

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

<b>In the Matter of:</b>	)	
	)	
<b>VEOLIA TRANSPORTATION SERVICES, INC.</b>	)	
	)	
<b>Employer,</b>	)	
	)	
<b>and</b>	)	<b>Case No.: 28-RC-071479</b>
	)	
<b>AMALGAMATED TRANSIT UNION, LOCAL 1637, AFL-CIO,</b>	)	
	)	
<b>Petitioner.</b>	)	

**EMPLOYER VEOLIA TRANSPORTATION SERVICES, INC.'S  
SUPPLEMENTAL STATEMENT IN OPPOSITION  
TO THE UNION'S REQUEST FOR REVIEW**

**McMAHON BERGER, P.C.**

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**EMPLOYER'S SUPPLEMENTAL STATEMENT IN OPPOSITION  
TO THE UNION'S REQUEST FOR REVIEW**

Comes now, Employer VEOLIA TRANSPORTATION SERVICES, INC. ("Veolia" or "Company") by and through its undersigned counsel, pursuant to Section 102.67(g) of the National Labor Relations Board Rules and Regulations, and herewith submits its Supplemental Statement in Opposition to the Union's Request for Review.

Pursuant to § 102.67(g) of the Board's Rules and Regulations, Veolia is attaching to the instant Supplemental Statement in Opposition its original Statement in Opposition to the Union's Request for Review, which Veolia filed with the Board on March 5, 2012. Attached to the Statement in Opposition is Veolia's Post-Hearing Brief filed with Region 28. Veolia requests the Board consider these prior filings when ruling on the Union's Request for Review.

As set forth in more detail in the previously-filed and attached Statement in Opposition and Post-Hearing Brief, Veolia urges the Board to uphold the Regional Director's Decision and Order. The Decision and Order is based on over 1,100 pages of hearing transcripts, hundreds of pages of exhibits and six days of hearing testimony. Both the Employer and the Union were represented by counsel and each had the opportunity to present several witnesses and cross-examine the other party's witnesses. The Decision and Order itself is thorough, addresses each party's arguments in support of their respective positions, and provides specific discussion of the basis for the Regional Director's ultimate conclusion that Veolia met its burden of establishing the Road Supervisors are Section 2(11) supervisors under the Act.

In supplementing its previously-filed Statement in Opposition, Veolia directs the Board's attention to the following precedent which establishes the road supervisors are statutory supervisors under Section 2(11) of the Act. *See, K.B.I. Security Services, Inc., 318 NLRB 268*

(1995) (road supervisors deemed Section 2(11) supervisors where they had authority to orally discipline employees and effectively recommend more severe discipline, each of which required exercise of independent judgment); ATC Management Corp., 1992 WL 1465658 (1992) (road supervisors stipulated to be Section 2(11) supervisor); Armstrong Tire & Rubber Co., 111 NLRB 708 (1955) (road supervisors held to be statutory supervisors under the Act). Excluding road supervisors from a bargaining unit of operators and drivers due to their Section 2(11) status likewise is not uncommon. *See*, MV Public Transportation, Inc., 356 NLRB No. 116 (2011).

In addition, the Road Supervisors are Section 2(11) supervisors as a result of the independent judgment they exhibit when effectively recommending discipline of employees. Specifically, in Berthold Nursing Care Center, 351 NLRB 27 (2007), the Board concluded supervisors who effectively recommended discipline of employees, which recommendations were accepted by upper management without further investigation, were statutory supervisors under the Act. As the Board held in Berthold Nursing, “it is clear that the counseling forms [completed by the supervisors] are a form of discipline because they lay a foundation, under the progressive disciplinary system, for future discipline against an employee.” 351 NLRB at 28.

Similarly, in Delta Carbonate, Inc., 307 NLRB 118 (1992), the Board concluded shift supervisors were statutory supervisors based on the fact they could effectively recommend discipline of employees. The Board concluded the supervisors at issue made recommendations for discipline to the production superintendent. The production superintendent, in turn, simply “verified” the appropriate personnel forms by countersigning them – he made no independent investigation of the circumstances surrounding the recommendation for discipline. *See also*, Deister Concentrator Company, Inc., 253 NLRB 358, 388 (1980) (shop foreman found to be statutory supervisors where he effectively recommended discipline of employees and his

supervisor relied on the foreman's recommendation without conducting further investigation into the facts of the situation); Cubit Systems Corporation, 194 NLRB 622 (1971) (individual deemed a Section 2(11) supervisor where her director followed her recommendations as to discipline without conducting further investigation); Home Exterminating Company, 160 NLRB 1480 (1966) (foreman found to be statutory supervisor where the record indicated his personnel recommendations as to discipline would be effective without an independent investigation); Spector Freight System, Inc., 141 NLRB 1110 (1963) (head dispatcher deemed Section 2(11) supervisor where he effectively recommended discipline of others and the facts of said recommendation were not investigated further by his manager).

Not only does the foregoing precedent, together with the precedent cited in Veolia's Statement in Opposition, support Veolia's position, but the Regional Director's Decision and Order is supported by the evidence in the record and the Union's arguments in its Request for Review are not supported by the record. As set forth in Veolia's previously-filed and attached Statement in Opposition and Post-Hearing Brief,

- The Regional Director correctly concluded the Road Supervisors discipline and effectively recommend discipline of operators. The counseling and coaching issued by the Road Supervisors constitute discipline as it is the first step in Veolia's progressive discipline policy. The Regional Director concluded the Road Supervisors "exercise broad discretion in deciding whether or not to report infractions." Thereafter, as confirmed by the Regional Director, upper management does not further investigate the underlying incident which prompted the discipline. Moreover, the Regional Director concluded, based on the evidence presented at hearing, the issuance of an Observation Notice by a Road Supervisor results in discipline being imposed, with only the level of discipline being left to the determination of upper management based on a

review of the operator's personnel record. Finally, as stated by the Regional Director, the Road Supervisors' issuance of Observation Notices constitutes "an integral first step of the disciplinary process which would not have otherwise occurred."

- The Regional Director addressed the Union's counter-arguments and rejected them; particularly, the Union's argument concerning the application of the Board's recent case of DIRECTV U.S., 357 NLRB No. 149 (2011). As noted by the Regional Director, DIRECTV U.S. is not applicable to the instant case as the facts are significantly different given the greater amount of management review of the counseling forms prepared by the supervisors at issue in that case.

- The Regional Director also correctly concluded that the Road Supervisors exercise independent judgment in rewarding the operators by issuing "Pats on the Back," which ultimately result in a monetary benefit to the operators.

- Finally, the Regional Director correctly relied upon the numerous examples submitted by Veolia of secondary indicia of supervisory status, including, but not limited to, different uniforms, access to e-mail accounts and company computers, attendance at management meetings, and the extreme supervisor to employee ratio should the Road Supervisors not be deemed Section 2(11) supervisors under the Act.

WHEREFORE, Veolia submits that the Regional Director correctly concluded in his Decision and Order that the Road Supervisors are statutory supervisors under Section 2(11) of the Act and properly dismissed the Union's petition in its entirety. Accordingly, the Union's Request for Review must be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this 2nd day of April, 2012, served the foregoing via the National Labor Relations Board's electronic filing system addressed as follows:

Lester A. Heltzer  
Executive Secretary  
National Labor Relations Board  
1099 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20570-0001

I hereby certify that on this 2<sup>nd</sup> day of April, 2012, the foregoing was sent via Federal Express to the following:

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**EMPLOYER VEOLIA TRANSPORTATION SERVICES, INC.’S  
STATEMENT IN OPPOSITION TO THE UNION’S REQUEST FOR REVIEW**

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Comes now, Employer VEOLIA TRANSPORTATION SERVICES, INC. (“Veolia” or “Company”) by and through its undersigned counsel, pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, and herewith submits its Statement in Opposition to the Union’s Request for Review.

**I. STATEMENT OF THE CASE**

On December 28, 2011, Amalgamated Transit Union, Local 1637 (“Union” and/or “Petitioner”) filed its Petition with the Board seeking to become the collective bargaining representative of Road Supervisors employed by Veolia at its Las Vegas, Nevada operation. In accordance with NLRB procedures, the Board conducted a six (6)-day hearing beginning on January 9, 2012, before Hearing Officer Michael J. Johnson. The Employer and the Union each presented several witnesses at hearing.

The issue raised at hearing was whether the Road Supervisors the Union sought to represent were statutory supervisors under Section 2(11) of the Act. The parties filed post-hearing briefs on January 27, 2012.

**II. THE REGIONAL DIRECTOR’S DECISION AND ORDER**

On February 2, 2012, the Regional Director for Region 28 issued his Decision and Order, wherein he correctly concluded the Road Supervisors are statutory supervisors and not employees within the meaning of Section 2(3) of the Act. In reaching his conclusion, the Regional Director went through an exhaustive legal and factual analysis of all applicable Board precedent and relevant facts. As a result, the Regional Director held the Road Supervisors exercise broad discretion in the disciplinary process in determining whether or not to issue an Observation Notice (OBN). The Regional Director further concluded that the incident

underlying the OBN is not investigated further by upper management prior to determination of the level of discipline to be assessed. Significantly, the Regional Director held that “Road Supervisors, by the act of issuing on OBN, initiate an integral first step of the disciplinary process which would not have otherwise occurred.” (See, Decision and Order, p. 5)

The Regional Director further concluded the Road Supervisors are statutory supervisors because they exercise independent judgment in recommending what conduct and which employee should be rewarded. Finally, the Regional Director held the numerous secondary indicia of supervisory status, including, but not limited to, different uniforms, e-mail accounts, computer access, management meetings, and the ratio of supervisors to operators, also resulted in the conclusion that the Road Supervisors are statutory supervisors.

### **III. ISSUE RAISED IN THE UNION’S REQUEST FOR REVIEW**

On February 27, 2012, the Union filed its Request for Review of the Regional Director’s Decision and Order. In its Request for Review, the Union asserts the Regional Director departed from “officially reported Board precedent and, as such, a substantial question of law exists.” In addition, the Union asserts the Regional Director’s Decision and Order “is clearly erroneous on substantial factual issues, as evidenced by the record, and such error prejudicially affects the rights of the Union and the road supervisors.” The Employer now files its Statement in Opposition to the Union’s Request for Review.

### **IV. STATEMENT OF FACTS**

Rather than simply repeat the factual recitation contained in the Employer’s Post-Hearing Brief submitted to the Region, the Employer incorporates by reference said Brief and attaches it to this Statement in Opposition as Attachment A for the Board’s Review. Furthermore, the

Regional Director's Decision and Order, attached to the Union's Request for Review, accurately reflects the relevant facts.

**V. THE UNION'S REQUEST FOR REVIEW MUST BE DENIED**

**A. The Regional Director Correctly Concluded Road Supervisors Are Section 2(11) Supervisors Under the Act Because They Discipline and Effectively Recommend Discipline of Operators.**

**1. Applicable Legal Principles of Supervisors Under the Act.**

Section 2(11) of the Act defines "supervisor" as:

"an 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 forgoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

29 U.S.C. § 152(11). The possession of any one of the indicia specified in Section 2(11) is sufficient to confer supervisory status, as long as the authority is carried out in the interest of the employer and requires the exercise of independent judgment. *Arlington Masonry Supply, Inc.*, 339 NLRB 817 (2003). "Failure to exercise authority does not negate supervisory status because possession rather than exercise of supervisory authority determines supervisory status." *Westwood Health Care Center*, 330 NLRB 935, 938 (2000). Stated slightly differently, it is the existence of the supervisory power that determines whether the individual is a supervisor under the Act, not whether the individual actually has exercised that power. *Arlington Masonry Supply, Inc.*, 339 NLRB at 818.

Thus, applying the foregoing definition, individuals are supervisors if "(1) they hold the authority to engage in any 1 of the 12 supervisory functions listed in Section 2(11); (2) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment; and (3) their authority is 'held in the interest of the employer.'" *NLRB v.*

*Kentucky River Community Care*, 532 U.S. 706, 713 (2001). An individual’s supervisory status can be established if the putative supervisor has the authority to either perform a supervisory function or to effectively recommend a supervisory function.

The Board clearly has established that an individual or class of individuals constitute a supervisor under Section 2(11) if the employees have the authority to effectively recommend discipline. *Progressive Transportation Services, Inc.*, 340 NLRB 1044 (2003); see also *Mountaineer Park, Inc.*, 343 NLRB 1473, 1474-1475 (2004). Under this standard, an individual is a supervisor when they *initiate the disciplinary process* based on their own independent judgment, without an independent investigation being conducted by the employer’s upper management. *Id.*

In *Progressive Transportation Services, supra*, the employer provided public transportation services and the union sought to represent the dispatchers. One of the individuals the union sought to represent was the “lead supervisor,” who, in addition to performing regular dispatching functions, also prepared and issued discipline notices to the dispatchers. The Board found the lead supervisor had the authority to effectively recommend discipline under Section 2(11) because she initiated the disciplinary process. Specifically, and of particular relevance to the instant case, the lead supervisor did not prepare the discipline notices independently, but brought employee disciplinary concerns to the attention of her manager, the Operations Manager, who decided the level of discipline based upon the supervisor’s report and recommendation. *Id.*, at 1045-1046. The Board noted that “even if [the lead supervisor] does not issue discipline entirely on her own, she uses independent judgment to effectively recommend discipline.” *Id.*, at 1045. The Board held that the lead supervisor “effectively recommends discipline to [the Operations Manager] when she brings rule infractions and misconduct to [the Operations

Manager's] attention, thereby initiating the discipline process." *Id.* In addition, the Operations Manager did not thereafter conduct an independent investigation of the incident in question, but generally followed the supervisor's recommendations. *Id.* Based on these facts, which are the same as in the instant case, the Board concluded the lead supervisor was a Section 2(11) supervisor under the Act.

In *Mountaineer Park, Inc.*, 343 NLRB 1473 (2004), the Board found that individuals classified as assistant supervisors were Section 2(11) supervisors because they were authorized to write recommendations for disciplinary action. Even though the disciplinary recommendations were reviewed and approved by upper management, the manager had a policy of merely "signing off" on recommendations if they were justified, without conducting an independent investigation. *Id.*, at 1474. The Board found that "if the assistant supervisor brought a disciplinary matter to the attention of management, discipline would ensue, demonstrating that the assistant supervisors' disciplinary recommendations were effective." *Id.*, at 1475. The Board further found it significant that the assistant supervisors effectively recommended discipline because they had the authority to bring employee rule infractions and misconduct to the Director of Housekeeping's attention, "thereby initiating the disciplinary process." *Id.*, at 1474.

Similarly, in *Starwood Hotels & Resorts Worldwide, Inc.*, 350 NLRB 1114 (2007), the Board found that the Front Desk Supervisor was a statutory supervisor based upon his/her authority to effectively recommend discipline. *Id.* The Board reached this conclusion based on the fact the Front Desk Supervisor initiated disciplinary action through coach and counsel sessions of an employee and made a recommendation that the employee be harshly disciplined after he repeatedly coached the employee about treating hotel guests rudely. *Id.*, at 1116-1117. The Manager then accepted the Front Desk Supervisor's report of the incident without

conducting his own independent investigation and issued discipline against the employee based on the Front Desk Supervisor's report. *Id.*

Identical to the facts in the instant case, in *Lucky Cab Company*, 2011 WL 6839070 (N.L.R.B. Div. of Judges Dec. 28, 2011), the Administrative Law Judge found that three Road Supervisors who worked for a taxicab company were supervisors under Section 2(11) because they were given the responsibility to report driver infractions they observed and did so based upon their own discretion. The Judge found that the Road Supervisors were Section 2(11) supervisors because "their reports, laying as they did, foundations for future discipline against drivers, were a form of discipline." *Id.* (citing *Oak Park Nursing Care Center*, 351 NLRB 27 (2007)). The Judge further held: "Since respondent regularly based discipline on the Road Supervisors' reports without conducting intervening, independent investigation, the reports played a significant role in the disciplinary process and amounted to effective recommendation of discipline." *Id.* (citing *Bon Harber Nursing and Rehabilitation Center*, 348 NLRB 1062 (2006)).

**2. The Regional Director Correctly Applied Applicable Legal Precedent Concerning the Authority of Road Supervisors to Discipline Employees in Concluding they are Statutory Supervisors under the Act.**

Based on the facts presented at hearing and the above legal precedent, the Regional Director correctly concluded the Road Supervisors discipline and effectively recommend discipline of operators. In fact, the evidence adduced at hearing establishes that (1) counseling and coaching constitute discipline, and (2) the Road Supervisors are authorized and actually do directly discipline coach operators by issuing counseling and coachings in the field. Coaching and/or counseling is the first step of progressive discipline and constitutes discipline.

Furthermore, Road Supervisors have been given the actual authority to discipline operators without additional investigation by other managers or senior supervisors. Road Supervisors have actually exercised this authority by issuing coachings and counselings to coach operators. For instance, where a Road Supervisor observes an operator engaging in a serious safety violation, the Road Supervisor can stop the operator and coach him or her directly on the violation (TR 182; 340, 346-47; 363; CX-34). Senior Supervisor Barry Goldsmith confirmed Veolia's position in this regard:

... Road Supervisors can function out in the field without any direct supervision from, say, me [a Senior Administrative Supervisor]. They can function on their own. They know what they need to do. They know the rules and policies and how to enforce them, and how to do their jobs properly, and discretion, would mean that they know when they need to approach an Operator concerning a violation, and have them come see me, and when they themselves can just handle it out in the field themselves.

(TR 393-94).

Consistent with the foregoing and with applicable Board precedent, former Road Supervisor Ken Green testified that he absolutely had the authority to issue counselings in the field. (TR 641.) Ila Meyers, another Road Supervisor, testified that she deals directly with operators who have violated rules and policies. (TR 834-35, 839.) Ms. Meyers confirmed that Road Supervisors have the authority to issue OBNs or speak to the operators verbally. (TR 837-38.) When she speaks to operators, she is trying to change their behavior so they make better decisions. (TR 839-40, 875.) In cases where the Road Supervisor personally and directly issues an in-field counseling or coaching, the Administrative Senior Supervisor who later receives the OBN will simply enter the discipline (counseling or coaching) issued by the Road Supervisor into the employee's record. (TR 350, 363; CX-34.)

In addition, the Road Supervisors effectively recommend discipline. The evidence presented at hearing establishes that, through the OBN procedure, Road Supervisors (1) are responsible for observing, investigating, identifying and reporting the coach operators' violations, (2) exercise discretion in determining whether to report infractions, (3) engage in subjective editorializing about the infractions, and (4) those reports directly lead to discipline and are the sole basis of same.

Specifically, Road Supervisors are responsible for correcting employees' poor behavior. In issuing OBN's, the Road Supervisors assert their responsibility for observing, investigating and reporting violations. They have been trained on the Company's policies and procedures and supervise every coach operator in their designated work zone.

