

**State of Maryland
Public Employee Relations Board**

| | | |
|----------------------------------|---|-----------------|
| In the matter of: |) | |
| |) | |
| AMERICAN FEDERATION OF TEACHERS, |) | |
| MARYLAND, |) | |
| Petitioner |) | |
| |) | PERB UC 2025-01 |
| v. |) | |
| |) | |
| COMMUNITY COLLEGE OF BALTIMORE |) | |
| COUNTY, |) | |
| Respondent. |) | |

DECISION AND ORDER

I. Procedural and Factual Background

A. Procedural Background

On September 25, 2024, AFT-Maryland (“AFT” or “the Union”) filed a petition for certification to represent a bargaining unit of full-time faculty employed by the Community College of Baltimore County (“CCBC” or “the College”). On October 8, 2024, the Maryland Public Employee Relations Board (“PERB” or “the Board”) certified the Union as the exclusive representative of the following unit:

All eligible Full-Time Faculty employees, as defined in Md. Code Ann., Educ. § 16-701(j)(1) employed by the Community College of Baltimore County, excluding supervisors and confidential employees, as defined in Md. Code Ann., Educ. § 16-701(j)(2), and all other employees.

Following certification, a dispute arose regarding CCBC’s exclusion of certain faculty members from the bargaining unit. The College asserted that these individuals were supervisory employees and therefore ineligible for inclusion. On October 15, 2024, AFT filed a unit clarification petition pursuant to Md. Code Ann., State Gov’t § 22-403(a)(3), requesting that the Board determine whether the employees excluded by CCBC should be included in the bargaining unit. CCBC filed its response on November 15, 2024, and AFT filed a reply on December 26, 2024.

The classifications at issue include the following¹:

- Academic Department Chairs
- School of Mathematics and Science (SOMS) Coordinators
- Program Directors
- Campus Head Librarians
- Visiting Lecturers

Over the course of two days of hearing on April 3-4, 2025, the parties presented extensive testimony and documentary evidence. The College presented seven witnesses, including Dr. Joaquin Martinez, Provost and Vice President for Academic Affairs; Jane Mattes, Dean, School of Business, Technology, and Law; Michael Venn, Assistant Dean, School of Mathematics and Science; Mary Kay DeMarco, Campus Nursing Director at Essex; Diane Flint, Assistant Dean, School of Health Professions; Tameika Scott, Director of Employee Relations and Equity; and Melissa Hopp, Vice President of Administrative Services. The Union presented Jamie Taylor, Program Director, Emergency Medical Services Technology; Charles Cotton, SOMS Coordinator, Physical Sciences; Erika Harris, Head Librarian; and Rachele Lawton, Chair, ESOL and World Languages.

B. FACTUAL BACKGROUND

CCBC is one of the largest institutions of higher education in Maryland, enrolling more than 50,000 students annually. It operates across three major campuses—Catonsville, Dundalk, and Essex—as well as satellite locations. The College offers a broad range of academic and professional programs across diverse disciplines including health professions, mathematics, humanities, social sciences, and technical education. There are about 400 full time faculty members employed, with about 50 falling into the contested positions.

To support its expansive mission and ensure the delivery of quality instruction across geographically dispersed sites, CCBC has developed a decentralized academic structure. Within each school, such as the School of Health Professions or the School of Mathematics and Science, faculty oversight is managed locally through the roles of Department Chairs, SOMS Coordinators, and Program Directors.

II. POSITIONS OF THE PARTIES

A. Union's Position

¹ AFT-Maryland withdrew its challenge with regard to campus nursing directors. CCBC withdrew its objections to the inclusion of certain professors, assistant professors, associate professors and inactive employees.

AFT contends that CCBC improperly excluded a broad array of faculty employees by labeling them as “supervisory” without substantiating those claims. The Union emphasizes that Maryland’s collective bargaining statute explicitly includes “department heads” within the definition of “faculty” and that PERB precedent recognizes a presumption in favor of their inclusion unless sufficient evidence to the contrary is presented.

