.*, 308 NLRB at 827–28 (Board found community of interest based on similar terms and conditions of employment and some functional integration, despite the lack of common supervision or evidence of interchange). Similarly, in *Columbia University*, after acknowledging that a petitioner's desire concerning the unit 'is always a relevant consideration,'" the Board found that teaching and research assistants shared a sufficient community of interest based in part on the similarity of their job functions, work, and terms and conditions of employment, despite the fact that they were employed across the various departments or schools across the university. 364 NLRB at 1098. Thus, similar to the employees in *Columbia University*, notwithstanding the fact that they work across various schools or colleges under separate supervision, RTPC faculty's similar skills and training, job functions and work duties, and terms and conditions "provide[] [an] ample basis on which to pursue a common bargaining agenda." *Id*. at 1099.

The Employer argues that the Petitioner did not meet its burden to establish a community of interest because the RTPC classification includes ten different types of faculty, RTPC faculty exist in two distinct operational arms of the university, and have varied work locations, hours, and benefits. While Petitioner did not present all classification combinations of RTPC faculty from all departments, Petitioner and USC did present witnesses from different departments who established substantial evidence of the community of interest factors including similarities in the RTPC faculty's skills and training, job duties, and terms and conditions of employment, including eligibility for benefits for all RTPC faculty. The separate operational arms of the university do highlight the lack of common supervision among the petitioned for unit, however both arms ultimately report to the same Provost and President and must comply with the many university-wide policies, including the faculty handbook. The community interest factors overall overcome the lack of the common supervision factor.

Therefore, the evidence establishes that RTPC faculty share a community of interest sufficient to support a finding that the petitioned-for unit is an appropriate unit for the purposes of collective bargaining.

D. Board's Election Rules

The Employer has raised a legal argument that the Board's election rules violate the Act, are impermissibly arbitrary, and deny employers free speech and due process. The Employer did not claim to have suffered specific harm due to the application of the Board's Rules and Regulations to this case, nor did it expand on these conclusory claims in its brief, reserving the right to do so in the event a request for review is filed with the Board. Accordingly, as there is no harm for me to consider and I am bound to apply the Board's Rules and Regulations, I see no basis on which to dismiss the petition.

E. Board's Structure

The Employer also raises a legal argument that the instant petition should be dismissed because the Board's structure violates the U.S. Constitution in that it limits the removal of Administrative Law Judges and Board members, and permits Board members to exercise executive, legislative and judicial power in the same administrative proceeding. The Employer has not fully briefed this issue but has indicated it will do so upon the filing of a request for review with the Board. Although the Employer did not make a legal argument for my consideration, I note that the Board recently rejected identical claims in *Portillos Hot Dogs, LLC*, 374 NLRB No. 58, slip op. at fn. 2 (Mar. 11, 2026). Accordingly, I see no basis on which to dismiss the petition.

IV. Conclusions and Findings

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the Board. Based upon the entire record in this matter, including the parties' stipulations, and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated and I find that the Employer is engaged in commerce within the meaning of Section 2(6) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction here.[2]

[2] The Employer, University of Southern California, a California Corporation, with an office and place of business in Los Angeles, California, is engaged in the business of providing higher education. During the last 12 months, a representative period, the Employer, in conducting its operations described above, derived gross revenues in excess of $1,000,000. During that same period of time, the Employer purchased and received goods and materials valued in excess of $5,000 directly from points located outside the State of California.

3. The parties stipulated and I find that 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. The parties stipulated and I find that there is no collective-bargaining agreement covering any of the employees in the petitioned-for unit, and there is no contract bar, or any other bar, to this proceeding.

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

6. The following employees of the Employer constitute an appropriate unit (the Unit) for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> Included: All full-time, part-time and/or adjunct Research-track, Teaching-track, Practitioner track, and/or Clinical-track faculty (collectively referred to as "RTPC Faculty" and/or "Non- Tenure Track Faculty") employed by the University of Southern California in Los Angeles County.
>
> Excluded: All tenured or tenure-track faculty; all faculty in the Keck School of Medicine; all faculty employed at Children's Hospital Los Angeles; all part-time and/or adjunct faculty in the USC School of Cinematic Arts; all visiting faculty; all emeritus faculty; all RTPC faculty permanently employed outside Los Angeles County; all non-faculty employees; and all managers, guards, and supervisors as defined in the Act, as amended.

Accordingly, I will direct an election in the Unit described above. There are approximately 2,750 employees in the Union found to be appropriate.

V. Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Faculty-UAW.

A. Election Details

At the hearing, the parties were given the opportunity to provide their positions on the method of election (i.e. mail vs. manual) and election details, including dates, times, and locations. Petitioner requests a mixed mail-manual election to allow employees who live outside California to vote by mail. The record does not reflect how many employees live outside the State of California. The Petitioner proposed that the manual portion of the election take place at sites located on the University Park and Health Services Campuses,

and that the election take place during the regular academic year, not over the summer. The Employer indicated that it would be difficult to ascertain which faculty members are living in-state versus out-of-state and therefore proposed a mixed mail-manual election in which all voters are given the opportunity to vote either in-person or by mail.

Although the Board prefers to conduct manual elections over conducting mail-ballot elections, the Board has acknowledged that circumstances may necessitate adaptations on the Board's part to facilitate an election. In *National Van Lines*, 120 NLRB 1343 (1956), the Board asserted that "circumstances surrounding working conditions in various industries require an adaptation of established election standards to those peculiar conditions." 120 NLRB at 1346, citing *Shipowners' Assn. of the Pacific Coast, et al.*, 110 NLRB 479, 480 (1954). Thus, for example, mail-ballot elections may be appropriate where employees are geographically or temporally scattered. *San Diego Gas and Electric*, 325 NLRB 1143, 1144 (1998). Here, however, the parties failed to establish that the unit employees are in fact scattered. Beyond asserting that some faculty members may live outside the State of California, there is no specific information in the record as to the number of employees who live out-of-state, or who are otherwise geographically scattered. In fact, the Employer itself indicated it would be difficult to obtain current addresses for faculty members or to identify who might benefit from a mail ballot option. The solution proposed by the Employer—that all voters be sent a mail ballot and also have the opportunity to vote in person—is logistically unfeasible and is not what the Board has typically ordered in a hybrid mail-manual election.

Accordingly, based on the parties' positions and the information in the record, I have determined that a manual election is appropriate, and that an election will be held on **two consecutive dates during the week of April 13 or April 20, 2026, with one polling location located on the University Park Campus and one polling location located on the Health Sciences Campus.** The specific dates, polling hours, and locations will be determined at a later date, after consultation with the parties.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **February 28, 2026**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board's designated office.

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

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

C. Voter List

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

To be timely filed and served, the list must be *received* by the regional director and the parties by **Tuesday, March 24, 2026**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

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

Upon finalization of the election details, the Employer will be directed to also file location-specific voter lists, reflecting which voters are anticipated to vote at the University Park Campus location versus the Health Sciences Campus location.

D. Posting of Notice of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election, which will be provided at a later date, 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.
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RIGHT TO REQUEST REVIEW

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

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

Dated: March 20, 2026

Danielle Pierce

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