The Road Supervisors also exercise a great deal of discretion in determining whether to report observed infractions. The Company established at hearing that Road Supervisors often exercise discretion and decide not to issue an OBN even though one might have been warranted. Instead, the Road Supervisor can decide, independently, to simply discuss the matter with the operator. In short, the Road Supervisor makes the decision whether or not to issue an OBN and does so with the ultimate goal of using the most effective method to change the employees' behavior so they make better decisions in the future.

The Road Supervisors also exercise a great deal of discretion in their subjective editorializing about the infractions they observe. In other words, when completing the "Observation" section of the OBN, the Road Supervisor retains discretion in determining what will be documented. In so doing, the Road Supervisor relies on his/her specific observations and on what he/she has determined to be relevant based on his/her independent evaluation of the situation, including his/her own investigation into the incident.

Furthermore, as a direct result of the Road Supervisor's OBN, discipline can and does result to the operators. No further investigation occurs by upper management other than a review of the operator's disciplinary record to determine the appropriate level of discipline. The Administrative Senior Supervisor takes the Road Supervisor's written description as set forth on the OBN as true and complete, and issues discipline based on the Road Supervisor's version of fact and determinations as set forth on the OBN (TR 336; 491; 514-15). The Administrative Senior Supervisor reviews the contents of the OBN with the operator and issues the appropriate, pre-determined discipline just as in *Lucky Cab Co.*, supra, where the discipline was issued without "conducting intervening, independent investigation."<sup>1</sup>

In summary, the Regional Director correctly held the Road Supervisors are statutory supervisors as they exercise significant independent discretion in disciplining and effectively recommending discipline of operators. The evidence set forth at hearing, as summarized in the attached Post-Hearing Brief, clearly establishes the correctness of the Regional Director's Decision and Order in this regard.

**B. The Regional Director Correctly Concluded That The Road Supervisors Are Statutory Supervisors Under the Act Because They Reward Operators.**

The Regional Director also correctly concluded that the Road Supervisors are supervisors under Section 2(11) of the Act due to the fact they reward operators. At the hearing, the uncontroverted testimony established that Road Supervisors can effectively recommend that coach operators be rewarded for their service through the issuance of Pats on the Back and On the Spot Rewards. Importantly, when a coach operator receives an On the Spot award, the coach operator also receives a plaque and \$100.00. At hearing, Ila Meyers, a Road Supervisor called

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<sup>1</sup> In addition, note that the Road Supervisors effectively recommend discipline based on accident reports they complete after conducting an investigation into the accident. *See*, pages 28-30 of the Company's Post-Hearing Brief.

by the Union, admitted that 100% of the time she has recommended that a coach operator receive an On the Spot, her recommendation was followed.

**C. The Regional Director Correctly Concluded That The Road Supervisors Are Statutory Supervisors Under The Act Because Of The Secondary Indicia Of Supervisory Status.**

The Regional Director also correctly concluded that the abundant evidence of secondary indicia of supervisory status readily supports a finding that the Road Supervisors are statutory supervisors under the Act. The Company provided a detailed summary of this secondary indicia in its Post-Hearing Brief at pages 38-54, a copy of which is attached. The Regional Director correctly relied on many of these facts in his Decision, including, without limitation, different uniforms that indicate “supervisor” designation, the issuance of a company e-mail account to allow communication with management, attendance at management meetings, and a significant supervisor to employee ratio in the absence of the Road Supervisors being deemed statutory supervisors (94:1).

**D. The Union’s Arguments In Support Of Its Request For Review Must Fail.**

The Union makes various statements and arguments in its Request for Review which Veolia maintains do not warrant the Board granting review of the Regional Director’s Decision and Order. Each of the Union’s positions shall be addressed in turn.

- The Union notes in its Request for Review that Veolia circulated a new observation notice (“OBN”) after receiving notice of the Union’s intent to organize the Road Supervisors. *See*, page 3 of Request for Review. The Union’s raising the issue of the new OBN’s is nothing more than a “red herring” and must not be given any consideration by the Board. In his Decision and Order, the Regional Director did not rely upon the fact that the Company distributed a new OBN in late-2011/early-2012. Rather, the Regional Director relied

upon the numerous OBN's submitted into evidence by Veolia at the hearing in support of its position that the OBN's constitute discipline. Thus, the Union's attempt to confuse the issue must be rejected by the Board.

- The Union argues the Regional Director departed from longstanding Board law on the definition of "reward" when he concluded the Road Supervisors' participation in the reward process at Veolia established the Road Supervisors are supervisors under the Act. *See*, Request for Review, p. 15-16). The Union relies on Brown & Sharpe Mfg. Co., 87 NLRB 1031 (1949), for the proposition that the term "reward" refers to "powers normally exercised by foremen or persons of like or related rank, such as the power to grant or recommend merit wage increases. . ."

The Union's stretches the meaning of Brown & Sharpe Mfg. Co. beyond where the Board has interpreted its definition of reward. For example, in Overnite Transportation Company, 343 NLRB 1431 (2004), the Board upheld the Administrative Law Judge's finding that a dispatcher was a statutory supervisor where he rewarded employees through the issuance of wage supplements in the form of additional pay if the employer had properly performed his job. In other words, a merit wage increase is not the only method of reward permitted by the Board to establish supervisory status.

- In accusing the Regional Director of ignoring evidence, the Union ignores evidence itself. Specifically, the Union asserts additional investigation occurs after the Road Supervisor completes and submits OBN. What the Union fails to note, however, is that the Regional Director directly acknowledged in his Decision and Order that OBN's are reviewed by two (2) other individuals after submission by the Road Supervisor. First, the Regional Director acknowledged that the Assistant Night Manager "enters the OBN into a database maintained by

the Employer for future reference and then forwards it to the appropriate AS Supervisor.” *See*, Decision and Order, p. 4. The Regional Director further acknowledged the AS Supervisor [Administrative Senior Supervisor] “reviews the OBN, references the Employer’s database to determine how many, if any, violations the operator previously committed, and determines the appropriate level of discipline based upon the Employer’s progressive disciplinary policy.” *See*, Decision and Order, p. 4.

Further, the Regional Director directly addressed the Union’s position with respect to additional investigation conducted by the AS Supervisor:

“Once the RS [Road Supervisor] prepares the OBN, the underlying incident is not further investigated. Rather, the violation as described by the RS is accepted as true by the AS Supervisor. The record shows that only in rare circumstances, e.g., where the OBN is challenged by the operator with convincing evidence or where the OBN is inadequately completed, does the issuance of an OBN by an RS not result in some form of discipline.” *See*, Decision and Order, p. 5.

Thus, the Union’s assertion must be rejected by the Board as the Regional Director already addressed the issue of additional investigation in his Decision and Order.

In addition, the Union completely misses the premise behind the Regional Director’s and the Company’s position with respect the Road Supervisor’s participation in the disciplinary process. As the Regional Director concluded, “[w]hile the RSs themselves do not directly determine the level of discipline imposed, ***RSs, by the act of issuing an OBN, initiate an integral first step of the disciplinary process which would not have otherwise occurred.***” *See*, Decision and Order, p. 5 (emphasis added). In other words, the Road Supervisors are statutory supervisors, in part, because they exercise independent discretion in issuing the OBN’s which is the first step of the Company’s disciplinary process. The fact that the OBN’s are reviewed as

others to determine where the employee is located along the progressive disciplinary scale does not remove the independent discretion and judgment exercised by the Road Supervisors.

- The Union also asserts the Regional Director ignored the Board's recent decision in DIRECTV U.S., 357 NLRB No. 149 (2011). The Regional Director did address the Board's DIRECTV decision in his Decision and Order and found the facts in the instant case to be distinguishable. As noted by the Regional Director, the amount of review that took place in DIRECTV was much more involved than the review that occurs at Veolia:

“The ECF [employee consultation form] itself, and its content, were then subject to management review. In that case, after the field supervisors submitted a draft ECF, an operations manager, a site manager, and the human resources department each reviewed the ECF. At each stage of review, the reviewer could alter the language of the ECF, modify the level of discipline, or decide that the ECF should not itself be issued.” *See*, Decision and Order, p. 5.

At Veolia, however, the level of review conducted by the Assistant Night Manager and Administrative Senior Supervisor is much more limited than that in DIRECTV. The Regional Director contrasted this limited amount of review in his Decision:

“In the instant case, the first review of the OBN is conducted by the Night Manager, *though such review is solely and simply for the purpose of entering them into the Employer's database* before forwarding the OBN to the AS Supervisor. The AS Supervisor's review of the OBN *is limited, as well*. The facts and determinations set forth by the RS, as well as the merits of the infractions cited by the RS, are not independently investigated by the AS Supervisors.” *See*, Decision and Order, p. 6 (emphasis added).

Thus, the facts of DIRECTV are distinguishable from the instant case and, accordingly, the Regional Director clearly was warranted in not applying the same result.

- The Union relies on a statement made by Kenneth Green, Senior Operations Supervisor, during the hearing that he did not believe he had authority to recommend discipline when he was a Road Supervisor. A more thorough examination of Mr. Green's testimony

reveals he in fact did believe he had disciplinary authority based on his ability to issue or not issue an OBN. Specifically, Mr. Green testified that he would issue an OBN if he observed a safety violation and he could decide to issue it onsite if he chose to do so. (TR 638-39). Mr. Green also testified he often made the decision not to issue an OBN and instead chose to speak with the operator about the performance issue as a coaching or counseling (TR 639-40). In fact, Mr. Green specifically stated, “I say there’s a lot of discretion involved there because I can submit an OBN just from seeing it.” (TR 640). Mr. Green then confirmed he believed he had the authority to issue such a counseling in the field (TR 641).

Mr. Green also testified he believed he had supervisory authority based on the training he had received, such as reasonable suspicion training (TR 646). Furthermore, Mr. Green confirmed his role in the disciplinary process:

Q: And in your capacity as a road supervisor, did you feel as though you played a role in disciplinary process?

A: Yes.

Q: And what role did you think that you were playing?

A: Well, just initially by serving an OBN initially. (TR 646).

Thus, when examined in its totality, Mr. Green’s testimony supports the Regional Director’s and Veolia’s position that the Road Supervisors play an integral role in the disciplinary process.

- The Union’s argument that the Road Supervisors do not discharge or effectively recommend discharge also is a “red herring” as the Regional Director did not rely upon any such authority in his Decision and Order. Rather, the Regional Director correctly relied upon the Road Supervisors’ participation in the first step of the progressive discipline process to conclude they are statutory supervisors.



**CERTIFICATE OF SERVICE**

I hereby certify that I have this 5<sup>th</sup> day of March, 2012, served the foregoing via the National Labor Relations Board's electronic filing system addressed as follows:

Lester A. Heltzer  
Executive Secretary  
National Labor Relations Board  
1099 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20570-0001

I hereby certify that on this 5<sup>th</sup> day of March, 2012, the foregoing was sent via Federal Express to the following:

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/s/ James N. Foster, Jr.

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

<b>In the Matter of:</b>	)	
	)	
<b>VEOLIA TRANSPORTATION SERVICES, INC.</b>	)	
	)	
<b>Employer,</b>	)	
	)	
<b>and</b>	)	<b>Case No.: 28-RC-071479</b>
	)	
<b>AMALGAMATED TRANSIT UNION, LOCAL 1637, AFL-CIO,</b>	)	
	)	
<b>Petitioner.</b>	)	

**EMPLOYER VEOLIA TRANSPORTATION SERVICES, INC.’S  
POST HEARING BRIEF**

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**EMPLOYER VEOLIA TRANSPORTATION SERVICES, INC.’S  
POST HEARING BRIEF**

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Comes now, Employer VEOLIA TRANSPORTATION SERVICES, INC. (“Veolia” or “Company”) by and through its undersigned counsel, pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, and herewith submits its Post-Hearing Brief.

**I. PROCEDURAL BACKGROUND**

On December 28, 2011, Amalgamated Transit Union, Local 1637 (“Union” and/or “Petitioner”) filed its Petition with the Board seeking to become the collective bargaining representative of Road Supervisors employed by Veolia at its Las Vegas, Nevada operation. In accordance with NLRB procedures, the Board conducted a six (6)-day hearing beginning on January 9, 2012, before Hearing Officer Michael J. Johnson. Appearing for the Employer were Geoffrey M. Gilbert, Jr., Esq. and Gina Moshiri, Esq. Appearing for the Petitioner was Eileen M. Bissen, Esq. and Benjamin Lunch, Esq. The Employer and the Union each presented several witnesses at hearing.

**II. ISSUE**

The issue before the Board is whether the Road Supervisors sought to be represented by the Union in its petition are statutory supervisors under Section 2(11) of the Act.

**III. STATEMENT OF FACTS**

**A. Company Background**

Veolia operates the public transportation system for Las Vegas, Henderson, and North Las Vegas, Nevada (TR 18).<sup>1</sup> The Regional Transportation Commission (“RTC”) contracted with Veolia to perform fixed route services for RTC, meaning the buses, also referred to as

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<sup>1</sup> The citation (TR \_\_) shall refer to pages from the hearing transcript; the citation (CX-\_\_) shall refer to exhibit introduced into evidence by the Employer).

coaches, and routes have a fixed schedule and set locations where the buses stop and pick up and drop off passengers (TR 19, 28). To service Las Vegas, Henderson and North Las Vegas the Company operates out of two (2) facilities, referred to as the Simmons facility, or bus maintenance facility, and the Sunset facility (cumulatively referred to as the “Las Vegas facility”) (TR 24). The Company currently employs approximately seven hundred and fifty (750) coach operators at its Las Vegas facility and the Company provides transportation services 24 hours a day, 7 days a week out of its Las Vegas facility (TR 19). Approximately 60% of the coach operators work out of the Sunset location (TR 25). The remaining coach operators work out of the Simmons location and the administrative offices for the Las Vegas facility are at the Simmons locat

Currently there are four (4) terminals used by Veolia in Las Vegas: Bonneville Transit Center; South Strip Transfer Terminal; Westcliff Transfer Center; and Centennial Hills Transit Center (TR 56). Veolia staffs the South Strip and Bonneville Transit Centers with Terminal Supervisors (TR 56). These terminals are the primary transfer points for passengers who are transferring from one bus line to another (TR 56). Each terminal has bays for the buses, restrooms, a supervisor’s office, passenger common area, and an operators’ break room (TR 56-57).

Terminal supervisors have essentially the same duties as the Road Supervisors, but they are not mobile; rather, the terminal supervisors are stationed at the terminals (TR 57). The two job titles are synonymous (TR 60-61).

The Bus Operation Center (“BOC”) receives calls from operators with mechanical difficulties or who have had an accident or other incident while on a route (TR 40). The BOC also tracks service through the computer system to determine whether buses are on time (TR 40).

If an operator is having difficulties and needs assistance, the BOC can dispatch a Road Supervisor or local law enforcement, medical services, the fire department, or whoever is needed to address the problem (TR 40-41). The BOC Senior Supervisor is in charge of the BOC, directing the radio operators and dispatching the Road Supervisors (TR 45). In the event a bus is running late, the terminal supervisor may contact the BOC to advise of the delay, the reason for the delay, and how far behind the operator is from the schedule (TR 58). The BOC then documents this information for later review (TR 58).

## **B. Organizational Structure of the Las Vegas Operations**

### **1. Managers**

Larry Kucera, the General Manager, is the highest ranking Company official at the Las Vegas facility (TR 43; CX-7). Immediately below the General Manager is the Director of Transportation, which currently is vacant (TR 44; CX-7). Below the Director of Transportation are several Managers, including Ryan Neale, who is the Bus Operations Center<sup>2</sup> Manager (TR 17; 44-45; CX-7). The Managers oversee the performance of the Senior Supervisors (TR 45). Mr. Neale, for example, manages the BOC Senior Supervisors, the Planning Senior Supervisor, the Dispatch Senior Supervisor, and the Scheduling Senior Supervisor (TR 45).

### **2. Administrative Senior Supervisors**

Currently, there are a total of four (4) Administrative Senior Supervisors at the two locations as well as four (4) Senior Road Supervisors (TR 46; CX-7). The primary role of the Administrative Senior Supervisors is to *administer* any discipline to the bus operators (TR 46-47). The Administrative Senior Supervisors perform their duties in an office at the facility and are not on the road like the Road Supervisors (TR 46). Information concerning the discipline of

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<sup>2</sup> Bus Operations Center is commonly referred to as “BOC” and shall be referenced as such in this Brief.

operators is not shared with operators, only with supervisors (including Road Supervisors) and managers (TR 49-50).

It is undisputed that senior supervisors, including administrative and operations, are statutory supervisors as defined under section 2(11) of the Act and all of the record evidence supports said position. In this respect, the record evidence establishes that senior supervisors: (1) have the authority to issue discipline to coach operators and they routinely exercise said authority (TR 671); (2) have the authority to direct operators in daily assignments and routinely exercise said authority (TR 671-72); (3) have the authority to assign work using independent discretion and routinely exercise said authority (TR 672); (4) have the authority to evaluate work performed by road supervisors and routinely exercise said authority (TR 672); have the authority and routinely exercise the authority to make hiring decisions of road supervisors and coach operators (TR 672) and; (5) have the authority to reward road supervisors and coach operators and routinely exercise said authority (TR 672-673).

### **3. Senior Operations Supervisors**

Senior Operations Supervisors (also referred to as Field Senior Supervisors) (hereinafter “Senior Supervisors”) are directly responsible for supervising and evaluating the performance of the Road Supervisors (TR 51). Senior Supervisors conduct annual performance evaluations of Road Supervisors (operators do not receive annual evaluations) (TR 53; 237). Such evaluations are conducted pursuant to the Performance Appraisal and Development Plan for Supervisors and Managers (TR 237; CX-26 & 27). One of the areas of evaluation with respect to the Road Supervisors is their ability to engage in problem solving and decision making (TR 240; CX-27).

Senior Supervisors conduct daily briefings with Road Supervisors and pass along any information the Road Supervisors need to perform their duties (TR 51). At these daily briefings,

which no operators attend, the Senior Supervisors discuss any “hot” topics that may be an issue, such as a specific route that may be having difficulties or safety issues or higher than normal traffic volume (TR 52). The Senior Supervisors also may distribute “tailgates” or safety team contacts containing safety messages during the daily briefings that the Road Supervisors are to provide to the operators while out in the field (TR 52). Senior Supervisors spend the majority of their time in the office (TR 53).

#### **4. Road Supervisors**

Road Supervisors —synonymous with Transit Supervisors, Transit Services Supervisors, and Yard Supervisors (Tr. 401, 432, 585)— primarily are responsible for responding to calls given to them by the BOC, observing operators while on their route to make sure they are following policies and procedures and operating their buses safely, performing accident and incident investigations, conducting minor troubleshooting of buses while on route, and distributing infractions (TR 54). Road Supervisors can decide what duties and responsibilities they are going to perform unless they have been directed to perform a particular task by BOC (TR 55). In other words, Road Supervisors decide they are going to conduct a time check, perform safety team contacts, drive down a route, check in on an operator, etc. (TR 55).