The Union argues that the mere presence of managerial-sounding titles such as “chair,” “director,” or “coordinator” does not establish supervisory status. Rather, the burden rests on the employer to demonstrate that these individuals regularly and independently exercise supervisory authority over other bargaining unit members. AFT asserts that such authority must not only exist but must also involve the use of independent judgment and result in employment actions such as discipline, promotion, or discharge.

AFT further relies on Maryland State Education Association v. Wor-Wic Community College, PERB UC 2024-04 (2025) (“Wor-Wic”), and AFT-MD v. Frederick Community College, PERB EL 2024-02 (2023) (“Frederick Community College”), in which the Board found that department chairs and coordinators who did not supervise unit members were not properly excluded. AFT contends that many of the employees excluded by CCBC supervise only adjuncts or classified staff, not bargaining unit faculty, and that the record fails to show a regular, independent exercise of supervisory authority over unit members.

The Union also warns that CCBC’s approach, if adopted, would grant public employers sweeping discretion to undermine the bargaining process by excluding faculty representatives through vague assertions of “supervisory” status. Such an interpretation would conflict with both Maryland labor law and the Union’s statutory duty of fair representation.

B. CCBC’s Position

CCBC maintains that the employees it excluded from the unit are properly classified as supervisory under Maryland law and under the federal standard adopted by PERB. According to the College, these individuals possess and regularly exercise authority in one or more of the following areas: evaluating full-time faculty, recommending contract renewals or non-renewals, resolving faculty complaints, making course assignments, adjusting workloads, directing work, and initiating or recommending discipline.

CCBC contends that many of the excluded employees—particularly Campus Directors, Program Directors, and Department Chairs—supervise substantial numbers of full-time faculty and are expected to manage faculty performance in accordance with institutional policy. CCBC further asserts that evaluations completed by these employees directly impact contract decisions,

merit pay, and disciplinary actions, thereby constituting effective recommendations under NLRA Section 2(11).

CCBC's Provost and Deans are responsible for overarching academic leadership, but their involvement in daily faculty supervision is limited due to the size and complexity of the institution. Each Dean may be responsible for hundreds of faculty members distributed across several academic disciplines and campuses, making real-time oversight by central administration impractical.

The College distinguishes this case from Frederick Community College, asserting that unlike in that case, the evaluators at CCBC oversee faculty within the unit and are responsible for implementing or recommending employment actions with limited or no independent review by higher administration.

Finally, CCBC warns that including employees with such responsibilities in the bargaining unit would create a conflict of interest, impede managerial efficiency, and disrupt the balance envisioned by the collective bargaining statute. It urges the Board to adopt a consistent standard for determining supervisory status and to exclude these employees to protect the integrity of the bargaining process.

III. APPLICABLE LAW

In determining whether certain academic positions should be included within a bargaining unit, the Board must interpret and apply the statutory provisions governing collective bargaining in Maryland's community colleges. A foundational principle in these determinations is the statutory inclusion of "department heads" within the definition of "faculty," as codified in Md. Code Ann., Educ. § 16-701(j)(1), balanced against the statutory exclusion of "supervisory employees" under § 16-701(j)(2).

This framework was recently clarified in Wor-Wic, where the Board found that the statutory language mandates a presumption of inclusion for department heads with academic responsibilities. In that decision, the Board emphasized that such individuals should be presumed to share a community of interest with full-time faculty and therefore be eligible for representation unless the employer provides specific, substantial evidence that they function as "supervisory employees" under the federal definition in 29 U.S.C. § 152(11).

The Board majority in Wor-Wic underscored that generalized job titles or administrative responsibilities do not suffice to rebut this presumption. Instead, the employer must demonstrate that department heads exercise independent judgment in making or effectively recommending employment actions such as hiring, promotion, discipline, or discharge. Evidence that duties are performed pursuant to detailed rubrics or subject to review by higher-level management weighs against a finding of supervisory status.

The reasoning in Wor-Wic guides the Board’s analysis in this matter, particularly with respect to the burden of proof and the proper role of statutory interpretation in harmonizing inclusivity of bargaining rights with managerial concerns. Accordingly, the Board now turns to the statutory framework and case-specific evidence to evaluate the disputed classifications in this case.