#### **5. Coach Operators**

Coach operators are represented by the Amalgamated Transit Union, Local 1637, the same Union seeking to represent the Road Supervisors in the instant matter, and their terms and conditions of employment are contained within a collective bargaining agreement (TR 21; CX-2). The current collective bargaining agreement, which covers the operators and not the Road Supervisors, is in effect until June 30, 2013 (TR 23; CX-2). The prior bargaining agreement was

in effect from January 1, 2006 through December 31, 2010, and also did not cover the transit operators (TR 23; CX-3).

Operators are responsible for the safe operation of the coach (or bus) they are driving (TR 21). Veolia assigns operators to a particular route where they pick up and drop off passengers at various locations along their designated routes (TR 21). Veolia assigns routes to operators pursuant to a bidding procedure set forth in the collective bargaining agreement (TR 21). Operators are assigned to either the Simmons or Sunset facility depending on what route to which they are assigned to (TR 24).

Coach operators use forms that are different from those used by supervisors, including Road Supervisors, and management must complete (TR 90; CX-12). These forms include Employee Incident Reports which operators can complete when they observe an incident that deserves recording, such as a safety issue or a passenger event on a bus (TR 91; CX-12, p. 1). Road Supervisors also can require operators to complete an Employee Incident Report during an accident investigation, in effect rendering the Report a witness statement (TR 91; 96).<sup>3</sup> Road Supervisors use independent discretion in determining the accuracy or any inconsistencies contained in the Employee Incident Report when investigating the accident at issue (TR 259).

### **C. The Use of Observation Notices**

One of the most significant duties of a Road Supervisor is the preparation and issuance of Observation Notices (“OBNs”). The OBN is the primary document used by Road Supervisors in supervising operators and is used to document either violations or commendable acts by the coach operators. (TR 55, 72, 743; CX-8; CX-10). Included in the OBN is the date of the

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<sup>3</sup> Note that Employee Incident Reports (CX-12) are different than a Road Supervisor Incident Report (CX-19 & 21). Road Supervisor Incident Reports are used only by Road Supervisors as part of an investigation into an incident, such as anything out of the ordinary that may occur on a bus or on property (TR 204).

incident, name of the operator, bus and route number, and a description of the incident at issue (TR 68; 76; CX-10). The Road Supervisor executes the OBN at the bottom above “Supervisor Signature” (TR 77; CX-10).

When an OBN is used by a Road Supervisor to document a *violation*, it directly leads to the issuance of discipline. (Tr. 383.) Ken Green, who served as a Road Supervisor from June 2010 through October 2011, testified that OBNs that are marked “Other” are issued for instances where the Road Supervisor determines that the operator has violated a Company policy and/or is not servicing to his or her full potential. (Tr. 637-38.)

When an OBN is used by a Road Supervisor to recognize and reward an operator, it leads to positive verbal feedback and gratitude from the Road Supervisor and/or the Administrative Senior Supervisor, and the issuance of pins and/or plaques, to the operator. (Tr. 405, 437-38, 492.) Additionally, certain Pats on the Back issued by Road Supervisors can result in an “On the Spot” award to the operator, which results in a plaque and check for \$100.00 being awarded to the operator (TR 75; 241). The Road Supervisor recommends the operator to receive an “On the Spot” award, and the Senior Supervisor adopts the Road Supervisor’s recommendation (TR 241). Only operators are eligible for “On the Spot” awards – whereas Road Supervisors are eligible to receive a different type of accolade, referred to as a “Bravo Award” (TR 241-42; CX-29).

Once an OBN is completed (and, if applicable, issued to the operator), a copy is submitted to the Assistant Night Manager, Mariann Kastner. (Tr. 335, 642.) After recording the OBN in her OBN database (CX-17), Ms. Kastner forwards the OBN to a Administrative Senior Supervisor. (Tr. 69-70, 335, 642.)

Next, the Administrative Senior Supervisor enters the violation or commendation, depending on the nature of the OBN, into the system and determines how many violations (if

any) the operator has previously received in order to determine the appropriate level of discipline to be issued. (Tr. 68-69, 172, 183, 335-36, 403, 466-67.)

It is noted that Road Supervisors are authorized to recommend the specific type and level of discipline to be issued in connection with an OBN; however, they generally do not do so because they are not aware of the operators' respective disciplinary records at the time the OBNs are completed/issued. (Tr. 70, 467-68, 471-72.) After the Administrative Senior Supervisor has identified the appropriate discipline, he or she will meet with the coach operator to issue discipline. (Tr. 336, 337.)

Barry Goldsmith testified that, after the Road Supervisor determines and records the violation on the OBN, the Administrative Senior Supervisor does not sit down with the Road Supervisor or with *both* the Road Supervisor and the operator. (Tr. 182, 336, 338, 517-18, 644-45.) Rather, the Administrative Senior Supervisor takes the Road Supervisor's written description as it is set forth on the OBN as true and complete, and issues discipline based on the Road Supervisor's version of facts and determinations as set forth on the OBN. (Tr. 336, 491, 514-15.)

Ken Green, a former Road Supervisor, testified that, in submitting an OBN, he was recommending that a coach operator correct his or her bad habits, and the Administrative Senior Supervisors are there to support the Road Supervisors and to make sure that the bad habits observed by Road Supervisors are corrected. (Tr. 643, 645.) Barry Goldsmith testified that he follows the Road Supervisor's recommendation of the direct observation set forth on the OBN **100% of the time**. (Tr. 338, 339, 384, 475.)

When the Administrative Senior Supervisor meets with the operator to issue discipline, the operator may volunteer some explanation or comments regarding the OBN. (Tr. 338, 530.)

Barry Goldsmith testified that if the operator volunteers certain information, he will write in on the OBN so that the operator's version is represented. (Tr. 338.) However, regardless of the operator's version or explanation of the events underlying the OBN, the Administrative Senior Supervisor considers the investigation to have been completed once the OBN was completed by the Road Supervisor. (Tr. 168, 336, 338, 371, 372, 373, 414-15; CX-36.) The Administrative Senior Supervisor does **not** conduct any independent investigation following his or her receipt of a completed OBN.<sup>4</sup> (Tr. 372, 373, 384.) Therefore, the Administrative Senior Supervisor reviews the contents of the OBN with the operator and issues the appropriate, **pre-determined** discipline. (Tr. 336.) As Barry Goldsmith testified:

Okay, once they come into my office, I go over the OBN with them, and issue them what ever I have decided to issue, whatever it is. There is no further investigation on it at all. It has already been investigated by the [Road] Supervisor in the field. When I receive it, it is complete. It is done, and all I have to do, at that point, as I stated earlier, is I just have to look up where we are at in the computer, and then whatever I have decided, whether it is a coaching or a verbal or a written, then I would issue it as that time...

(Tr. 337-38.)

Similarly, Administrative Senior Supervisor Mark Bailey testified:

[W]hen the Road Supervisor sends these, this is -- they're the eyes and ears, so I don't witness these things. So once we get these, we take these as this is what happened and then we -- the only research we do is what level of progressive discipline this operator has received so far and what the next level would be.

(Tr. Tr. 542.)

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<sup>4</sup> In fact, when an operator wrote that he was requesting his *Weingarten* rights on the OBN after discipline was issued by the Senior Administrative Supervisor during one of these meeting, the Senior Administrative Supervisor advised the operator that he was not conducting an investigation. (Tr. 541, 545; CX-55-7.)

After the discipline has been issued to the operator, he or she is asked to sign the OBN and is issued a copy. (Tr. 338.) Oftentimes, operators refuse to sign the OBN (often on the advice of the Union) whether it is issued on scene by the Road Supervisor and/or later by the Administrative Senior Supervisor. (Tr. 477-78, 463, 641.) Barry Goldsmith testified that this is an acknowledgement that the operators (and the Union) consider the issuance of an OBN and/or the related counseling and/or coaching to be a form of discipline. (Tr. 478.) If an operator refuses to sign the OBN during the meeting with the Administrative Senior Supervisor, another supervisor is usually asked to sign as a witness that the operator has been served. (Tr. 370, 532.)

In anticipation of the Union's argument that the Employer purportedly re-investigated the circumstances underlying the OBNs and/or discarded OBNs, the Employer notes that the uncontroverted evidence presented at hearing establishes that, *only in very rare cases*, an OBN concerning a violation may not lead to discipline where, for instance, an operator later presents extraordinary circumstances **that could not have been shared in-field with the Road Supervisor** (see Tr. 390-91, 434). However, even in those **very rare** cases, the Administrative Senior Supervisor is not re-investigating the Road Supervisor's OBN and/or taking the operator's side of the story as true; rather, the Administrative Senior Supervisor is making a decision based on the appropriate level of discipline that will be issued. (Tr. 391-92, 434, 458, 460-62.) Barry Goldsmith testified that discarding an OBN is very rare—possibly one (1) time every six (6) months. (Tr. 459.) Similarly, Mark Bailey testified that it is rare for him to discard an OBN. (Tr. 547.)

Next, if the Administrative Senior Supervisor issues a coaching or a counseling, he or she will document the issuance of discipline (by noting the coaching, counseling, or simply that the discipline was “entered”) directly on the OBN. (Tr. 347, 350, 363, 365, 367, 432.) In cases

where additional discipline is warranted, a formal Disciplinary Notice may be completed and issued based on the OBN. (Tr. 383, 386-87.) The discipline or commendation is then entered by the Administrative Senior Supervisor into the operator's personnel record. (Tr. 338, 347, 353, 404-05, 407, 438-39, 440.) Finally, a disposition or feedback memo is completed by the Administrative Senior Supervisor, detailing the discipline or other action taken by the Administrative Senior Supervisor based on the OBN issued by the Road Supervisor, and that memo is forwarded to the Road Supervisor.<sup>5</sup> (Tr. 78, 286-87, 340, 533, 543-44; CX-42, 56, 55-3, 72-2, 72-3, 72-83, 72-117, 72-130, 76-2, 92-3, 93-3; CX-10 at 4.) Ken Green testified that, after receiving the disposition sheet, he knew that 100% of the "Other" (negative) OBNs he issued resulted in discipline, whether it was a coaching, verbal warning, written warning or suspension.<sup>6</sup> (Tr. 651-52, 653.) Similarly, Marcella Jackson, a Road Supervisor, testified that she has received disposition sheets stating if an operator was coached, issued a written or verbal warning. (Tr. 981, 982, 983, 996, 998, 1000-01; CX-72-1, 2; CX-76 at 2.) Ms. Jackson admitted

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<sup>5</sup> Ila Meyers testified that she does not know what happened with the OBNs she issued, and she has never received a disposition sheet. (Tr. 746.) This is probably because Ms. Meyers testified that she only issues OBNs (including Pats on the Back) one time every six months. (Tr. 746.)

Similarly, Susan Thomas testified that she has never seen a disposition sheet. (Tr. 886.) On cross examination, Ms. Thomas admitted that she does not check her mailbox, where the disposition sheets are returned to the Road Supervisors, regularly. (Tr. 896.) Subsequently, Ms. Thomas testified that she cannot dispute the Company's records (CX-17) which demonstrate that the disposition sheets were provided to Ms. Thomas and establish that discipline was issued based on the OBNs she completed. (Tr. 905, 906.) Ms. Thomas also testified that she has received one or two emails notifying her that an OBN she issued led to discipline. (Tr. 904.) Those emails may have stated that the operators were coached. (Tr. 905.) Additionally, in describing the OBN process, Ms. Thomas testified:

I give this form [OBN] to my senior operator and he pulls [the operator] in and has [the operator] sign off on it and follows through with disciplinary, I'm assuming.

(Tr. 926.)

<sup>6</sup> In fairness, Mr. Green testified that his receipt of the disposition sheets depended on him checking his mailbox so he may not have read every disposition sheet for every OBN he issued. 653 However, of the disposition sheets he reviewed, 100% of the OBNs he issued resulted in discipline. 651-53

that when she receives the disposition sheets, she becomes aware of what happened with respect to the OBN she issued. (Tr. 982.)

Barry Goldsmith, Administrative Senior Supervisor testified that the Company receives, on average, about 6-12 OBNs each day. (Tr. 350.) Although Mr. Goldsmith did not (at the request of the Hearing Officer) pour over and specifically go through each of the over **two hundred (200)** OBNs presented by the Employer in support of its case during the hearing, Mr. Goldsmith and Mr. Bailey testified that the OBNs they did specifically testify about were representative of the OBNs they received and reviewed from 2006 to the present, and they have handled all OBNs in a manner consistent with their testimony concerning OBNs and the related issuance of discipline. (Tr. 364, 385, 542-43.)

In accordance with the foregoing, the OBNs completed and issued by Road Supervisors are used by the Employer as an independent basis for the issuance of discipline, from coaching and counseling to written warning, unpaid suspensions, conditions of employment, and termination. (Tr. 383, 384; CX-8.) The Employer notes that, while often times a video recording may exist that could corroborate/verify the Road Supervisor's observation as detailed on an OBN, Senior Administrative Supervisors do not download and/or view any video recording (whether or not one is available) prior to determining and issuing discipline to an operator in connection with an OBN. (Tr. 442.) Barry Goldsmith testified that he has never viewed a video prior to issuing a discipline in connection with an OBN. (Tr. 441-42, 448-49.)

#### **IV. DISCUSSION**

##### **A. Applicable Legal Principles of Supervisors Under the Act.**

Section 2(11) of the Act defines "supervisor" as:

“an 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 forgoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”

29 U.S.C. § 152(11). The possession of any one of the indicia specified in Section 2(11) is sufficient to confer supervisory status, as long as the authority is carried out in the interest of the employer and requires the exercise of independent judgment. *Arlington Masonry Supply, Inc.*, 339 NLRB 817 (2003). “Failure to exercise authority does not negate supervisory status because possession rather than exercise of supervisory authority determines supervisory status.” *Westwood Health Care Center*, 330 NLRB 935, 938 (2000). Stated slightly differently, it is the existence of the supervisory power that determines whether the individual is a supervisor under the Act, not whether the individual actually has exercised that power. *Arlington Masonry Supply, Inc.*, 339 NLRB at 818.

Thus, applying the foregoing definition, individuals are supervisors if “(1) they hold the authority to engage in any 1 of the 12 supervisory functions listed in Section 2(11); (2) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment; and (3) their authority is ‘held in the interest of the employer.’” *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 713 (2001). An individual’s supervisory status can be established if the putative supervisor has the authority to either perform a supervisory function or **to effectively recommend a supervisory function**. The burden of establishing supervisory status rests upon the party seeking to assert the status. *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1047 (2003).

**B. The Road Supervisors Are Statutory Supervisors Under Section 2(11) of the Act Because They Discipline and Effectively Recommend Discipline of Operators.**

The Board clearly has established that an individual or class of individuals constitute a supervisor under Section 2(11) if the employees have the authority to effectively recommend discipline. *Progressive Transportation Services, Inc.*, 340 NLRB 1044 (2003); see also *Mountaineer Park, Inc.*, 343 NLRB 1473, 1474-1475 (2004). Under this standard, an individual is a supervisor when they initiate the disciplinary process based on their own independent judgment, without an independent investigation being conducted by the employer's upper management. *Id.*

In *Progressive Transportation Services*, the employer provided public transportation services and the union sought to represent the dispatchers. The dispatchers worked in a dispatching center, referred to as the "deck." One of the individuals the union sought to represent was the "deck lead supervisor," who, in addition to performing regular dispatching functions, also prepared and issued discipline notices to the dispatchers. The Board found the deck lead supervisor had the authority to effectively recommend discipline under Section 2(11) because she initiated the disciplinary process. Specifically, and of particular relevance to the instant case, the deck lead supervisor did not prepare the discipline notices independently, but brought employee disciplinary concerns to the attention of her manager, the Operations Manager, who decided the level of discipline based upon the supervisor's report and recommendation. *Id.* at 1045-1046. The Board noted that "even if [the deck lead supervisor] does not issue discipline entirely on her own, she uses independent judgment to effectively recommend discipline." *Id.* at 1045.

Furthermore, the Board held that the deck lead supervisor “effectively recommends discipline to [the Operations Manager] when she brings rule infractions and misconduct to [the Operations Manager’s] attention, thereby initiating the discipline process.” *Id.* In addition, the Operations Manager did not thereafter conduct an independent investigation of the incident in question. The Board also found that the deck lead supervisor was a Section 2(11) supervisor because the Operations Manager generally followed the supervisor’s recommendations without performing his own independent investigation. *Id.* In fact, the Board relied on the fact that when the deck lead supervisor brought a potential disciplinary issue to the Operations Manager’s attention, discipline thereafter ensued. Based on these facts, which are the same as in the instant case, the Board concluded the deck lead supervisor was a Section 2(11) supervisor under the Act.

In *Mountaineer Park, Inc.*, the Board found that individuals classified as assistant supervisors were Section 2(11) supervisors because they were authorized to write recommendations for disciplinary action. Even though the disciplinary recommendations were reviewed and approved by upper management, the manager had a policy of merely “signing off” on recommendations if they were justified, without conducting an independent investigation. *Id.* at 1474. The Board found that “if the assistant supervisor brought a disciplinary matter to the attention of management, discipline would ensue, demonstrating that the assistant supervisors’ disciplinary recommendations were effective.” *Id.* at 1475. The Board further found it to be significant that the assistant supervisors effectively recommended discipline because they had the authority to bring employee rule infractions and misconduct to the Director of Housekeeping’s attention, “thereby initiating the disciplinary process.” *Id.* at 1474.

Similarly, in *Starwood Hotels & Resorts Worldwide, Inc.*, 350 NLRB 1114 (2007), the Board found that the Front Desk Supervisor was a supervisor under the meaning of the Act based

upon the Front Desk Supervisor's authority to effectively recommend discipline as well as effectively recommend against hiring applicants. *Id.* The Board reached this conclusion as to supervisory status based on the fact the Front Desk Supervisor initiated disciplinary action through coach and counsel sessions of an employee and made a recommendation that the employee be harshly disciplined after he repeatedly coached the employee about treating hotel guests rudely. *Id.* at 1116-1117. The Manager then accepted the Front Desk Supervisor's report of the incident without conducting his own independent investigation and issued discipline against the employee based on the Front Desk Supervisor's report. *Id.*

Identical to the facts in the instant case, in *Lucky Cab Company*, 2011 WL 6839070 (N.L.R.B. Div. of Judges Dec. 28, 2011), the Administrative Law Judge found that three Road Supervisors who worked for a taxicab company were supervisors under Section 2(11) because they were given the responsibility to report driver infractions they observed and did so based upon their own discretion. The Judge found that the Road Supervisors were Section 2(11) supervisors because "their reports, laying as they did, foundations for future discipline against drivers, were a form of discipline." *Id.* (citing *Oak Park Nursing Care Center*, 351 NLRB 27 (2007)). Judge Parke further stated: "Since respondent regularly based discipline on the Road Supervisors' reports without conducting intervening, independent investigation, the reports played a significant role in the disciplinary process and amounted to effective recommendation of discipline." *Id.* (citing *Bon Harbor Nursing and Rehabilitation Center*, 348 NLRB 1062 (2006)).