A. Statutory Framework and Definitions

The Board’s determination regarding whether an employee should be included in or excluded from a bargaining unit rests upon the legal framework provided by the Public Employee Relations Act (“PERA”), Md. Code Ann., State Gov’t § 22-101 et seq., and the Community College Collective Bargaining Law, Md. Code Ann., Educ. § 16-701(j). These statutes govern the structure of bargaining units in Maryland’s public higher education institutions and delineate which employees are eligible for collective bargaining representation.

Section 16-701(j) of the Education Article establishes the governing statutory definitions for the purposes of community college faculty bargaining. Subsection (j)(1) defines “faculty” to include “employees whose assignments involve academic responsibilities, including teachers and department heads.” Subsection (j)(2) provides that “‘faculty’ does not include officers, supervisory employees, confidential employees, part-time faculty, or student assistants.” Thus, the law explicitly contemplates that department heads may be members of a bargaining unit unless they fall within one of the enumerated exclusions. This framework necessitates a fact-intensive analysis to determine whether an employee with a leadership title (e.g., chair, coordinator, director) exercises supervisory authority as a matter of law.

The statutory inclusion of department heads alongside teachers supports a broader reading of bargaining rights and creates a tension with the exclusion of supervisory employees. This tension is resolved by the application of well-established principles of statutory interpretation and labor law.

B. Statutory Interpretation

In interpreting the meaning and scope of “supervisory employee,” the Board follows guidance from Maryland’s highest courts. As articulated in Kushell v. Department of Natural Resources, 385 Md. 563 (2005), and Navarro-Monzo v. Washington Adventist Hospital, 380 Md. 195 (2004), the Board must begin with the plain language of the statute and seek to give meaning to every word. The Board must read the statute in context and as a whole, harmonizing potentially conflicting provisions where possible.

Consistent with these principles, a majority of the Board interprets § 16-701(j) to mean that “department heads” are presumptively included within “faculty” unless the employer

demonstrates, by specific evidence, that the individual meets the legal definition of a supervisory employee.² Wor-Wic, *supra*. The presumption in favor of inclusion is premised on the legislative intent as expressed in the statutory language that includes in the faculty bargaining unit “department heads with academic responsibilities.”

C. Burden of Proof

The burden of rebutting the presumption of inclusion lies with the employer or other party asserting supervisory status. The contesting party must offer clear and specific evidence demonstrating that the employee in question possesses and exercises supervisory authority as defined under applicable law. Vague assertions of authority, reliance on job titles alone, or conclusory statements that an employee “supervises” others are insufficient. The Board requires evidence of the actual exercise of supervisory functions and the use of independent judgment in doing so.

D. Definition of Supervisory Authority

Because neither PERA nor the Education Article defines “supervisory employee,” the Board relies on the federal definition provided in Section 2(11) of the National Labor Relations Act (NLRA), 29 U.S.C. § 152(11), which defines a supervisor as:

[A]ny 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 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.

This standard has three essential components: (1) the individual must possess the authority to take (or effectively recommend) at least one of the enumerated supervisory actions; (2) the individual must use independent judgment in the exercise of that authority; and (3) the authority must be exercised in the interest of the employer.

The Board applies this standard consistent with interpretations by the National Labor Relations Board (“NLRB”) and federal courts, while accounting for the specific context of Maryland’s community college system.

² Contrary to our concurring colleagues’ assertion, the majority from Wor-Wic is not creating a new evidentiary standard. To rebut the presumption that department heads are included in the unit, the contesting party must establish by a preponderance of the evidence that the department heads are supervisors.

E. Evaluations as Effective Recommendations

Evaluations are not themselves among the enumerated supervisory functions listed in Section 2(11) of the NLRA. However, the NLRB has held that an employee may be deemed a supervisor if their evaluations amount to effective recommendations concerning core employment actions—such as pay increases, promotions, discipline, or contract renewal—when those evaluations are routinely relied upon by higher administration without further independent investigation.

The foundational standard comes from Bayou Manor Health Center, 311 NLRB 955 (1993), and Beverly Enterprises, 329 NLRB 233 (1999), where the NLRB held that evaluations confer supervisory status when they are the proximate cause of employment decisions, and those decisions are made without independent verification or override.

For a recommendation to be “effective,” the NLRB has consistently required that it must routinely be followed by the administration. For example, in Ithaca College, 261 NLRB at 577–78, the Board credited testimony that faculty recommendations were “invariably” followed, including the approval of 500 faculty curriculum proposals without exception. Similarly, in College of Osteopathic Medicine, 265 NLRB at 297, the Board emphasized that faculty recommendations were “almost always followed.” In Livingstone College, 286 NLRB at 1310, 1313, faculty decisions were found to be routinely approved, with no evidence of contrary administrative action. By contrast, in St. Thomas University, 298 NLRB at 286, faculty recommendations were held to be ineffective because they were “usually ignored or reversed.”

Additional case law reinforces this standard across various sectors. In Starwood Hotels, 350 NLRB 1114, 1116 (2007), *citing* Progressive Transportation Services, 340 NLRB 1044 (2003), the NLRB held that recommendations are effective where the director “typically followed the supervisor’s recommendations without an independent investigation.” Likewise, in Mountaineer Park, 343 NLRB 1473 (2004), the NLRB found that even where upper management reviewed disciplinary recommendations, those recommendations were routinely “signed off” if justifiable, without conducting an independent investigation. More recently, in The Arc of South Norfolk, 368 NLRB No. 32 (2019), the NLRB reiterated that a “putative supervisor engages in effective ‘recommendation’ where his or her recommendations are routinely or usually followed without independent investigation.”

Collectively, these cases confirm that routine acceptance is the standard for effectiveness. Occasional administrative feedback or procedural acknowledgment does not negate the supervisory nature of an individual’s recommendations where those recommendations generally and predictably result in personnel actions.

F. Independent Judgment and Regularity

The NLRA and Board precedent further require that the employee’s supervisory actions be undertaken with independent judgment, meaning that the individual has discretion to weigh options, compare performance, and form conclusions based on an independent investigation and personal evaluation, not mechanical rule-following or detailed instructions from above.

This standard was articulated in Oakwood Healthcare, Inc., 348 NLRB 686, 693 (2006), where the Board explained that independent judgment must entail more than the application of fixed rules, checklists, or automatic processes. Assignments or evaluations that result from a predetermined formula or checklist do not meet the standard. Likewise, recommendations that are overridden or subject to independent investigation by others do not satisfy the requisite independent judgement.

Additionally, the supervisory authority must be exercised on a “regular and substantial” basis. Under the NLRB standard, “regular” means according to a pattern or a schedule, as opposed to sporadic substitution. The term "substantial" refers to the amount of time and weight of responsibility associated with the supervisory duties. Id. at 694.

IV. ANALYSIS

In this case, the dispositive issue is whether the employees in the disputed classifications—Academic Department Chairs, SOMS Coordinators, Head Librarians and Program Directors—perform evaluations that constitute effective recommendations on employment actions such as contract renewal, pay increases, promotion eligibility, or discipline, consistent with the standards applied by the NLRB and as adopted by this Board in Wor-Wic.

As explained above, in Bayou Manor Health Center, *supra*, and Beverly Enterprises, *supra*, evaluations are not themselves an enumerated supervisory function, but where an employee’s evaluation is the proximate cause of a personnel action (such as denial of a raise, non-renewal, or placement on a performance plan), the individual is considered a statutory supervisor under the Act. We adopt this principle that evaluation authority alone, when it reliably leads to consequential employment outcomes, may suffice for supervisory classification.

Thus, in this matter, the Board focuses its analysis on the testimony and evidence regarding whether the positions at issue make evaluations that directly and effectively determine pay, contract renewal, promotion eligibility, or discipline of unit employees.