- Road Supervisors Directly Issue Discipline to Coach Operators.**

As set forth above, in *Lucky Cab Co., supra*, the Administrative Law Judge determined that the Road Supervisors were “supervisors” within the meaning of Section 2(11) of the Act where they were authorized to directly issue discipline, even where no evidence was adduced that the Road Supervisors actually directly issued discipline. Here, the evidence adduced at hearing establishes that (1) counseling and coaching constitute discipline, and (2) the Road Supervisors are authorized and actually do directly discipline coach operators by issuing counseling and coachings in the field.

Specifically, the uncontroverted evidence presented at hearing overwhelmingly establishes that coaching and/or counseling is the first step of progressive discipline and constitutes discipline (TR 181, 382-83, 387, 505, 590, 696). As confirmed by Elin Fehr, Veolia’s Human Resources Manager, coaching and counseling constitutes discipline as it is used to change behavior, and it is the first step of the progressive discipline process (TR 590-91). In addition, Sections 10.4 and 10.11 of the operators’ collective bargaining agreement confirms that coaching and counseling are part of the disciplinary process (TR 592-93; CX-2).<sup>789</sup>

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<sup>7</sup> On cross examination, Ms. Fehr was asked if she ever supplied OBNs pertinent to the operator in response to a request for information which requested all discipline an operator has received. (TR 602.) The Union counsel’s question and Ms. Fehr’s response is inapposite inasmuch as there was no foundation laid as to whether or not the operator(s) in question ever received an OBN and/or the level of discipline (if any) that resulted from said OBN(s). For example, Ms. Fehr could have received a request for information, requesting all discipline for John Doe. If John Doe was terminated for a first offense (without having received any prior OBNs), the above questioning does not dispute the fact that (1) OBNs have been issued as to other operators, (2) counseling and coaching was a direct result of the issuance of the OBN, and (3) counseling and coaching constitute discipline. Alternatively, John Doe’s OBN could have resulted in a written warning, in which case, the written warning itself, not the OBN, would be responsive to the information request. The above questioning is additionally not specific as to the other information requested. Pertinently, Ms. Fehr testified that she always provides the OBNs as part of an operator’s personnel file. (Tr. 615.)

<sup>8</sup> On cross examination of Barry Goldsmith, the Union counsel asked Mr. Goldsmith if he ever had a discussion with Jose Mendoza, President and Business Agent for the Union, where Mr. Goldsmith stated that coaching is not discipline. Mr. Goldsmith testified that he never said that, and, tellingly, the Union never called Mr. Mendoza as a witness to dispute that fact. (Tr. 462, 463.)

<sup>9</sup> William Farmer, a coach operator and Union steward, testified that he believes coaching and counseling are not discipline because whenever he is brought in for a coaching, he has been told that it is not discipline. (Tr. 1111.) Mr. Farmer went on to testify that coachings are “like warnings” that “can lead to discipline”. (Tr. 1120.)

Given that coaching and counseling constitute discipline, Road Supervisors are authorized to and do in fact issue discipline to coach operators. (TR 80, 182, 249; 339-40; CX-8).

As the Employer established at hearing, Road Supervisors have been given the actual authority to discipline operators without additional investigation by other managers or senior supervisors (TR 688-89). Road Supervisors attend quarterly meetings where they receive refresher training on progressive discipline, how to approach operators in the field, and how to complete observation notices, and engage in discussions of the duties of the Road Supervisor as they relate to discipline and enforcement of rules (TR 689, 691, 692, 777, 892; CX-73). Trevor Halleran, Field Supervision Manager, testified that during these quarterly meetings, he reviews: (1) how the Road Supervisor should professionally approach an issue with the coach operator, which may include removing an operator from the coach and meeting with him or her privately; (2) how the Road Supervisor should explain the issue to the operator; (3) that the Road Supervisor should offer the operator an opportunity to explain; and (4) the Road Supervisor should conduct a thorough investigation so that he or she believes that he or she has gathered all the facts and can make a solid determination before the Road Supervisor removes the operator from service (TR 694-95; CX-73). Additionally, the Road Supervisor is trained to explain to the operator how their conduct violated the Company's policies and procedures, clearly explain expected behavior, and inform the employee of the consequences of such conduct (TR 695-696).

In addition to the possession of this authority, Road Supervisors have actually exercised this authority by issuing coachings and counselings to coach operators. For instance, where a Road Supervisor observes an operator engaging in a serious safety violation, the Road Supervisor can stop the operator and coach him or her directly on the violation (TR 182; 340,

346-47; 363; CX-34). Senior Supervisor Barry Goldsmith confirmed Veolia's position in this regard:

... Road Supervisors can function out in the field without any direct supervision from, say, me [a Senior Administrative Supervisor]. They can function on their own. They know what they need to do. They know the rules and policies and how to enforce them, and how to do their jobs properly, and discretion, would mean that they know when they need to approach an Operator concerning a violation, and have them come see me, and when they themselves can just handle it out in the field themselves.

(TR 393-94).

Consistent with the foregoing and with applicable Board precedent, former Road Supervisor Ken Green testified that he absolutely had the authority to issue counselings in the field. (Tr. 641.) Ila Meyers, another Road Supervisor, testified that she deals directly with operators who have violated rules and policies. (Tr. 834-35, 839.) Ms. Meyers confirmed that Road Supervisors have the authority to issue OBNs or speak to the operators verbally. (Tr. 837-38.) When she speaks to operators, she is trying to change their behavior so they make better decisions. (Tr. 839-40, 875.) In cases where the Road Supervisor personally and directly issues an in-field counseling or coaching, the Administrative Senior Supervisor who later receives the OBN will simply enter the discipline (counseling or coaching) issued by the Road Supervisor into the employee's record. (Tr. 350, 363; CX-34.)

In accordance with the foregoing, the Employer's uncontroverted evidence establishes that Road Supervisors hold and actually exercise the authority to directly issue discipline.

## **2. Road Supervisors Effectively Recommend Discipline.**

Additionally, the Administrative Law Judge in *Lucky Cab Co.*, in determining that the Road Supervisors were "supervisors" within the meaning of Section 2(11), found that the Road Supervisors were charged with the responsibility to report the driver infractions they observed,

exercised discretion in determining whether to report infractions, engaged in subjective editorializing about the infractions, and said reports laid the foundation for future discipline.

Similarly here, the evidence presented at hearing establishes that, through the OBN procedure, Road Supervisors (1) are responsible for observing, investigating, identifying and reporting the coach operators' violations, (2) exercise discretion in determining whether to report infractions, (3) engage in subjective editorializing about the infractions, and (4) those reports directly leads to discipline and are the sole basis of same.

**First, as detailed above, Road Supervisors are responsible for observing, investigating, identifying and reporting the coach operators' violations or commendable acts.** (TR 68, 82; CX-8). Each Road Supervisor supervises every coach operator in the zone in which he or she is working during a given shift. (Tr. 25-50, 468-69, 647, 1079.) Road Supervisors have been trained on the Company's rules, policies, and procedures and are responsible for monitoring, investigating and determining whether operators are violating or exceeding the Company's expectations as it concerns those rules, policies, and procedures. (Tr. 334-35.)

The importance of the OBN is highlighted by the direction given to the Road Supervisors by Mr. Neale while he was a Senior Field Supervisor (TR 82; CX-8). In this directive, Mr. Neale reminded the Road Supervisors that one of their primary responsibilities was to "correct employees' bad behavior and reward good behavior" and that the issuance of "OBNs and POBs [Pats on the Back] is crucial in this process." (TR 82; CX-8). Mr. Neale further explained Veolia's position as to the importance of issuing Observation Notices with respect to correcting misconduct: "If an operator commits an offense and he or she realizes that there is not going to be any consequences to their actions, then the operator will most likely repeat the same

offenses.” (TR 82; CX-8). Stated slightly differently, Veolia relies heavily on the Road Supervisors issuing Observation Notices when appropriate to ensure the operators’ behavior is corrected rather than repeated (TR 82-83). Similarly, permitting Road Supervisors the authority to issue a Pat on the Back in appropriate circumstances gives the operators an incentive to continue their commendable behavior (TR 83).

Mr. Neale further described the Road Supervisor’s role in observing the operator’s behavior and, if necessary, “it is your duty as a supervisor, to fill out a detailed Observation Notice or Pat on the Back.” (TR 83; CX-8). Finally, Mr. Neale explained that the Road Supervisor should “explain to the operator why they are being issue the OBN and what actions they can take to correct their bad behavior or point out their good behavior.” (TR 83; CX-8). Mr. Neale issued this memorandum in 2010 and the same purpose and procedure applies to this day (TR 84). Mr. Neale’s memorandum summarizes Veolia’s philosophy towards the importance of supervision at the Road Supervisor level and the issuance of Observation Notices (TR 86).

**Next, Road Supervisors exercise a great deal of discretion in determining whether to report the infractions they observe. Road Supervisors** evaluate facts out in the field and determine whether or not to issue an OBN (TR 394). For example, on several occasions former Road Supervisor Ken Green decided not to issue an OBN even when it may have been warranted (TR 639). Specifically, Mr. Green witnessed what he considered to be unsafe driving and coached the operator about his or her unsafe driving without issuing an OBN (TR 640). During these discussions, Mr. Green warned the operator that further unsafe driving would lead to his issuing an OBN (TR 640). Mr. Green confirmed that “there’s a lot of discretion involved there because I can submit an OBN just from seeing it. I absolutely could have done that, but I felt that it would be better if I just talked to them.” (TR 640-41).

Similarly, Ken Green testified that he would issue Pat on the Back OBNs if he determined, in his opinion, that an operator demonstrated great customer service, safe driving, and if the operator “easily” followed instructions and/or the Company’s policies and procedures. (Tr. 636, 637.)

Ila Meyers, another Road Supervisor, testified that she has made a decision not to write OBNs (Tr. 832, 833), she has decided to deal with operators directly, and she has the authority to make the decision as to whether an OBN is issued or not. (Tr. 834-35, 839.) Ms. Meyers also testified that she does not issue Pats on the Back simply because an operator is doing his or her job. (Tr. 835.) However, Ms. Meyers does talk to the operators and shake their hands and tell them “job well done”. (Tr. 835-36.) Ms. Meyers confirmed that Road Supervisors have the authority to issue OBNs or speak to the operators verbally. (Tr. 837-38.) When she speaks to operators, she is trying to change their behavior so they make better decisions. (Tr. 839-40, 875.)

Similarly, Susan Thomas, a Road Supervisor, testified that if she feels that she has observed something that needs to be recorded, she completes an OBN. (Tr. 898.) Ms. Thomas testified that if she observed a violation of the safety rules or the policies and procedures that Veolia maintains, she would fill out an OBN where she “felt [the violation] would interrupt the daily operations.” (Tr. 902.) Ms. Thomas testified that she exercises discretion in deciding whether or not to fill out OBNs. (Tr. 922.)

Marcella Jackson, a Road Supervisor, testified that, before issuing OBNs, she may discuss the incident/issue with the operator. (Tr. 1019-20.) If an operator gives her a justification for violating the policy that is unrelated to the operator, Ms. Jackson would not issue an OBN. (Tr. 1031.)

The attached Chart of OBNs (Ex. B) demonstrates that Road Supervisors frequently exercise discretion in determining whether a violation or commendable act took place. For instance, Road Supervisors issue OBNs where they determine, in their *subjective opinions*, that operators conduct themselves in an unprofessional manner. (Ex. B at ##2, 16, 56, 67, 79, 90, 147.) Road Supervisors also issue OBNs where they determine that there is reasonable suspicion that an operator is under the influence of alcohol or drugs. (Ex. B at #97.) Additionally, Road Supervisors issue OBNs where they determine, within their sole and subjective discretion, that operators have gone above and beyond what is expected of them. (Ex. B at ##8, 35, 83, 84, 106, 110, 183.)

Additionally, Road Supervisors maintain and exercise authority and discretion as to whether they will issue a copy of the OBN (which has two carbon copies attached to the top sheet) on scene to the operator, or will complete the OBN and forward it directly to the Administrative Senior Supervisor for further processing (TR 352; 614-15; 642; CX-8). Generally, unless the OBN involves a significant safety violation and there is a need to speak to the operator immediately, Road Supervisors will not issue negative OBNs to operators on scene (TR 639). Ken Green testified that he liked to issue Pats on the Back in the field because he found it put operators in a good mood. (Tr. 636.) At times, however, Mr. Green decided not to issue Pats on the Back in the field because he did not want to place any undue strain on service by stopping the operators in route. (Tr. 637.) Mr. Green testified that operators “absolutely” signed the Pats on the Back he issued in the field. (Tr. 637.) The decision as to whether to issue the OBN on scene or at a later date, however, is completely left to the Road Supervisor’s discretion.

**Next, Road Supervisors exercise a great deal of discretion in their subjective editorializing about the infractions they observe.** Whether the OBN is issued for a violation or commendation, the “Observation” section is always completed by a Road Supervisor. (Tr. 346.) In completing this section, the Road Supervisor retains the discretion to determine what he or she will document, including the violation or commendable act, the circumstances underlying the act, the results of any investigation conducted by the Road Supervisor, and/or the rules, policies and procedures implicated by the operator’s conduct. (Tr. 535-36.) Barry Goldsmith testified that the content and context of each OBN is different. (Tr. 361.) The contents of the OBN are based on what information the Road Supervisor has gathered and determined to be relevant, which vary based on the violation or other conduct at issue. (Tr. 361.)

As described in the attached chart of OBNs, the Road Supervisor exercises considerable discretion in determining whether an operator’s conduct violates Company policy such as, for example, whether an operator engaged in unprofessional conduct (TR 177), investigating passenger disturbances by questioning the passengers and the operator, collecting statements when they deem such necessary, and deciding whether to remove a passenger from the bus (TR 191). Similarly, the Road Supervisors have considerable discretion in conducting an investigation into an incident that leads to the preparation of an OBN or incident report, such as determining what information to include in the OBN and whether taking pictures is necessary (TR 317).

**Finally, the OBNs completed and issued by Road Supervisors directly and independently lead to the Employer’s issuance of discipline to coach operators.** Significantly, and consistent with Board precedent on the issue, the Administrative Senior Supervisor takes the Road Supervisor’s written description as set forth on the OBN as true and

complete, and issues discipline based on the Road Supervisor's version of facts and determinations as set forth on the OBN (TR 336, 491, 514-15). As set forth above, the Administrative Senior Supervisor follows the Road Supervisor's recommendation of the direct observation set forth on the OBN **100% of the time** and conducts **no** independent investigation following his or her receipt of a completed OBN. Simply, the Administrative Senior Supervisor reviews the contents of the OBN with the operator and issues the appropriate, **pre-determined** discipline. Therefore, exactly like in *Lucky Cab Co.*, the discipline was issued without "conducting intervening, independent investigation", and the Road Supervisors reports (i.e. OBNs) served as the sole basis for the discipline.

In addition to the discipline Road Supervisors effectively recommend based on OBNs, Road Supervisors also effectively recommend discipline based on accident reports. Consistent with the forgoing analysis, the evidence presented at hearing establishes that, through the accident reporting procedure, Road Supervisors (1) respond to and investigate accidents, including reporting coach operators' violations in connection with same, (2) exercise discretion in determining what information and/or violations to report, (3) engage in subjective editorializing, and (4) those reports directly leads to discipline and are the sole basis of same.

Specifically, Road Supervisors -- not coach operators -- are trained to investigate accidents and routinely do investigate accidents on behalf of the Company (TR 196, 594-95, 596, 1058-59; CX82). When Road Supervisors conduct accident investigations, they rely upon an Accident Kit that contains several documents used during the investigation (TR 248; CX-32). Included among these documents are an Accident Checklist and a Post-Accident Inspection Form that the Road Supervisor completes to ensure that all of the necessary steps of the investigation have been followed (TR 248; CX-32). The Kit also contains a Post-Accident

Interview/Remediation Discussion Form, discussed previously, which the Road Supervisor completes (TR 249; CX-32). In completing the remediation section, the Road Supervisor sits with the operator at the scene and reviews how to avoid similar issues going forward (TR 81, 193). In addition, the Road Supervisor may complete a Report of Traffic Citation and Convictions form and/or a Post-Accident Substance Abuse Decision form if applicable (TR 250; CX-32).

With respect to the Substance Abuse form, the Road Supervisor is the individual who exercises discretion in determining whether or not the operator's actions contributed to the accident (TR 251; CX-32). Such exercise of discretion is significant because the Road Supervisor's decision determines whether or not the operator is sent for a drug or alcohol test (TR 251). Only supervisors, including Road Supervisors, and managers have the authority to send operators for drug testing based on reasonable suspicion (TR 252). Supervisors, including Road Supervisors, and managers receive training on determining when they believe reasonable suspicion exists to believe an operator is under the influence of alcohol or drugs (TR 253).

The Road Supervisors also complete an Auto Liability, General Liability Claim Call-In Data Form as part of the investigation (TR 254; CX-32). Additional forms completed include the Vehicle Accident Report, the Accident Diagram and the Maintenance Department Accident/Incident Work Order (TR 255-59; CX-32). In investigating accidents, Road Supervisors use discretion in determining whether to take statements from witnesses (TR 92). Again, each of these forms is completed by the Road Supervisor when applicable to the situation. Importantly, the Road Supervisor exercises significant discretion in completing these documents in terms of which forms to complete and what information to include therein (TR 257).

Finally, the uncontroverted evidence establishes that accident report, prepared exclusively by the Road Supervisor, is forwarded to a Senior Supervisor, and then to the Safety Department (TR 662-63). In instances where there is no video (from the coach's on-board surveillance system) of the accident, the Safety Department reviews, solely, the Road Supervisor's accident report to determine whether the accident was preventable/chargeable or non-preventable /non-chargeable. In instances where the accident is deemed preventable /chargeable, and no video of the accident exists, the Administrative Senior Supervisor will issue discipline to the operator based solely on the accident report created by the Road Supervisor (TR 666-71; CX-66, CX-67, CX-68, CX-69). Barry Goldsmith, Administrative Senior Supervisor testified that no investigation is completed by the Employer after the accident report is submitted by the Road Supervisor (TR 663-65).

Based on the foregoing, the evidence presented at hearing demonstrates that Veolia uses the OBNs and accident reports completed by Road Supervisor as an independent basis for the issuance of discipline, from coaching and counseling to written warning, unpaid suspensions, conditions of employment, and termination (TR 383, 384; CX-8). Accordingly, as in *Lucky Cab Co.*, Veolia's Road Supervisors effectively recommend discipline and are "supervisors" within the meaning of Section 2(11).