A. Academic Department Chairs, SOMS Coordinators, Head Librarians and Program Directors

As previously discussed, CCBC is one of Maryland’s largest community colleges, serving over 50,000 students across multiple campuses and with over 400 full time faculty. Due

to its size and complexity, the College operates with a decentralized structure where Department Chairs, SOMS Coordinators, Head Librarians and Program Directors provide frontline academic supervision. Testimony confirmed that the Provost and Deans cannot feasibly manage day-to-day faculty oversight, and that these localized faculty leaders are critical to the College's academic and operational functioning. Their roles are not symbolic; they exercise real supervisory authority with direct consequences for employment decisions.

Importantly, the structure of CCBC's academic organization reinforces this supervisory framework. Each academic school has a Department Chair, SOMS Coordinator, or Program Director, and each campus has a Head Librarian who functions as the direct supervisor of faculty, tailored to the unique structural and accreditation needs of the school. This supervision is critical to the academic mission and operational efficiency of CCBC, particularly given the size and scale of its operations.

As an introduction to the analysis of individual classifications, it is necessary to acknowledge the overarching and consistent role that Academic Department Chairs, SOMS Coordinators, Head Librarians, and Program Directors play in the supervision and evaluation of full-time faculty at CCBC. The evidence in the record, particularly the testimony of CCBC administrators and supervisors, as well as policy documents, confirms that these employees function as "direct evaluating supervisors" with effective authority over key employment outcomes.

All positions CCBC claims to be supervisors are responsible for evaluating the performance of their direct reports, which includes full-time faculty. Evaluators do not merely collect inputs; they exercise independent judgment and assign performance ratings based on their knowledge of the faculty member's work and professional contributions. These evaluations culminate in the assignment of an overall rating of "Good," "Unsatisfactory," or "Needs Improvement," which carries direct employment consequences. The evidence establishes that neither Deans nor the Provost alter these ratings. Dr. Martinez, the Provost, testified that his role in the process is limited to ministerial acknowledgment, and he has never changed an evaluation rating. Assistant Dean Michael Venn affirmed that when a "Good" rating is checked, the faculty member automatically receives a 3% step increase in salary—the sole determining factor is the rating issued by the first evaluator. Furthermore, to be eligible for a promotion, a faculty member must receive a "Good" rating three consecutive years.

Moreover, faculty who receive "Unsatisfactory" evaluations are not only denied the salary increase but become ineligible for promotion, may be placed on performance improvement plans, may lose contract renewal eligibility, and can be excluded from overload teaching assignments. These outcomes demonstrate that Academic Department Chairs, SOMS Coordinators, Head Librarians, and Program Directors at CCBC have the authority to issue evaluations that serve as the proximate cause of material changes in employment status.

The consistency and autonomy with which these employees carry out evaluation duties, and the direct employment consequences that flow from those evaluations, support a finding that these employees are supervisory within the meaning of Md. Code Ann., Educ. § 16-701(j)(2).

a. Academic Department Chairs

ESOL and World Language Department Chair Rachele Lawton testified that she is a 12-month faculty member paid on the faculty scale. Her position as Department Chair is for four years. Her responsibilities as a Chair include serving as a conduit of information to and from Department faculty, working on curriculum, and attending CCBC meetings. She also has a role in dealing with student concerns, as well as some role in dealing with faculty issues. Lawton spoke about having once awarded an "unsatisfactory" rating on a performance evaluation: before doing so she had to involve her Dean. Likewise, if she would want to issue discipline, Lawton would need to identify the issue for those above her to decide how to proceed. She said that she relies on standardized processes when preparing performance evaluations.

The evidence revealed that Lawton, based on her familiarity with the work of Department faculty members, determines what rating to award: "Good," "Needs Improvement," or "Unsatisfactory," and that such decisions are not independently investigated by her Dean. Dean Mattes testified that she has never changed a Chair's rating. Largely attributable to the very large size of CBCC's faculty and the multiple sites, College witnesses (Provost, Assistant Deans and College Vice President) testified that they do not have the personal knowledge or experience with individual faculty members to develop an opinion of their work and therefore could not evaluate their work. The evidence also established that performance ratings effect automatic personnel actions including pay increases and contract renewals, as well as an employee's eligibility for promotion, and can result in the denial of a pay increase and the non-renewal of a faculty member's employment contract.

Based on their authority to evaluate faculty, which evaluations are routinely followed and not subject to independent investigation, we find that Academic Department Chairs are supervisors and excluded from the full-time faculty unit.

b. SOMS Coordinators

Charles Cotton, Coordinator for Physical Sciences testified that he is a 12-month faculty member in the School of Math and Science, one of eight such Coordinators at CCBC. He is paid on the faculty scale, but on a 12-month pay scale as opposed to other faculty who are paid for 10 months' work. As Coordinator, he schedules classes at two sites and "puts out fires." Cotton does not have authority to award a step increase, and he cannot fire a faculty member.

When preparing performance evaluations for his full-time faculty, Cotton prepares the narrative and checks the boxes (“Good,” “Needs Improvement,” or “Unsatisfactory”). Although his Assistant Dean, Michael Venn, occasionally asks him to "reconsider and revise" the comments, Venn has never changed the rating on a performance evaluation.

Based on their authority to evaluate faculty, which evaluations are routinely followed and not subject to independent investigation, we find that SOMS Coordinators are supervisors and excluded from the full-time faculty unit.

c. Program Directors

Jamie Taylor, Program Director for EMS Technology, testified that she hires adjuncts, evaluates faculty, assigns courses and can issue an improvement plan or initiate progressive discipline, though for anything egregious she would need to work with the HR Department. Her authority over hiring is exclusive; she selects candidates based on credential review and teaching demonstrations. Her job description lists supervision of staff and evaluation responsibilities as core functions. She also noted that all Program Directors within the School have the same authority, which is mandated by programmatic accreditation standards.

Program Directors in the School of Health Professions hold comprehensive supervisory authority. Assistant Dean Diane Flint testified that she does not assign or alter ratings provided by Program Directors. Even when a faculty member receives an “Unsatisfactory,” Flint's role is limited to passive review.

Based on their authority to evaluate faculty, which evaluations are routinely followed and not subject to independent investigation, and their authority to hire, we find that Program Directors are supervisors and excluded from the full-time faculty unit.

d. Head Librarians

Head Librarians at CCBC function as institutional supervisors responsible for the full management and oversight of library operations at each campus. Erika Harris, the Head Librarian at the Essex campus, testified that she supervises a team consisting of four full-time faculty, five classified staff, and two adjuncts.

Ms. Harris testified about her responsibilities. She has academic responsibilities, service obligations to CCBC, and decides building desk coverage. While performance evaluations are prepared according to CCBC senate-approved guidance, Ms. Harris has been asked to change the narrative portion when it did not adequately align with what CBCC sought, though she has never changed one of the boxes: "Good," "Needs Improvement" or "Unsatisfactory." Harris retains authority over the ultimate evaluative decision, which ratings lead to step increases or performance-related actions without further investigation by her superiors. She does not have

authority to discipline or fire a full-time faculty member. Those who report to her consider her their "boss."

Human Resources Director Tameika Scott testified that Head Librarians are treated as supervisors by the College and participate in formal supervisor training. HR may offer documentation templates, but the assessment and rating are entirely within the discretion of the Head Librarian.

Based on their authority to evaluate faculty, which evaluations are routinely followed and not subject to independent investigation, we find that Head Librarians are supervisors and excluded from the full-time faculty unit.

B. Temporary Employees

The College also seeks to exclude Visiting Lecturers from the bargaining unit on the grounds that they are temporary employees who do not share a community of interest with the regular full-time faculty members. The Board agrees.

The evidence establishes that Visiting Lecturers are employed under short-term contracts with no expectation of continued employment beyond the term of the assignment, which is typically for one or two semesters only. The College presented evidence that Visiting Lecturers are not eligible for full-time faculty benefits such as retirement contributions, sabbatical leave, or tuition remission. Moreover, they do not have access to the faculty grievance process, academic freedom protections, or other due process rights extended to full-time faculty. Visiting Lecturers may also be terminated with as little as two weeks' notice when their services are no longer needed, a condition that stands in stark contrast to the notice and procedural protections afforded to full-time faculty members.