**C. Veolia Also Has Established the Road Supervisors Are Statutory Supervisors Under the Act Because They Can Effectively Recommend Hiring.**

The undisputed facts clearly establish that Road Supervisors have participated in the interview process for other Road Supervisors since 2002. Specifically, Road Supervisors have been members of interview panels that effectively recommend whether the Road Supervisor candidates should be hired (TR 577, 578, 586-89; CX-61). In serving on the interview panels

for potential Road Supervisors, Road Supervisors exercise independent discretion in making a selection as to whether the candidate should be hired (TR 578-79). Elin Fehr, Veolia's Human Resources Manager, testified that each of the panel members, including Road Supervisors, takes an equal part in the process and has an equal vote as to whether the candidate will be hired (TR 574, 577-589, 606; CX-61).<sup>10</sup> In fact, it is undisputed that, under the current process, a Road Supervisor could effectively prevent someone from getting hired as a Road Supervisor by recommending that he or she not be hired (TR 612). Finally, it is undisputed that the Company has hired Road Supervisors based solely on the recommendation of the panel interview members, including Road Supervisors (TR 615).<sup>11</sup> In other words, the Employer did not independently assess the candidate before hiring the candidate.

After first denying the extent of her involvement in the hiring process, Susan Thomas, one of the Road Supervisors called by the Union at hearing, admitted she participated in an interview panel for a Road Supervisor candidate in 2009 (TR 1130-31; CX-89). Subsequently, and despite Ms. Thomas' testimony to the contrary, it was established that Ms. Thomas recommended a candidate for hire while serving as a Road Supervisor, and, but for a hiring freeze, the candidate would have been hired based on the recommendations of the members of the interview panel including Road Supervisor Thomas (TR 1130-1138).

In addition to serving on interview panels for Road Supervisor candidates, in October, 2011, Ms. Fehr decided to start utilizing Road Supervisors on the panel interviews for coach operators. It is important to note that Ms. Fehr's decision was precipitated by the fact that Maurice Cone, the person solely responsible for interviewing and hiring coach operators, took a

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<sup>10</sup> Jamie Pedroso, a Road Supervisor, participated in the panel interview marked as CX-61 (TR 587).

<sup>11</sup>It is noted that, to avoid any legal issues or improper questioning and to avoid any appearance of favor or impropriety, all panel members are limited to the specific questions provided by the Company, and related follow-up questions (TR 576, 612-13, 740, 871-72).

leave of absence in August 2011 (Tr 556-568). At the time Mr. Cone took his leave, Ms. Fehr was forced to explore other options for interviewing and hiring coach operators. After talking with the Company's Human Resource Manager at the Phoenix facility, Fehr developed a process by which several different job classifications, including Road Supervisors, would participate on the panel interviews for coach operators (TR 560-63, 566-68, 571, 623-24). It is important to note that, not only was the process adopted by Ms. Fehr similar to that in place in Phoenix, it was consistent with Veolia's past practice in Las Vegas in that Road Supervisors had previously been responsible for interviewing and hiring coach operators (TR 554-55, 583; CX-59; CX-60).

On December 23, 2011, in preparation for the upcoming February 2012 interviews for the new class of operators, Ms. Fehr, distributed a memo to several different job classifications, including Road Supervisors, notifying them of the new panel interview process for potential operators (TR 563-65, 740; CX-57).<sup>12</sup> Since the December 23, 2011 memo was distributed, the potential panel members (including Road Supervisors) have received training on the new process and have participated in the interview panels for the new class of operators (TR 604-05, 740, 882). Road Supervisors, once selected, are required to participate in the panel interviews (TR 615).

Similar to the panel interview process for Road Supervisors, each of the panel members – including Road Supervisors – participate equally in the panel interview process for coach operators (TR 574, 606). Each panel member asks questions, takes notes and decides if the candidate should be hired or not (TR 574-75). Each panel member is given an equal vote as to whether or not a candidate should be hired (TR 577, 606). Accordingly, a Road Supervisor

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<sup>12</sup> Although Veolia issued this memo around the time of the instant organizing activity, such activity played no role in the issuance of the memo (TR 568). Veolia's position in this regard is further supported by the fact that this is not the instant Union's first attempt to organize the Road Supervisors and the December 23, 2011 memo was sent to and affected several job classifications beyond that of Road Supervisor (TR 569-70).

could effectively prevent an applicant from being hired by recommending that he or she not be hired (TR 612). Veolia makes the decision to hire an operator based solely on the recommendation of the interview panel (TR 615).

**D. Veolia Also Has Established the Road Supervisors Are Statutory Supervisors Under the Act Because They Reward Operators.**

At the hearing, the uncontroverted testimony established that Road Supervisors can effectively recommend that coach operators be rewarded for their service through the issuance of Pat on the Backs and On the Spots. Importantly, when a coach operator receives an On the Spot award, the coach operator also receives a plaque and \$100.00. At hearing, Ila Meyers, a Road Supervisor called by the Union, admitted that 100% of the time she has recommended that a coach operator receive an On The Spot, her recommendation was followed.

**E. The Union Failed to Contradict Veolia's Evidence That the Road Supervisors Are Statutory Supervisors Under Section 2(11) of the Act.**

At hearing, the Union called several Road Supervisors who purported to testify that they did not exercise any independent discretion or judgment in the performance of their duties as Road Supervisors. These individuals' testimony, when analyzed more closely, clearly does not contradict Veolia's specific and abundant evidence that the Road Supervisors are Section 2(11) supervisors under the Act.

**1. Ila Meyers**

Ms. Meyers repeatedly denied having any authority whatsoever on direct examination and further denied performing basic functions inherent in the Road Supervisor position. On cross examination, however, Veolia established Ms. Meyers' testimony was internally inconsistent. For example, Ms. Meyers initially stated she was not familiar with most of the

documents contained within Company Exhibit 20, which the Company had established was a collection of documents used by the Road Supervisors in the performance of their duties (TR 754). On cross examination, however, Ms. Meyers admitted that most of the documents contained within Company Exhibit 20 were in fact documents she was required to use in performing her duties as a Road Supervisor (TR 851-62).

As another example, Ms. Meyers testified there were no daily briefings on the morning shift, and she has not attended any such briefings in the morning (TR 776-77). Ms. Meyers later admitted, however, that she received one such briefing every two months (TR 793). Ms. Meyers further testified that, during the briefings she did attend, issues such as OBNs, discipline and schedule changes were not discussed, and the information provided during the briefings was not helpful (TR 794-95). Another Road Supervisor called by the Union, Susan Roberts, testified, in direct contradiction to Ms. Meyers, that these briefings did in fact include guidance on how to perform the Road Supervisor position (TR 914). Yet another Road Supervisor called by the Union, Marcella Jackson, testified that the information provided at these briefings was helpful and helped her do her job (TR 972). Ms. Jackson also testified that, during the daily briefings, Road Supervisors receive information about accidents on the road, detours and other information and directives (TR 953).

Ms. Meyers also testified that all ideas proposed by Road Supervisors to management were not well received or implemented. She admitted on cross examination, however, that following the suggestion of a Road Supervisor, Veolia specifically adopted the practice of allowing Road Supervisors to wear polo shirts on Wednesdays (TR 831).

Ms. Meyers additionally testified she never received any training on issuing discipline (TR 748). On cross examination, however, she admitted Veolia has offered a lot of training to

supervisors. She further admitted she had participated in multiple company-paid training retreats where the training covered how to be a better supervisor and how to perform her duties as a supervisor (TR 873-74).

With respect to her participation in the disciplinary process, Ms. Meyers testified that she understood that the Company tracks an employee's violations and applies progressive discipline where necessary (TR 875). Ms. Meyers also testified that, if she observes an employee engaging in repeat violations, she has emailed her supervisor or prepared written incident reports (TR 875-76). Additionally, and bearing on the issue of her independent discretion and authority as a Road Supervisor, Ms. Meyers testified that she is "pretty effective" and has never had an operator repeat an offense that she has verbally coached them about (TR 876). In other words, based solely on her proactive role as the first step in the coaching and counseling process, which is part of the disciplinary process, according to Ms. Meyers, operators have corrected their behavior and become better employees, which is the very purpose of the progressive discipline system.

Furthermore, with respect to Ms. Meyers' participation in the disciplinary process, she admitted that she has received training on Veolia's rules and regulations, that one of her duties as Road Supervisor is to ensure the operators are following such rules and procedures, and that part of her daily work includes writing OBNs, which, as established previously, is part of the disciplinary process (TR 825-26). Ms. Meyers also admitted on cross examination that she has made the decision not to issue OBNs even though she observes operators engaging in violations of company rules (TR 832, 833). In other words, when pressed on cross examination, Ms. Meyers confirmed Veolia's position that Road Supervisors exercise independent discretion and judgment in the performance of their job duties.

**2. Susan Thomas**

Although Susan Thomas, another Road Supervisor called by the Union, testified that she has never used an Observation Notice to recommend that someone be disciplined, she admitted that, after she completes an OBN, it very well may lead to discipline (TR 903-04). Ms. Thomas admitted she has received emails notifying her that an OBN she issued led to discipline and/or coaching (TR 904-05). In fact, Veolia's evidence at hearing established that OBNs issued by Ms. Thomas directly led to and were the sole basis for the issuance of discipline (CX-72-112, 72-147; TR 923-26, 927-30).

Ms. Thomas testified that she did not feel that she was a supervisor (TR 895). She admitted, however, there have been occasions when she has made the independent decision to speak to an operator one-on-one about an issue of concern rather than issue an OBN to the operator (TR 936). Ms. Thomas further testified that if she observed an operator violate a work rule, she had the authority and discretion to engage in a discussion with the operator instead of issue an OBN (TR 937).

With respect to the issuance of OBNs, Ms. Thomas initially asserted she only completes them when she is directed to do so by upper management and that she calls someone on the radio before she completes them (TR 908-09). Ms. Thomas subsequently admitted on cross examination, however, that "sometimes" she gets directed to complete OBNs, although she could not recall any specific instances (TR 920-21). Ms. Thomas further admitted that she has filled out OBNs without being directed to do so when she has observed an issue in the field (TR 922).

**3. Marcella Jackson**

Another Road Supervisor called by the Union, Marcella Jackson, testified that she held the position of "Supervisor 2" for approximately 1.5 years shortly after her hire (TR 951). In this

position, Ms. Jackson testified she would sometimes do an investigation into a Road Supervisor's OBN (TR 951). However, Ms. Jackson admitted that the Supervisor 2 position, which was eliminated in 2008, was not the same as the Administrative Senior Supervisor position and that she does not know the duties of an Administrative Senior Supervisor (TR 957). In particular, Ms. Jackson admitted she does not know if Administrative Senior Supervisors investigate or handle OBNs or how they otherwise perform their jobs (TR 958-59).

Ms. Jackson also testified at hearing that she issued OBNs to operators if she observed a violation of Company policy (TR 980). Ms. Jackson further stated she was told by Veolia to prepare the OBNs in a certain manner (TR 980). Ms. Jackson admitted, however, that she was not directed when to issue the OBN; in other words, Ms. Jackson admitted that it was her determination whether an operator had violated a company rule or procedure and/or whether the violation would result in the issuance of an OBN (TR 980).

Ms. Jackson also admitted that, on one occasion, she responded to a passenger disturbance on a bus and that she made the decision to remove the operator from the bus (TR 1078; CX-74-92, 93). Ms. Jackson also admitted that on another occasion, she issued an OBN and coached and advised an operator that his conduct was unsafe and that he needed to reduce his speed (TR 1077; CX-74-85, 86). Ms. Jackson admitted that, in determining the operator's conduct was unsafe, she had to use her own independent judgment (TR 1076-77).

#### 4. William Farmer

William Farmer, an operator and Union steward, also testified on behalf of the Union at hearing. Mr. Farmer stated it is his opinion that coaching and counseling are not discipline because whenever he is brought in for a coaching, he has been told that it is not discipline (TR

1111). Mr. Farmer admitted on cross examination, however, that coachings are “like warnings” that “can lead to discipline” (TR 1120).

**F. Applicable Secondary Indicia of Supervisory Status of the Road Supervisors**

The competent record evidence clearly establishes that Road Supervisors possess and exercise the authority to: (1) discipline or effectively recommend discipline; (2) hire or effectively recommend that someone be hired; and (3) reward employees. As illustrated below the record evidence also establishes that a litany of secondary indicia exists supporting the Company’s position that Road Supervisors are statutory supervisors under the Act.

**ACCESS**

It is undisputed that Road Supervisors, senior supervisors and managers have greater access to the interior of the Las Vegas facilities than the coach operators. (TR 118-19; CX-15, 16p & 16q). For example, at the Simmons location, only Road Supervisors, senior supervisors and managers have access to the administration building with one exception -- coach operators have access to the reception area between 8:00 a.m. and 5:00 p.m. (TR 29-30; 121-22).

Another example of the increased access given to Road Supervisors, senior supervisors and managers is the Transportation building. In this building, the coach operators do not have access to certain portions of the building that the Road Supervisors, senior supervisors and managers have access to, including the dispatch area, the BOC server room, and the radio room (TR 39,125-26; CX-15, p. 2). In addition, coach operators do not have access to the office area in the Transportation building where the Road Supervisors and other supervisors maintain files and complete reports (TR 126; CX-15, p. 2; CX-16w & 16x).

Although not specifically identified herein, the record is inundated with additional examples, all of which were not challenged by the Union, of the different access available to Road Supervisors, senior supervisors and managers versus coach operators. The fact that Road Supervisors have the same access to the Company's Las Vegas facilities as senior supervisors and managers coupled with the fact that the Road Supervisors access to the facilities is significantly greater than the access given to coach operators clearly supports the Company's position that Road Supervisors are statutory supervisors as defined under the Act.

### **DRIVERS' LOUNGE**

Coach operators have a driver's room/lounge area that can be used for, among other things, waiting for assignments (TR 33; CX-4, p. 2). Road Supervisors, Senior supervisors and managers do not use the drivers' lounge (TR 33). Instead, the Road Supervisors, senior supervisors and managers have a separate break room within a restricted area of the Las Vegas facility that cannot be accessed by coach operators and is not used by coach operators (TR 123-24 133-134; CX-16a). The fact that Road Supervisors use the same break room as senior supervisors and managers coupled with the fact that said break room cannot be accessed and is not used by coach operators, as well as the fact the coach operators have a separate drivers' lounge solely for their use, clearly supports the Company's position that Road Supervisors are perceived and considered to be statutory supervisors as defined under the Act. These facts were not challenged by the Union at hearing.

### **BADGES**

It is undisputed that the badges used by coach operators and Road Supervisors are different. First, the Road Supervisor's badge allows the Road Supervisor to access all of the Company's Las Vegas facilities, while the coach operator's badge allows access to significantly

less of the Company's Las Vegas facilities. Second, the badges worn by the coach operators are different from the badges worn by the Road Supervisors insofar as the titles read either "Coach Operator" or "Transit Supervisor" (TR 136; CX-16e). Stated another way, the badges worn by the coach operators and the Road Supervisors clearly identify a distinction between the two job classifications as well as the supervisory status of the Road Supervisors. As such, these undisputed facts clearly support the Company's position that Road Supervisors are statutory supervisors as defined under the Act.

## **PARKING**

Coach operators park their personal vehicles in a completely separate parking lot from where the Road Supervisors, senior supervisors and managers park their vehicles (TR 119-20 & 146; CX-15; CX-16r & 16s). In addition, Road Supervisors, senior supervisors and managers have access to a parking area at the Simmons location that is guarded and requires a decal on the windshield to access (TR 144-45) -- coach operators have no such access. The fact that Road Supervisors park their personal vehicles in the same parking lot as senior supervisors and managers, coupled with the fact that coach operators do not park in the same parking lot as Road Supervisors, senior supervisors and managers, clearly supports the Company's position that Road Supervisors are statutory supervisors as defined under the Act.

## **UNIFORMS**

Road Supervisors and coach operators wear different uniforms. Road Supervisors wear a "uniform" consisting of a denim blue shirt, black pants or shorts in the summer, and a hat signifying they are a supervisor (TR 141- 142; CX-16n & 16o). Road Supervisors also have a high visibility safety shirt or vest they wear at times to make them more visible in high traffic areas, like the terminals, or when they are out of their vehicles on the road (TR 141 -142; CX-

16n & o). In contrast, coach operators wear a white shirt and a hat identifying them as coach operators (TR 141; CX 16m). The distinction in uniforms further emphasizes the Road Supervisors are held out to the public as supervisors as distinguished from the operators. Similar to the badges used by Road Supervisors and coach operators, the uniforms worn by the coach operators and the Road Supervisors clearly identify a distinction between the two job classifications as well as the supervisory status of the Road Supervisors.

## **EQUIPMENT**

The Road Supervisors and coach operators use different equipment to perform their job duties and, in many instances, the different equipment used supports the Company's position that Road Supervisors are statutory supervisors as defined under the Act. For example, Road Supervisors operate a van to perform their duties on the road (TR 153; CX-16aa & 16bb & 16cc). Road Supervisor vans are labeled "Supervisor" on the side (TR 154; CX-16aa). Coach operators drive a bus. The different equipment used by the coach operators and the Road Supervisors coupled with the fact the van used by the Road Supervisors actually identifies them as supervisors shows the distinction between the two job classifications and supports the Company's position that Road Supervisors are statutory supervisors as defined under the Act.

In addition some of the equipment used by Road Supervisors to perform their duties are also used by senior supervisors and/or managers. For example, the supervisor vans have strobe lights on them that only can be used by Road Supervisors, senior supervisors and managers -- not coach operators -- to, among other things, divert traffic away from a disabled bus and pull over coach operators (TR 155-156). Road Supervisors and senior supervisors are trained to use radar and actually do use radar in performing their supervisory duties to track the speed of buses at the

terminals and on routes (TR 156).<sup>13</sup> Road Supervisors and senior supervisors use two-way handheld radios.<sup>14</sup> (TR 157). The fact that Road Supervisors use the same equipment to perform their duties as senior supervisors and/or managers coupled with the fact that coach operators do not use said equipment further supports the Company's position that Road Supervisors are statutory supervisors as defined under the Act.

Supervisor vans are equipped with a water cooler and tool kit for minor repairs in case of a breakdown and a water cooler (TR 158, 209). The fact that Road Supervisors -- not coach operators -- are responsible for minor repairs to the busses further supports the Company's position that Road Supervisors are statutory supervisors as defined under the Act.

The supervisor vans also have a first aid kit for minor scrapes and other injuries for operators (TR 209). The fact that Road Supervisors are responsible for administering first aid on behalf of the Company further supports the Company's position that Road Supervisors are statutory supervisors as defined under the Act.

## **FARE BOXES**

Road Supervisors -- not coach operators -- have access to a special tool kit from RTC to repair fare boxes and they receive special training on how to conduct these repairs (TR 160-162). The fact that the Road Supervisors, unlike coach operators, are trained how to and actually do repair fare boxes is important because during the repair of fare boxes Road Supervisors have access to the RTC's fare money (TR 160-162). The fact that Road Supervisors are given training that allows them to access RTC's fare money and they actually do access RTC's fare money, while coach operators have no such access, further supports the Company's position that Road Supervisors are statutory supervisors as defined under the Act.

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<sup>13</sup>Operators are not trained and do not use radar in the performance of their duties (TR 157).

<sup>14</sup>Operators do not use two way handheld radios.

## **REMOVING PASSENGERS**

Road Supervisors also have the authority to exercise their independent discretion and judgment and remove passengers from a bus if they are causing a disturbance such as arguing with an operator or another passenger (TR 107). Operators do not have the authority to remove a passenger (TR 107-08). In fact, only Road Supervisors, law enforcement and the fire department can remove a passenger from a bus (TR108, 190). The fact that Road Supervisors -- not coach operators -- can remove passengers from a bus further supports the Company's position that Road Supervisors are held out to be, and actually are, statutory supervisors as defined under the Act.

## **DEALING WITH CUSTOMER**

Road Supervisors, like senior supervisors and managers, routinely represent the Company in dealing with issues with Veolia's customer – the RTC (TR 62-63). Coach operators are not authorized to represent the Company regarding issues with the RTC (TR 63). The fact that Road Supervisors, just like senior supervisors and managers, act as agents of the Company in dealing with the customer further supports the Company's position that Road Supervisors are statutory supervisors as defined under the Act.

## **WORKING WITH LAW ENFORCEMENT**

Road Supervisors, like senior supervisors and managers, routinely represent the Company in dealing with law enforcement (TR 197). In fact, Road Supervisors, senior supervisors and managers, but not coach operators, can press charges with law enforcement on behalf of the Company (TR 197-199). The fact that Road Supervisors, just like senior supervisors and managers, represent the Company in dealing with law enforcement further supports the Company's position that Road Supervisors are statutory supervisors as defined under the Act. If

Road Supervisors were deprived of this discretionary authority to act and bind the Company, Veolia would have no one in the field acting in a supervisory capacity.

### **REMOVING AN OPERATOR FROM A BUS**

Road Supervisors have the authority to pull an operator from a route based on the Road Supervisor's assessment of the operator's performance (TR 60). For example, if the operator has the smell of alcohol on his breath, is acting insubordinately, is driving erratically or is acting in an unsafe manner, the Road Supervisor can pull the operator off the route at the terminal (TR 60). The fact that the Road Supervisors can control whether a coach operator works clearly supports the Company's position that Road Supervisors are statutory supervisors as defined under the Act.

### **BONUS**

The Company issued \$25 gift certificates to Road Supervisors, senior supervisors and managers during the 2011 holiday season (TR 591). Coach operators did not receive gift certificates or any other recognition during the 2011 holiday season (TR 591). The fact that Road Supervisors received the same gift certificate as senior supervisors and managers further supports the Company's position that Road Supervisors are statutory supervisors as defined under the Act.

### **COMPUTER USE AND EMAILS**

Road Supervisors can access computers in the office area so they can check company emails, perform research on company software, and do whatever other duties they need to perform their supervisory functions (TR 127 & 147-48; CX-16t & 16u). Road Supervisors, just like senior supervisors and managers, have their own Veolia email account and frequently receive email communications from other members of management (TR 127; CX-23). Operators

do not have access to these computers or the software on the computers, and they do not have Company email addresses (TR 127). The fact that Road Supervisors are given access to Company software, have Company email addresses and are treated the same as senior supervisors and managers in this respect further supports the Company's position that Road Supervisors are held out and actually are statutory supervisors as defined under the Act.

## **PAY**

Coach Operators are paid an hourly wage and coach operators receive overtime for any hours worked over 40 in a work week. Road Supervisors, just like senior supervisors and managers are paid a salary and do not receive overtime compensation (TR 701).<sup>15</sup>

## **BENEFITS**

The Road Supervisors, senior supervisors and managers have different benefits than the operators (TR 244; CX-30). One example is that Road Supervisors have long-term disability insurance (TR 246; CX-30, p. 11) and the coach operators do not. The increased benefits provided to Road Supervisors coupled with the fact the Road Supervisors receive the same benefits as senior supervisors and managers further supports the Company's position that Road Supervisors are statutory supervisors as defined under the Act.

## **SUPERVISORY RATIO**

Currently the Company employs approximately 750 coach operators and 42 supervisors that work on the road, including the 4 senior field supervisors, at its Las Vegas facility. That means that the current supervisory ratio is one (1) supervisor for every eighteen (18) coach

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<sup>15</sup>Although the Union desperately tried to mislead the hearing officer with respect to the issue of whether Road Supervisors are salaried by vaguely referring to paycheck stubs, Elin Fehr, Human Resources Manager clarified that Road Supervisors are exempt salaried employees and the only reason the paychecks list the hourly rate, number of hours worked, and gross pay is so the third party payroll system, ADP, can calculate the 401k contribution amount based on hours worked (TR 1131-1133; CX-90).

operators. If the Road Supervisors are deemed not to be supervisors under the Act, 750 coach operators will be supervised on the road by 4 senior field supervisors. Under this scenario, the supervisory ratio would be one supervisor on the road for every 187 coach operators. In Pennsylvania Truck Lines, 199 NLRB 641 (1972), the Board observed that “if strip supervisors and dispatchers were found to be nonsupervisory, there would be no more than three supervisors . . . at any of the employer’s terminals, some of which have as many as 100 drivers, and there would be no supervisors at the terminals on weekends, when a dispatcher or strip supervisor is in charge.” Where a proposed bargaining unit otherwise would be left without anyone in a supervisory capacity, the Board has relaxed its standards of exclusion to ensure maintenance of a minimum layer of supervision. Salvation Army Williams Mem’l Residence, 293 NLRB 944 (1989). Therefore, it is axiomatic that an examination of the supervisory ratio supports the Company’s position that the Road Supervisors are supervisors as defined under the Act.

In addition, the Company’s agreement with the RTC requires the Company to employ one supervisor for every 28 buses in service (TR 65; CX 9). If it is determined that Road Supervisors are not supervisors as defined under the Act, an argument could be made that the Company is in violation of its agreement with the RTC.

## **DRUG AND ALCOHOL TESTING**

Road Supervisors represent the Company’s interests during any drug/alcohol testing of a coach operator. In this respect, the Road Supervisor stays with the coach operator and monitors the coach operator until testing can be completed. The fact that the Company requires Road Supervisors to oversee the testing of coach operators is illustrative of the supervisory responsibilities of the Road Supervisors and further supports the Company’s position that the Road Supervisors are supervisors as defined under the Act.

## **HANDBOOK**

Road Supervisors are included among the group of non-union (unrepresented) employees at the Las Vegas properties that are subject to the rules and procedures set forth in an Employee Handbook (TR 235; CX-25). The Employee Handbook applicable to Road Supervisors also applies to managers and senior supervisors – and essentially all other non-union represented employees (TR 234-35). The operators represented by the ATU are subject to an entirely different Employee Handbook (TR 233-34; CX-24). The fact that the Road Supervisors, senior supervisors and managers work under the same terms and conditions of employment further supports the Company’s position that Road Supervisors are statutory supervisors as defined under the Act.

## **TRANSPORT PASSENGERS**

If something happens to a passenger that requires the passenger to be transported by a Company vehicle, only Road Supervisors are allowed to transport passengers -- not coach operators (TR 200-201). The fact that the Company only allows Road Supervisors to transport passengers in a Company vehicle -- and subject the Company to potential liability if anything were to happen to the passenger -- further supports the Company’s position that Road Supervisors are statutory supervisors as defined under the Act.

## **EMERGENCIES**

Road Supervisors also act as supervisory or managerial representatives of the Veolia in certain times of crisis. Road Supervisors are first responders with respect to anything that could threaten the passengers on the coach or the coach operator. In times of emergency, Road Supervisors direct coach operators and represent the Company in dealing with passengers (TR 195). For example, during the administrative hearing in the matter, a bomb threat occurred across

the street from the Board's Regional Office (TR 227). Two (2) Road Supervisors in the area had taken control of the situation with respect to Veolia's buses in the area and had directed the operators to unload the buses, loaded with passengers at the time, and evacuate the area immediately (TR 227-28). The Road Supervisors were the highest ranking Veolia officials at the scene and had full authority to act as they did to protect Veolia's passengers and property (TR 228). The fact that Road Supervisors act as the highest ranking Company official at the scene of an emergency clearly demonstrates heightened authority given to Road Supervisors and further supports the Company's position that Road Supervisors are statutory supervisors as defined under the Act.

#### **ACCIDENT INVESTIGATION**

Road Supervisors -- not coach operators -- are trained to investigate accidents and routinely do investigate accidents on behalf of the Company. The Accident Kit used by the Road Supervisors contains a Post-Accident Interview/Remediation Discussion Form which the Road Supervisor completes (TR 249; CX-32). In completing the remediation section, the Road Supervisor sits with the operator at the scene and lets the operator know how to avoid similar issues going forward (TR 81, 193). In addition, the Road Supervisor may complete a Report of Traffic Citation and Convictions form and/or a Post-Accident Substance Abuse Decision form if applicable (TR 250; CX-32). The fact that Road Supervisors assess accident scenes, determine what could have been done to avoid the accident and instruct the coach operator how to avoid the accident in the future shows the authority the Road Supervisors have over the coach operators and further supports the Company's position that Road Supervisors are statutory supervisors as defined under the Act.

#### **APPROVING A DETOUR**

Road Supervisors can approve a detour but coach operators cannot approve a detour (TR 94-95).

## **FORMS**

Road Supervisors and coach operators use different forms in performing their duties. Road Supervisors and senior supervisors use Observation Notices -- coach operators do not (TR 89). Road Supervisors complete Daily Logs, documents which operators do not complete (TR 96-97; CX-13). These Daily Logs are used to track the Road Supervisor's activities on a daily basis (TR 97; CX-18a-n). There also are several other Company documents used by Road Supervisors that operators do not use, including Operator Schedule Adherence Checklist, Recovery Point Supervisor Observation, Late Pull-outs, Safety Systems Video Review Request Form, Tailgate Meeting Notes, Safety Contact Information Sheet, and Supervisor Vehicle Maintenance Work Request (CX-22). Road Supervisors -- not coach operators -- also are responsible for completing the paperwork contained within a Workers' Compensation Packet whenever an operator experiences an on-the-job injury or accident (TR 262, 356-357; CX-33).

The Coach operators use the forms contained in CX-12. The Road Supervisors, senior supervisors and managers do not use the forms in CX-12 (TR 90).

## **RECEIPT OF OBN/POB DISPOSITION SHEET**

After a coach operator receives discipline or praise based on the submission of an OBN, the Road Supervisor that completed the OBN receives a disposition form advising the Road Supervisor what action was taken based on the Road Supervisor's OBN. This disposition sheet could show that a coach operator was disciplined up to and including termination. Clearly, the Company would never share personal information or performance information or discipline about a coach operator with another coach operator (TR 49-50, 340-341, 409; CX-42, 56).

## **RECOGNITION FORMS**

Road Supervisors, senior supervisors and managers use the Bravo form to nominate each other for recognition (CX-29). Coach operators are nominated for recognition through the completion of an On The Spot form (CX-28).

## **VIEW THEMSELVES AS SUPERVISORS**

The competent record evidence clearly establishes that Road Supervisors consider themselves to be supervisors under the Act. The best example that Road Supervisors consider themselves to be supervisors are the self evaluations completed by Road Supervisor Marcella Jackson (TR 1060-1075; CX 83-88). In these self evaluations, Ms. Jackson clearly indicates that she uses independent discretion in performing her duties and that she is responsible for overseeing the coach operators. Jackson also indicates that she wants more management training (TR 1067; CX-86).

Further, Ken Green, who had 14 years of supervisory experience when he joined Veolia as a Road Supervisor, testified that, when he applied for the position of Road Supervisor in June 2010, he intended to apply for a supervisory position (TR 646-47). Moreover, Mr. Green felt that he was a supervisor when he served as a supervisor because of all the training he received and his role in the disciplinary process (TR 646). Finally, the fact that Road Supervisors view themselves as supervisors under the Act can be gleaned by the entries written by Road Supervisors on OBNs and Supervisor incident reports.

## **REGARDED BY OTHERS**

The Competent record evidence clearly shows that both coach operators and senior supervisors regard Road Supervisors as Section 2(11) supervisors under the Act. With respect to coach operators, many of the Employee Incident Reports completed by coach operators and

submitted into evidence show they regard the Road Supervisors as Section 2(11) supervisors. In addition, the entries written on the OBNs by Senior Supervisor Goldsmith show that Senior Supervisors consider Road Supervisors to be supervisors under the Act. For example, Mr. Goldsmith routinely tells coach operators they must follow the directives of Road Supervisors. Further, the memo written by Mr. Neale summarizing certain duties of the Road Supervisors irrefutably establishes that senior supervisors regard Road Supervisors as supervisors under the Act. In this memo, Mr. Neale clearly indicates that Road Supervisors are authorized to and do issue/decide/recommend discipline related to coach operators. Finally, Mr. Green testified that the coach operators respected the Road Supervisors as supervisors (TR 647).

### **ANNUAL EVALUATIONS**

Senior Supervisors and Road Supervisors receive annual performance evaluations (TR 53). Coach operators do not receive annual evaluations (TR 53; 237). The evaluations for Road Supervisors and senior supervisors are conducted pursuant to the Performance Appraisal and Development Plan for Supervisors and Managers (TR 237; CX-26 & 27). One of the areas of evaluation with respect to the Road Supervisors is their ability to engage in problem-solving and decision-making (TR 240; CX-27). The fact that Road Supervisors are treated the same as senior supervisors regarding performance evaluations further supports the Company's position that Road Supervisors are statutory supervisors as defined under the Act.

### **SUPERVISORY MEETINGS**

Unlike coach operators, Road Supervisors participate in supervisory meetings. In this respect, Senior Field Supervisors conduct daily briefings with Road Supervisors and pass along

any information the Road Supervisors need to perform their duties (TR 51, 128).<sup>16</sup> At these daily briefings, which no operators attend, the Senior Supervisors discuss any “hot” topics that may be an issue, such as a specific route that may be having difficulties or safety issues or higher than normal traffic volume (TR 51-52). The Senior Supervisors also may distribute “tailgates” or safety team contacts containing safety messages during the daily briefings that the Road Supervisors are to provide to the operators while out in the field (TR 52).

## **RESTROOMS**

Road Supervisors, senior supervisors and managers use different restrooms than the coach operators (TR141; CX-4, p. 2CX 16i).

## **OFFICES**

The Road Supervisors have a designated office with a desk where they can, *inter alia*, do their paperwork, do accident investigations and conduct confidential meetings with operators (TR 37, 148). Coach operators do not have access to the Road Supervisors’ office, but Senior Supervisors and managers do have access (TR 37 148).

## **SCHEDULES**

Coach operators and Road Supervisors work different schedules. Coach operators work on one of three shifts (TR 20). There are only two shifts for Road Supervisors (TR 130). Coach operators also work swing shifts -- shifts that require a coach operator to spend an hour or two off of the clock in the middle of a shift (TR 20). Importantly, Road Supervisors are not scheduled to work split shifts (TR 20).

## **LOCKERS**

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<sup>16</sup> Operators do not have daily briefings (TR 1118).

The Company provides Coach Operators with lockers for their personal use (TR 135). In contrast, the Company does not provide lockers to Road Supervisors, senior supervisors and managers (TR 34, 135; CX-4, p. 2). The fact that Road Supervisors are treated the same as senior supervisors and managers with respect to lockers further supports the Company's position that Road Supervisors are statutory supervisors as defined under the Act.

## **TRAINING**

Road Supervisors receive special training that operators do not receive including, but not limited to, training on: (1) fare box repair; (2) performing minor repairs out in the field; (3) being a good manager through the Veolia Management Apprenticeship Program; (4) how to conduct accident investigations; (5) OSHA; (6) managing employees; (7) reasonable suspicion drug and alcohol testing; (8) how to be a supervisor and how to perform tasks and responsibilities in the field; (9) emergency responses; (10) biohazards; (11) how to complete accident reports; and (12) how to issue OBNs (TR 159, 195-196, 253, 257, 542, 594-597, 633-635, 689-691, 1055-1059; CX-8, 62-63, 65, 80-82).

In addition, Road Supervisors attend quarterly meetings where they receive refresher training on progressive discipline, how to approach operators in the field, and how to complete observation notices, and engage in discussions of the duties of the Road Supervisor as they relate to discipline and enforcement of rules (TR 689, 691, 692, 777, 892; CX-73). Trevor Halleran, Field Supervision Manager, testified that during these quarterly meetings, he reviews: (1) how the Road Supervisor should professionally approach an issue with the coach operator, which may include removing an operator from the coach and meeting with him or her privately; (2) how the Road Supervisor should explain the issue to the operator; (3) that the Road Supervisor should offer the operator an opportunity to explain; and (4) the Road Supervisor should conduct a

thorough investigation so that he or she believes that he or she has gathered all the facts and can make a solid determination before the Road Supervisor removes the operator from service (TR 694-95; CX-73). Additionally, the Road Supervisor is trained to explain to the operator how their conduct violated the Company's policies and procedures, clearly explain expected behavior, and inform the employee of the consequences of such conduct (TR 695-696).

**V. CONCLUSION**

Pursuant to the foregoing reasons, Veolia Transportation Services, Inc. has established the Union's proposed unit of Road Supervisors is inappropriate because they are statutory supervisors under Section 2(11) of the Act. Accordingly, the Region should dismiss the Union's petition in its entirety.

Respectfully submitted,

McMAHON BERGER

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this 27<sup>th</sup> day of January, 2012, served an original and one (1) copy of the foregoing via the National Labor Relations Board's electronic filing system addressed as follows:

National Labor Relations Board, Region 28  
600 Las Vegas Boulevard South  
Las Vegas, Nevada 89101-6637

I hereby further certify that I have this 27<sup>th</sup> day of January, 2012, served a true and correct copy of the foregoing on the following via Electronic Mail addressed as follows:

Eileen M. Bissen, Esq.  
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/s/ James N. Foster, Jr.