It is well-established that employees who have no reasonable expectation of continued employment do not share a sufficient community of interest with permanent employees to be included in the same bargaining unit. This principle was articulated by the NLRB and courts, including TradeSource, Inc. v. NLRB, 17 F. App'x 159, 164 (4th Cir. 2001), NLRB v. Trump Taj Mahal Assocs., 2 F.3d 35, 38 (3rd Cir. 1993), and Goddard, 216 NLRB 457 (1975), which emphasize that transient or short-term employees lack the continuity of interest necessary for inclusion in a stable bargaining unit alongside full-time faculty.

Based on the significant differences in terms and conditions of employment, job security, benefits, and participation in College governance, the Board concludes that Visiting Lecturers are temporary employees who do not share a community of interest with full-time faculty and are, therefore, properly excluded from the bargaining unit.

V. CONCLUSIONS OF LAW

1. Under Md. Code Ann., Educ. § 16-701(j), full-time faculty are eligible for collective bargaining representation unless they are classified as “supervisory employees” pursuant to § 16-701(j)(2).
2. The burden of proof in a unit clarification petition rests with the party seeking to exclude employees from the bargaining unit based on supervisory status. That party must demonstrate, through specific and credible evidence, that the employee regularly exercises one or more supervisory functions with independent judgment.
3. PERB follows the federal standard for determining supervisory status under 29 U.S.C. § 152(11) of the NLRA, including authority to effectively recommend employment actions where such recommendations are routinely followed without independent investigation.
4. An employee’s performance evaluations may constitute “effective recommendations” sufficient to establish supervisory status where such evaluations directly result in pay increases, denial of promotions, placement on performance improvement plans, contract nonrenewal, or other employment consequences.
5. Academic Department Chairs, SOMS Coordinators, Program Directors, and Head Librarians at CCBC each conduct evaluations that are not subject to independent investigation, and which directly result in employment consequences including pay increases, promotion eligibility, and contract renewal or nonrenewal.
6. These positions exercise independent judgment in issuing evaluations and making employment-related decisions, and these supervisory duties are regular, substantial, and integral to the College’s academic and operational structure.
7. CCBC carried its burden of proof in showing Department Chairs, SOMS Coordinators, Program Directors and Head Librarians exercise supervisory authority.
8. Therefore, Academic Department Chairs, SOMS Coordinators, Program Directors, and Head Librarians at CCBC are supervisory employees within the meaning of Md. Code Ann., Educ. § 16-701(j)(2) and are excluded from the bargaining unit.
9. Visiting Lecturers are temporary employees who do not share a community of interest with permanent full-time faculty and are therefore ineligible for inclusion in the bargaining unit.

VI. ORDER

Based on the foregoing findings of fact and conclusions of law, it is hereby ordered:

1. The Petition for Unit Clarification filed by AFT-Maryland is hereby **DENIED** as to the inclusion of Academic Department Chairs, SOMS Coordinators, Program Directors, and Head Librarians.
2. These positions are found to be supervisory employees under Md. Code Ann., Educ. § 16-701(j)(2) and are properly excluded from the bargaining unit of full-time faculty employed by CCBC.
3. The Petition is further **DENIED** as to the inclusion of Visiting Lecturers, who are found to be temporary employees lacking a sufficient community of interest with full-time faculty to warrant inclusion in the bargaining unit.
4. The bargaining unit as certified on October 8, 2024, remains unchanged, and shall include all other eligible full-time faculty employees, excluding those classified herein as supervisors or temporary employees.

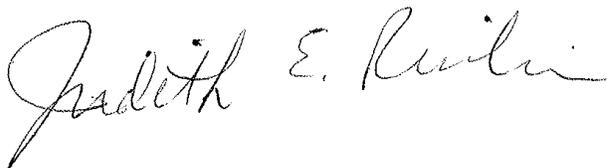
BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD:



Lafe E. Solomon, Chair



Lynn A. Ohman, Member



Judith E. Rivlin, Member

ANNAPOLIS, MD
May 23, 2025

APPEAL RIGHTS

Any party aggrieved by this action of the PERB may seek judicial review in accordance with Title 10, Subtitle 2 of the State Government Article, Annotated Code of Maryland, Sec. 10-222 (Administrative Procedure Act-Contested Cases) and Maryland Rules CIR CT Rule 7-201 et seq. (Judicial Review of Administrative Agency Decisions).

CONCURRING OPINION OF MEMBERS COOPERMAN AND STEYER

We concur in the majority's conclusion that Academic Department Chairs, SOMS Coordinators, Program Directors, and Head Librarians employed by the Community College of Baltimore County ("CCBC") are supervisory employees and, therefore, excluded from the full-time faculty bargaining unit. We also concur in the majority's decision that the Visiting Lecturers are temporary employees who do not share a community of interest with the regular full-time faculty and, therefore, are excluded from the full-time faculty bargaining unit.

We disagree, however, with the majority's adherence to the fictitious legal presumption it created in Maryland State Education Association v. Wor-Wic Community College, PERB UC 2024-04 (2025) ("Wor-Wic"), that department chairs are presumed to be included in the unit and that this presumption only can be overcome by "clear and specific" evidence that the challenged employees function as supervisors. Opinion at 6. In Wor-Wic we objected to the majority's creation of this presumption and its imposition of a heightened burden of proof to establish that department chairs are supervisors before they will be excluded from the unit. *See* Wor-Wic, supra, at 13-15 (Cooperman and Steyer, concurring in part and dissenting in part).

Although the majority asserts that it has not altered the preponderance of evidence burden of proof, the majority's imposition of proof through "clear and specific evidence" by means of a presumption is akin to the higher evidentiary standard of clear and convincing evidence. As we stated in Wor-Wic,

[I]f the sole purpose of the presumption were simply to establish that a bargaining unit of full-time faculty and non-supervisory department heads is appropriate, then use of a presumption would be much ado about nothing. The statute is clear that non-supervisory department heads are included in the full-time faculty unit and department heads who are supervisors are excluded from the faculty unit. The majority, however, does not stop there. Rather, . . . the majority uses their fabricated

presumption to impose what amounts to a heightened burden of proof on the College to establish that department heads are supervisors before they can be excluded from the unit.

Wor-Wic, supra, at

The heightened standard of proof required under the majority’s presumption is an unlawful departure from the mandated burden of proof established in the Administrative Procedure Act (“APA”), State Government Article, §10-217, and PERB’s regulations, COMAR 14.30.08.21, which require proof by a preponderance of evidence. As we noted in Wor-Wic, only the legislature has the authority to impose a higher burden of proof. “By using this heightened burden, the majority has exceeded its authority by going well beyond statutory interpretation and infringing on the province of the General Assembly,” which we cannot condone. Wor-Wic, supra, at 13 (Cooperman and Steyer, concurring in part and dissenting in part).

“To prove by a preponderance of the evidence means to prove that something is more likely so than not so. In other words, a preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true.” See Coleman v. Anne Arundel County Police Dept., 369 Md. 108, 126 n. 16 (2002). See also Wagner v. Pierce, 2025 WL 3983256 (2024); Mathis v. Hargrove, 166 Md.App. 286 (2005); SLEOLA v. Maryland Comptroller, SLRB ULP Case No. UC 2016-02 (2019) (ALJD p. 7-8) *citing Coleman*.

We find that the evidence presented by CCBC, including the testimony of the college’s witnesses, was credible and persuasive that department chairs, program directors, coordinators, and head librarians use independent judgment to effectively recommend pay determinations, contract renewal, promotion eligibility, and/or discipline in their evaluation of faculty. Applying the preponderance of evidence standard, we conclude that the totality of the evidence presented establishes that it is more likely than not that these employees are supervisors and appropriately excluded from the full-time faculty unit.



Harriet E. Cooperman, PERB Member



Richard Steyer, PERB Member