## SUPERVISOR INCIDENT REPORTS

N o.	Date of Event	Road Supervisor	Event	How Independent Discretion was Exercised by Road Supervisor	Reference
1	11-12- 2009	Employee Incident Report	Bio Incident	-After passenger vomited on coach, BOC sent road supervisor to scene—road supervisor instructed operator to drive coach back to yard.	CX-72-134
2	03-09- 2010	Johnny Clark, #33	Relieved Operator	-Operator reported to Road Supervisor that she was ill and did not feel safe to continue -Road Supervisor notified BOC that she was taking operator out of service -Road Supervisor drove operator back to yard	CX-74-1; TR. 718-39
3	03-20- 2010	Vandeventer, #70	Took coach out of service and relieved operator	-Road Supervisor responded to coach after report of burning smell. -Road Supervisor contacted maintenance -Road Supervisor interviewed operator and drove coach back to yard. -Road Supervisor instructed operator to drive supervisor van back to yard	CX-74-2, 3; TR. 718-39
4	02-14- 2010	Ila Meyers #63	Took coach out of service	-Road Supervisor responded to secured coach with operator waiting outside -Road Supervisor drove coach to yard to be inspected	CX-74-4, 5, 6, 7; TR. 718-39
5	01-10- 2010	#20	Contacted police to remove passenger	-Road supervisor responded to incident where operator reported a passenger was sleeping on his bus -Road supervisor asked passenger to leave bus or police would be called -Road supervisor contacted the police to remove the passenger	CX-74-8, 9; TR. 718-39
6	01-13- 2010	#59	Investigating Passenger Complaint	-Operator contacted Road Supervisor to report passenger complaint. -Road Supervisor instructed operator to complete incident report. -Road Supervisor interviewed another operator about the passenger complaint -Road Supervisor contacted BOC to get relief driver for operator while ensuring continued service	CX-74-10, 11, 12; TR. 718-39

## SUPERVISOR INCIDENT REPORTS

N o.	Date of Event	Road Supervisor	Event	How Independent Discretion was Exercised by Road Supervisor	Reference
7	01-20- 2010	Yakabi #74	Responding to Passenger Disturbance	-Road Supervisor responded to an incident involving a passenger disturbance; -Road Supervisor interview operator -Road Supervisor waited for police to arrive and remove passenger from coach	CX-74-13, 14, 15; TR. 718-39
8	01-01- 2010	#20	Responding to Passenger Disturbance	-Road Supervisor responded to incident where operator reported he was overwhelmed due to unruly and loud passengers -Road Supervisor interviewed operator -Road Supervisor permitted operator to sit in her van while Road Supervisor drove the coach and dropped off the passengers	CX-74-16, 17, 18; TR. 718-39
9	03-21- 2011	Parent, #40	Responding to Passenger Disturbance	-Road Supervisor responded to incident where operator called police about unruly passenger. -Road Supervisor interviewed operator and called BOC to send relief operator -Road Supervisor drove operator back to yard.	CX-74-19, 20, 21, 22; TR. 718-39
10	01-26- 2011	John Brown, #57	Responding to Incident Involving Spill on Coach	-Road Supervisor responded to incident where soda had been spilled on bus -Road Supervisor cleaned spill and instructed operator where to go back into service -Road Supervisor advised operator that she was not permitted to drop off passenger on board at his car -Road Supervisor instructed operator to "try to catch some of her last trip"	CX-74-23, 24; TR. 718-39
11	01-16- 2011	Scott #19	Responding to Incident involving Passenger Asleep on Coach	-Road Supervisor responded to incident involving passenger sleeping on coach at the end of route -Road Supervisor attempted to wake passenger and asked passenger to leave coach. -After passenger fell, Road Supervisor instructed operator to complete incident report and asked passenger to complete courtesy card	CX-74-25, 26, 27, 28, 29, 30; TR. 718- 39

## SUPERVISOR INCIDENT REPORTS

N o.	Date of Event	Road Supervisor	Event	How Independent Discretion was Exercised by Road Supervisor	Reference
				<ul style="list-style-type: none"> <li>-Road Supervisor asked passenger if he wanted medical help</li> <li>-Road Supervisor instructed operator to return coach to yard.</li> </ul>	
12	01-01-2011	Ken Green, #37	Responding to Passenger Disturbance	<ul style="list-style-type: none"> <li>-Road Supervisor responded to incident involving a reported passenger incident.</li> <li>-Road Supervisor determined that coach was damaged and unsafe to continue in operation and contacted BOC to send relief coach for passengers</li> <li>-Road Supervisor instructed passengers to exit the coach</li> <li>-Once the coach was empty, Road Supervisor instructed operator to drive coach to next stop and stand by</li> <li>-Road Supervisor returned the damaged coach to the yard</li> </ul>	CX-74-31, 32, 33; TR. 718-39
13	06-10-2011	Jones #34	Responding to Passenger Complaint	<ul style="list-style-type: none"> <li>-Road Supervisor responded to incident where a passenger reported he was bitten by ants</li> <li>-Road Supervisor interviewed operator and passenger</li> <li>-Road Supervisor took pictures of area passenger claimed to have been bitten by ants</li> <li>-Road Supervisor documented statements by operator and passenger</li> <li>-Road Supervisor surveyed bus for ants and collected samples of ants to be included with report</li> <li>-Road Supervisor sent coach to yard for service and possible fumigation</li> </ul>	CX-74-34, 35, 36, 37, 38, 39; TR. 718-39
14	04-19-2011	Gregory Hunt, #66	Responding to Passenger Disturbance	<ul style="list-style-type: none"> <li>-Road Supervisor responded to incident involving an unruly passenger</li> <li>-Road Supervisor interviewed operator</li> <li>-Road Supervisor requested passenger to exit coach; when the passenger refused, Road Supervisor contacted police</li> <li>-Road Supervisor addressed passengers on coach and instructed them to exit coach and re-board the next coach</li> <li>-Road Supervisor advised unruly passenger that he could not board next coach</li> </ul>	CX-74-40, 41, 42, 43; TR. 718-39

## SUPERVISOR INCIDENT REPORTS

N o.	Date of Event	Road Supervisor	Event	How Independent Discretion was Exercised by Road Supervisor	Reference
15	04-04-2011	Scott, #19	Responding to Incident involving Passenger in the Yard	<ul style="list-style-type: none"> <li>-Road Supervisor received call from Senior Supervisor to report to yard</li> <li>-Road Supervisor found passenger who had been left on a bus walking in the yard</li> <li>-Road Supervisor interviewed passenger and walked him out of the yard</li> </ul>	CX-74-44, 45; TR. 718-39
16	03-29-2011	Scott, #19	Responding to Incident involving Possible injury to Operator	<ul style="list-style-type: none"> <li>-Road Supervisor responded to incident where operator was reported as possibly having nose bleed.</li> <li>-Road Supervisor interviewed operator who stated he felt ok and informed operator to let the Company know if he later decided he wanted to see a doctor</li> </ul>	CX-74-46, 47, 48, 49; TR. 718-39
17	06-16-2011	Ken Green, #37	Coaching Operator for Misconduct	<ul style="list-style-type: none"> <li>-Road Supervisor issued OBN for operator's violation of rules and regulations.</li> <li>-Road Supervisor instructed operator to catch up with fill coach</li> <li>-Road Supervisor determined that operator was rude and discourteous toward Road Supervisor and instructed operator to exit the coach.</li> <li>-Road Supervisor spoke to operator and coached him on his misconduct</li> </ul>	CX-74-50, 51, 52, 53, 54; TR. 718-39
18	07-02-2011	#14	Responding to Passenger Disturbance	<ul style="list-style-type: none"> <li>-Road Supervisor responded to incident where operator called police about unruly passengers.</li> <li>-Road supervisor interviewed operator about incident</li> <li>-Road Supervisor decided that passengers could ride on the next coach provided no additional disruptive behavior and advised police of this</li> <li>-Road supervisor documented operator's statements and other observations</li> </ul>	CX-74-55, 56, 57; TR. 718-39
19	07-07-2011	Murray #23	Investigating Operator Injury	<ul style="list-style-type: none"> <li>-Road Supervisor interviewed operator after he was injured in slip and fall.</li> <li>-Road Supervisor documented operator's statements concerning accident, injury and refusal of medical attention</li> </ul>	CX-74-58, 59, 60, 61; TR. 718-39

## SUPERVISOR INCIDENT REPORTS

N o.	Date of Event	Road Supervisor	Event	How Independent Discretion was Exercised by Road Supervisor	Reference
20	07-18- 2011	Marcella Jackson, #5	Responding to Passenger Disturbance	<ul style="list-style-type: none"> <li>-Road Supervisor responded to incident involving passenger.</li> <li>-Road Supervisor interviewed operator and spoke to police who were on scene</li> <li>-Road Supervisor permitted operator to continue in route and Road Supervisor transported passenger after he apologized to operator</li> </ul>	CX-74-62, 63, 64; TR. 718-39
21	12-26- 2011	Barnes #64	Responding to Passenger Disturbance	<ul style="list-style-type: none"> <li>-Road Supervisor responded to incident involving passenger disturbance</li> <li>-Road Supervisor interviewed operator</li> <li>-Road Supervisor instructed passenger to exit coach and permitted operator to continue in route.</li> </ul>	CX-74-65, 66, 67; TR. 718-39
22	12-26- 2011	Scott, #19	Responding to Coach with Farebox Problems	<ul style="list-style-type: none"> <li>-Road Supervisor responded to a coach with farebox problems and identified two (2) coaches with farebox problems</li> <li>-Road Supervisor determined that one of the operators was "very down" and instructed the passengers on that coach to board the second coach</li> <li>-As the passengers were boarding, the Road Supervisor observed one of the passengers almost trip over the wheelchair ramp</li> <li>-Road Supervisor interviewed passenger and asked if he needed medical attention</li> <li>-Road Supervisor permitted the coach to continue in service</li> <li>-Road Supervisor collected a courtesy card and completed incident report</li> </ul>	CX-74-68, 69, 70, 71, 72, 73; TR. 718- 39
23	12-13- 2011	John Mack, #53	Responding to Passenger Disturbance	<ul style="list-style-type: none"> <li>-Road Supervisor responded to incident involving passenger disturbance.</li> <li>-Road Supervisor interviewed operator</li> <li>-Road Supervisor observed passenger to be intoxicated and contacted police to remove passenger</li> <li>-Road Supervisor collected written statement from operator and completed report of incident</li> <li>-Road Supervisor permitted operator to continue in service</li> </ul>	CX-74-74, 75, 76; TR. 718-39

## SUPERVISOR INCIDENT REPORTS

N o.	Date of Event	Road Supervisor	Event	How Independent Discretion was Exercised by Road Supervisor	Reference
24	11-06-2011	Barnes #64	Responding to Bomb Threat at Store	<ul style="list-style-type: none"> <li>-Road Supervisor responded to incident to assist police with store evacuation due to bomb threat.</li> <li>-Road Supervisor assisted store employees and shoppers on to coach to provide a safe area while police handled bomb threat</li> <li>-Following incident, Road Supervisor instructed operator to return coach to yard</li> </ul>	CX-74-77, 78; TR. 718-39
25	09-14-2011	John Brown, #57	Responding to Passenger Disturbance and Accident	<ul style="list-style-type: none"> <li>-Road Supervisor observed individual waiting at bus stop attempt to board coach after doors were closed</li> <li>-Road Supervisor attempted to stop individual from going through doors</li> <li>-Road Supervisor determined that individual was not injured but Road Supervisor nevertheless transported individual to receive medical attention</li> <li>-Road Supervisor determined that the incident was not the fault of the operator</li> </ul>	CX-74-79, 80, 81; TR. 718-39
26	10-15-2011	Ila Meyers, #63	Responding to Passenger Disturbance	<ul style="list-style-type: none"> <li>-Road Supervisor responded to broken down bus and sleeping passenger on board</li> <li>-Road Supervisor woke passenger and asked him to exit bus.</li> <li>-After Road Supervisor determined passenger was intoxicated and unruly, she called police</li> </ul>	CX-74-82, 83, 84; TR. 718-39
27	09-05-2011	Marcella Jackson, #5	Responding to Coach Driving Through Red Stop Light	<ul style="list-style-type: none"> <li>-Road Supervisor observed coach drive through red stop light and followed coach.</li> <li>-Road Supervisor spoke to operator and determined that operator engaged in unsafe driving</li> <li>-Road Supervisor coached operator on scene</li> <li>-Road Supervisor decided not to issue OBN on scene</li> </ul>	CX-74-85, 86, 87, 88, 89; TR. 718-39, 1076-77
28	08-08-2011	Davis, #15	Investigating Report of Damage to Coach	<ul style="list-style-type: none"> <li>-After operator reported damage to coach to Road Supervisor, Road Supervisor inspected damage and placed tape across cracked mirror to stabilize crack</li> <li>-Road Supervisor completed report concerning damage to coach</li> </ul>	CX-74-90, 91; TR. 718-39

## SUPERVISOR INCIDENT REPORTS

N o.	Date of Event	Road Supervisor	Event	How Independent Discretion was Exercised by Road Supervisor	Reference
29	08-04- 2011	Marcella Jackson, #5	Responding to Passenger Disturbance	<ul style="list-style-type: none"> <li>-Road Supervisor responded to incident involving passenger disturbance</li> <li>-Road Supervisor removed operator from the coach</li> <li>-Road Supervisor determined operator's conduct to be aggressive and confrontational and coached operator; Road Supervisor instructed operator to sit in Supervisor van to cool off</li> <li>-Road Supervisor drove the coach for the remainder of the route in order to keep service going</li> </ul>	CX-74-92, 93, 94, 95, 96, 97, 98; TR. 718-39
30	04-26- 2010	Susan Thomas, #45	Responding to Passenger Disturbance	<ul style="list-style-type: none"> <li>-Road Supervisor responded to incident involving passenger disturbance</li> <li>-Road Supervisor interviewed operator and spoke to police</li> <li>-Road Supervisor documented witness statements, collected courtesy cards, and attempted to get statement from passenger</li> <li>-Road Supervisor transported operator to yard and placed operator on investigative suspension</li> </ul>	CX-74-99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109; TR. 718-39
31	10-13- 1010	Marcella Jackson, #5	Pre-Trip Inspection	<ul style="list-style-type: none"> <li>-Road supervisor assisted operator complete pre-trip inspection by working with maintenance department to start coach</li> <li>-After pre-trip was complete, road supervisor directed operator to make timely pullout</li> <li>-road supervisor determined that operator wasted critical time standing and waiting during pre-trip and issued OBN</li> </ul>	CX-78 at 2 &3

**OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS**

<b>No.</b>	<b>Date of Event</b>	<b>Road Supervisor</b>	<b>Violation/Commendation</b>	<b>How Independent Discretion was Exercised by Road Supervisor</b>	<b>Level of Disciplinary Commendation</b>	<b>Reference</b>
1	04-16-2006	Donnal Willis, #35	Speeding, Entering intersection on red traffic signal	-Decided not to issue OBN on scene -Directed operator to observe all policies and procedures	In-Field Coaching by Road Supervisor	CX-34, TR. 347, 363
2	06-13-2008	Tom Gilbert, #32	Unprofessional conduct	-Determined operator conducted himself in unprofessional manner when he yelled at a supervisor in front of a passenger -Directed operator to step inside coach and lower his voice -Directed operator follow instructions -Made decision not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-35, TR. 364-65, 366
3	09-21-2010	Marcella Jackson, #5	Leaving the yard late	-Decided not to issue OBN on scene -Determined that operator violated rule concerning schedule adherence	Coaching based on Road Supervisor's OBN	CX-36
4	05-19-2010	Hatch, #39	Following another coach too closely	-Determined operator was following too closely and not maintaining appropriate spacing from other coaches -Counseled operator on scene not following too closely and leaving sufficient space -Decided not to issue OBN on scene	In-Field Coaching by Road Supervisor; Follow-up Coaching by Senior Administrative Supervisor based on Road Supervisor's OBN	CX-37; TR. 388
5	06-22-2011	Tom Gilbert, #32	Using cell phone while driving company vehicle	-Decided not to issue OBN on scene -Conducted investigation by speaking to operator who admitted to violation	1-day suspension, final warning & 1-year condition of employment based on Road Supervisor's OBN	CX-38; TR. 383-85

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
6	11-20-2010	Barry Ryales, #16	Turning right against a red light	-Conducted investigation by talking to BOC -Determined that operator denied violation to BOC -Determined that operator violated policies and procedures	Written warning based on Road Supervisor's OBN	CX-39; TR. 395-96
7	10-28-2009	Marcella Jackson, #5	Leaving the yard late	-Conducted investigation by talking to BOC & Operator -Determined violation occurred because operator failed to contact Road Supervisor or BOC for help -Decided not to issue OBN on scene	1-day suspension & 1-year condition of employment based on Road Supervisor's OBN	CX-40; TR. 400
8	08-27-2010	Ken Green, #37	Professionalism, attention to detail and camaraderie	-Determined operator went above and beyond his duties in performing careful and thorough pre-trip and exceeded expectations through professionalism, attention to detail and camaraderie -Decided not issue OBN on scene -Determined conduct was in accordance with rules and regulations	Positive commendation based on Road Supervisor's OBN	CX-41; TR. 405-06
9	12-09-2001	Scott, #19	Operating coach out of service without road supervisor or BOC approval ("deadheading")	-Decided to issue OBN on scene -Instructed operator that he could not operate coach in such a manner without supervisor approval	Coaching based on Road Supervisor's OBN	CX-43; TR. 413
10	08-27-2099	Jay Block #67	Failure to do pre-trip and/or brake check	-Decided not to issue OBN on scene -Determined operator failed to do pre-trip on numerous prior occasions and coaching	Coaching based on Road Supervisor's OBN	CX-44; TR. 418
11	09-25-2009	Parkerson	Failure to follow	-Decided not to issue OBN on scene	Coaching based on	CX-45; TR.

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
		#30	shuttle relief key procedure	-Determined operator failed to follow procedure by not bringing key to supervisor or relaying appropriate information to supervisor	Road Supervisor's OBN	421
12	01-12-2009	John Brown #57	Leaving the yard late -Failure to communicate with road supervisor and/or maintenance	-Decided not to issue OBN on scene -Conducted investigation by speaking to operator -Determined violation occurred because operator left yard late and failed to notify road supervisor or maintenance of any problems	Counseling based on Road Supervisor's OBN	CX-46-1; TR. 432
13	01-27-2009	Donald Willis #35	Failed to pick up passengers at stop	-Determined operator left passengers at bus stop -Determined that operator should not have left passengers at stop and should have followed supervisor's instructions -Determined operator's excuse was insufficient -Decided not to issue OBN on site	Counseling based on Road Supervisor's OBN	CX-46-2; TR. 436
14	03-25-2009	Hatch, #39	Commendation for following rules and policies and having positive and courteous attitude	-Decide to issue OBN on scene -Determined operator did an excellent job creating space between the coaches and keeping passenger behind yellow line -Determined operator had positive attitude and was courteous to passengers and other operators	Commendation based on Road Supervisor's OBN	CX-46-3; TR. 440
15	02-04-2010	Padilla #71	Failure to follow 10-100 procedure	-Observed operator stop, park coach and exit without permission in violation of 10-100 procedure -Road supervisor conducted investigation by contacting BOC to determine if operator had called -Decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-47-1; TR. 443-45
16	03-12-2010	Padilla #71	Argumentative	-Decided not to issue OBN on scene	Coaching based on	CX-47-2;

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
			conduct with supervisor Failure to check in with supervisor	-Determined operator became argumentative when advised of his pull out time -Directed operator to pull out according to his instructions as opposed to time listed on paddle (route sheet)	Road Supervisor's OBN	TR. 446
17	06-16-2011	Ken Green #37	Failure to provide adequate customer service	-Decided not to issue OBN on scene -Determined operator failed to provide adequate customer service by passing designated stop where passengers were waiting -Decided to request video download of violation	Formal verbal warning based on Road Supervisor's OBN	CX-48; TR. 448
18	07-28-2011	Jones #34	Making right turn against red light	-Decided not to issue OBN on scene -Determined operator made unsafe turn by failing to wait for light to change	Written Warning based on Road Supervisor's OBN	CX-49; TR. 493-94
19	11-15-2011	Todd Hargett #26	Unprofessional conduct by using profanity	-Decided not to issue on scene -Determined exhibited unprofessional conduct by using profanity in front of approximately 75 passengers	Coaching based on Road Supervisor's OBN	CX-50; TR. 504-05
20	11-23-2011	Derrick Lavender #21	Failure to do walk through	-Decided not to issue OBN on scene -Determined operator did not do security check and walk through of her coach during layover	Written Warning based on Road Supervisor's OBN	CX-51; TR. 508
21	07-24-2011	Ramsaran #73	Leaving the yard late	-Determined operator received bus on time, did not report any problems, but still left yard 6 minutes late -Decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-52; TR. 514-15
22	05-17-2011	John Mack #53	Failure to follow procedures	-Determined operator bypassed stop and failed to pick up passengers -Decided to follow operator and observed him going off route and bypassing additional stop	Suspension based on Road Supervisor's OBN	CX-53; TR. 520

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
				-Determined operator violated procedure by failing to contact BOC for permission -Decided not to issue OBN on scene		
23	10-09-2011	Ramsaran #73	Leaving the yard late	-Determined operator was given coach on time -Determined operator failed to report mechanical problems yet left the yard late -Decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-54; TR. 528-29
24	06-09-2011	Marcella Jackson #5	Leaving the yard late	-Decided not to issue OBN on scene -Advised operator in violation of rules by leaving yard late -Independently verified that paddle was issued on time	Coaching based on Road Supervisor's OBN	CX-55-1; TR. 528, 531
25	03-09-2011	Jones #34	Unprofessional conduct	-Decided not to issue OBN on scene -Determined operator violated rules by using profanity toward road supervisor	Coaching based on Road Supervisor's OBN	CX-55-2; TR. 528, 531-32
26	07-29-2011	Ken Green, #37	Recovery Time Violation	-Road Supervisor determined that operator took extended break without notifying BOC -Road Supervisor determined that operator violated Company's rules and regulations -Road supervisor decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-55-4; TR. 528, 536
27	12-17-2011	Dwight O'Neil, #B3	Eating while driving	-Determined operator engaged in unsafe act when he observed operator eating while operating a coach -Decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-55-5; TR. 528, 536-37
28	12-06-2011	Johnny Clark, #33	Unprofessional conduct	-Decided not to issue OBN on scene -Conducted investigation into operator's allegation that passenger threatened him and	Coaching based on Road Supervisor's OBN	CX-55-6; TR. 528, 539-40

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
				<ul style="list-style-type: none"> <li>operator refused to board him</li> <li>-Spoke to passenger and witnessed operator yelling at passenger</li> </ul>		
29	06-25-2011	Stipulated as Road Supervisor	Failure to use proper bio procedures	<ul style="list-style-type: none"> <li>-Decided to issue OBN on scene</li> <li>-Determined operator failed to use proper bio procedures where he attempted to clean blood himself</li> </ul>	Coaching based on Road Supervisor's OBN (no video of accident downloaded/available)	CX-55-7; TR. 528, 541
30	02-04-2011	Barry Ryales #16	Accident Investigation, Unsafe operation of company vehicle	<ul style="list-style-type: none"> <li>-Responded to the scene and discussed accident with operator</li> <li>-Engaged in post-accident discussion with operator, obtained description of accident and discussed factors contributing to accident and what could have been done to avoid it.</li> <li>-Determined factor contributing to accident was failure to use caution merging into "Strip" traffic and not allowing ample spacing before trying to merge</li> <li>-Determined operator's actions did not contribute to accident and excused operator from post-accident drug testing</li> <li>-Determined accident resulted only in superficial damage to coach</li> <li>-Determined no injuries to passengers on coach (V-1) or in other vehicle (V-2)</li> <li>-Interviewed operator and driver of V-2 and collected statements from both</li> <li>-Assessed on damage on V-1 and V-2 and</li> </ul>	3-day Suspension and 4 points assessed on operator's accident record based on Road Supervisor's Accident Report (no video of accident downloaded/available)	CX-66 CX-67; TR. 659-68

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
				<ul style="list-style-type: none"> <li>-completed maintenance work order</li> <li>-Took 45 pictures of areas he determined to be relevant to investigation of accident</li> </ul>		
31	10-16-2011	Hatch #39	<p style="text-align: center;">Accident Investigation, Careless Driving</p>	<ul style="list-style-type: none"> <li>-Determined operator made contact with curb platform while pulling away from stop</li> <li>-Collected statement from operator and discussed accident with operator</li> <li>-Engaged in post-accident discussion with operator, obtained description of accident and discussed factors contributing to accident and what could have been done to avoid it.</li> <li>-Determined accident resulted in superficial damage only</li> <li>-Determined no injuries to passengers on coach (V-1)</li> <li>-Determined unnecessary to tow the coach</li> <li>-Contacted maintenance for them to perform wheel repair</li> <li>-Contacted BOC and relief operator was sent to accident scene to take over route</li> <li>-Transported operator involved in accident back to the yard</li> <li>-Took 11 pictures of what he determined to be relevant for inclusion in accident report</li> </ul>	<p>Written Warning and 3 points assessed on operator's accident record based on Road Supervisor's Accident Report (no video of accident downloaded/available)</p>	<p>CX-68 CX-69; TR. 668-78</p>
32	07-30-2011	Ken Green #37	<p style="text-align: center;">Accident Investigation, Negligent or Dangerous Driving</p>	<ul style="list-style-type: none"> <li>-Engaged in post-accident discussion with operator, obtained description of accident and discussed factors contributing to accident and what could have been done to avoid it.</li> </ul>	<p>2-day Suspension and 1-year condition of employment and 5 points assessed on</p>	<p>CX-70 CX-71; TR. 668-78</p>

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
				<ul style="list-style-type: none"> <li>-Interviewed operator about events leading to accident and passenger who fell</li> <li>-Determined passenger injured right shoulder and offered to transport passenger, but she declined</li> <li>-Discussed operator's version of events with injured passenger</li> <li>-Called EMS to scene</li> <li>-Interviewed witnesses on scene and determined operator made hard stop because he was yelling at passengers</li> <li>-Despite operator's denial of all witness statements, sided with witnesses</li> <li>-Later determined one of witnesses was highly intoxicated</li> <li>-Relieved operator of duty</li> <li>-Took 11 pictures of what he deemed to be relevant to accident investigation</li> </ul>	operator's accident record based on road supervisor's accident investigation report (no video downloaded/available)	
33	04-12-2011	Marcella Jackson #5	- Leaving the yard late	<ul style="list-style-type: none"> <li>-Decided not to issue OBN on scene</li> <li>-Determined operator violated rules by leaving yard late and failed to report any problems to maintenance or supervisor</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-1; TR. 679; 734-35
34	12-30-2011	Anthony Cunningham #28	-Unauthorized cell phone use	<ul style="list-style-type: none"> <li>-Observed coach stopped with "Not In Service" sign illuminated</li> <li>-Contacted BOC to determine if problem with coach</li> <li>-Approached coach and observed operator sitting in passenger seat using his cell phone</li> <li>-Operator admitted using cell phone</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-4 CX-72-5; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
				-Advised operator he was in violation of policy		
35	12-08-2010	Rand #B2	Commendation for following policies and procedures	-Decided not to issue OBN on scene -Determined operator was doing a good job handling fare evasion situation	Commendation based on Road Supervisor's OBN	CX-72-6; TR. 679
36	01-22-2011	Stipulated as Road Supervisor	Failure to follow instructed pull out times	-After operator missed scheduled pull out time, Supervisor assigned operator a different pull out time and determined operator also missed alternative assigned pull out time	Coaching based on Road Supervisor's OBN	CX-72-7; TR. 679
37	08-07-2010	Padilla #71	Failure to check with supervisor prior to leaving terminal	-Determined operator violated shuttle key procedure by exiting terminal without checking with supervisor -Decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-8; TR. 679
38	06-21-2010	Donnel Willis #35	Arriving late at timepoint	-Observed operator 32 minutes late in service -Determined operator left terminal on time -Advised operator that being on time is very important -Decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-9; TR. 679
39	02-10-2010	Marcella Jackson #5	Leaving the yard late	-Decided not to issue OBN on scene -Observed operator pulling out of the yard late -Interviewed operator who stated she had to use restroom -Determined dispatch issued paddle on time	Coaching based on Road Supervisor's OBN	CX-72-10; TR. 679
40	04-17-2010	O'Neil	Failure to carry accident kit	-Determined operator did not have an accident kit at time of passenger fall incident -Advised operator to see Senior Supervisor -Decided to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-11; TR. 679
41	04-24-2009	Hatch #39	Failure to maintain proper spacing	-Observed coach following too closely behind another coach and decided to follow	Coaching based on Road Supervisor's	CX-72-12; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
				-Determined operator was driving coach with very few passengers and there was a significant time gap between his coach and the next available coach -Counseled operator on scene -Decided to issue OBN on scene	OBN	
42	03-30-2010	Marcella Jackson #5	Leaving the yard late	-Observed coach leaving yard late -Determined dispatch gave operator paddle on time -Determined operator left late due to excessive pretrip -Decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-13; TR. 679
43	07-10-2009	Laura Bennett #38	Backing up without a backer	-Observed operator backing coach without a backer -Decided not to issue OBN on scene	Counseling based on Road Supervisor's OBN	CX-72-14; TR. 679
44	10-18-2011	Rand #55	Failure to follow established detour	-Decided to issue OBN on scene -Observed operator failing to follow established detour while operating a coach	Coaching based on Road Supervisor's OBN	CX-72-15; TR. 679
45	02-21-2009	Marino, #41	Leaving the yard late and unauthorized cell phone usage	-Observed operator outside using cell phone when he was supposed to be pulling out of the yard. -Instructed operator to pull out due to being late -Operator completed phone call and told supervisor he was late all day -Decided not to issue OBN on scene	Counseling based on Road Supervisor's OBN	CX-72-16; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
46	08-14-2008	Hatch #39	Violation of spacing policy	<ul style="list-style-type: none"> <li>-Observed coach following 2 other coaches too closely</li> <li>-Counseled operator on scene advising operator not to follow too close</li> <li>-Observed bus did not have very many passengers, confirming operator was following other buses too closely</li> <li>-Decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-17; TR. 679
47	07-16-2009	Murray, #23	Maintaining safe distance	<ul style="list-style-type: none"> <li>-Observed coach following too closely with front coach and determined a violation of strip procedures and failure to allow proper spacing on strip</li> <li>-Decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-18; TR. 679
48	07-04-2009	Celeste Brown #57	Unauthorized and unassisted U-turn	<ul style="list-style-type: none"> <li>-Determined operator made an unauthorized and unassisted U-turn without notifying BOC</li> <li>-Decided to issue OBN on scene</li> </ul>	Written Warning based on Road Supervisor's OBN	CX-72-19 CX-72-20; TR. 679
49	04-03-2009 04-04-2009	Laura Bennett #38	Allowing passengers to ride forward of the standing line	<ul style="list-style-type: none"> <li>-Observed passengers in front of yellow line on coach and noted operator has been warned of this violation in the past.</li> <li>-Advised operator if it happened again, she would be written up</li> <li>-Observed violation twice in two days</li> <li>-Decided not to issue OBN on scene</li> </ul>	Final Warning & 1-year condition of employment based on Road Supervisor's OBN	CX-72-21 Through - 23; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
50	04-25-2008	Barry Ryales #25	Violation of policies and procedures- failure to wear seat belt	-Determined operator was not wearing seat belt while operating coach -Determined actions violated the law and directed operator to see Senior Supervisor -Decided to issue OBN on scene	Final Warning based on Road Supervisor's OBN	CX-72-24 & -25; TR. 679
51	05-13-2010	Johnny Clark #33	Refusal to perform duties	-Observed that after coach entered and parked in the yard, a sleeper was on the coach. -Determined operator failed to perform post-trip walkthrough	Final warning, 1-day suspension and 1-year condition of employment based on Road Supervisor's OBN	CX-72-26; TR. 679
52	05-21-2009	Laura Bennett #38	Leaving the yard late	-Observed operator leaving yard late -Determined operator received coach on time, yet performed excessive pre-trip -Decided not to issue OBN on scene	Written Warning based on Road Supervisor's OBN	CX-72-27 & 28; TR. 679
53	04-05-2008	Hatch #39	Following too closely	-Observed operator following too closely behind front coach -Determined operator failed to create space by holding -Directed operator to maintain space properly -Decided not issue OBN on scene	Verbal Warning based on Road Supervisor's OBN	CX-72-29 & 30; TR. 679
54	05-22-2004	Bonnie Doone #54	Failure or refusal to perform duties	-Observed operator going out of service and bypassing passengers without permission -Determined operator did not have permission and directed operator to see senior supervisor -Decided to issue OBN on scene	Written Warning based on Road Supervisor's OBN	CX-72-31 & 32; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
55	11-15-2010	Johnny Clark, #33	Leaving the yard late	-Determined that operator failed to follow policy concerning schedule adherence by not leaving on time. -Determined operator did not report any problems -Decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-33; TR. 679
56	09-12-2010	Tom Gilbert #32	Failure to follow supervisor's instructions	-Decided not to issue OBN on scene -Determined operator did not follow directions and was argumentative when instructed to take coach to yard and stated he would do it after he finished his cigarette -Deemed operator's conduct to be in violation of rules and regulations	Coaching based on Road Supervisor's OBN	CX-72-34; TR. 679
57	12-06-2011	John Brown, #57	Failure to use proper layover procedures	-Observed operator stop at a location not designated as layover destination -Advised operator he could not choose to layover where she wanted to -Determined operator's action caused operator to leave layover unnecessarily -Decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-35&36; TR. 679
58	12-31-2009	Block #67	Unsafe speed entering the terminal	-Observed operator entering terminal at unsafe speed. -Spoke to operator and considered operator to take a very unprofessional approach with supervisor -Decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-37; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
59	01-02-2010	Laura Bennett #38	Standing forward of standing line	<ul style="list-style-type: none"> <li>-Observed coach arriving 10 minutes early to time point</li> <li>-Observed coach had 3-4 passengers standing in front of standing line</li> <li>-Spoke to operator about being early and operator stated he was not going to sit at stops as his coach was full</li> <li>-Decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-38; TR. 679
60	10-18-2010	Johnny Clark, #33	Leaving the yard late	<ul style="list-style-type: none"> <li>-Observed operator leaving yard late</li> <li>-Determined operator received his paddle on time</li> <li>-Asked operator why he was late</li> <li>-Operator responded he could not find his coach</li> <li>-Determined operator did not comply with company policy concerning schedule adherence</li> <li>-Decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-39; TR. 679
61	11-22-2011	Derrick Lavender#21	<ul style="list-style-type: none"> <li>-Right turn on red</li> <li>-Late pull out</li> </ul>	<ul style="list-style-type: none"> <li>-Observed operator making a right turn on red</li> <li>-Determined operator left layover late and failed to perform walkthrough</li> <li>-Decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-40; TR. 679
62	03-29-2010	Marcella Jackson #5	Leaving the yard late	<ul style="list-style-type: none"> <li>-Observed operator sitting in breakroom and determined operator subsequently left the yard late</li> <li>-Decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-41; TR. 679
63	05-21-2009	Laura Bennett#38	Leaving the yard late	<ul style="list-style-type: none"> <li>-Observed operator leaving the yard late</li> <li>-Determined operator received coach on time</li> <li>-Determined pretrip was reason for leaving yard late</li> <li>-Decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-42; TR. 679

**OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS**

<b>No.</b>	<b>Date of Event</b>	<b>Road Supervisor</b>	<b>Violation/Commendation</b>	<b>How Independent Discretion was Exercised by Road Supervisor</b>	<b>Level of Disciplinary Commendation</b>	<b>Reference</b>
64	02-13-2010	Cassandra Rice #27	Failure to wear a seat belt	-Observed operator not wearing a seat belt -Discussed violation with operator she did not have it on because "she had to be ready to fight." -Decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-43; TR. 679
65	10-04-2007	Marcella Jackson #5	Leaving the yard late	-Observed operator pull out late -Determined dispatch gave paddle to operator on time -Decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-44; TR. 679
66	07-01-2008	Parent, #40	Violation of 4-way policy	-Observed operator leave bus stop with 4-way lights still on which is a violation of policy -Decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-45; TR. 679
67	07-19-2010	Marian Shipp #81	Failure to follow supervisor's instructions	-Observed operator pull in at terminal and instructed operator to pull out at specified time slot. -Observed operator pull out later than specified time slot -Decided not to issue OBN at scene	Coaching based on Road Supervisor's OBN	CX-72-46; TR. 679
68	11-22-2011	Derrick Lavender #21	Failure or refusal to perform duties	-Observed operator fail to perform security check walkthrough at layover.	Written Warning based on Road Supervisor's OBN	CX-72-48; TR. 679
69	10-21-2009	Dwight O'Neil, #B3	Violation of safety procedure	-Observed operator make a right turn on red while deadheading in violation of safety procedures -Directed operator to see senior supervisor -Decided to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-49; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
70	02-02-2006	Lennix Slack #16	Backing coach without a backer	-Observed operator backing a coach without a backer in violation of company policy -Determined operator engaged in a very serious safety violation which would not be tolerated -Decided to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-50; TR. 679
71	10-15-2005	Lennix Slack #16	Use of cell phone while operating company vehicle	-Observed operator using cell phone while operating company vehicle in violation of company rules -Determined operator was willfully using cell phone -Instructed operator that such conduct would not be tolerated -Decided to issue OBN at scene	Written Warning based on Road Supervisor's OBN	CX-72-51 & 52
72	08-20-2005	Bonnie Doone #54	Failure to have medical card at all times	-Determined operator involved in accident had no medical card and did not know where card was -Pulled operator off route and replaced him with another operator -Instructed operator to see senior supervisor -Decided to issue OBN at scene	Coaching based on Road Supervisor's OBN	CX-72-53; TR. 679
73	08-13-2004	Noah Britt #31	Failure or refusal to perform duties – right turn on red	-Observed operator make a right turn against a red light -Decided to issue OBN at scene	Written Warning based on Road Supervisor's OBN	CX-72-54 & 55; TR. 679
74	10-09-2006	Shereyll Epps #21	Failure to stop at stop sign	-Observed operator failure to stop at stop sign when entering terminal -Decided to issue OBN at scene	Written Warning based on Road Supervisor's OBN	CX-72-56 & 57; TR. 679
75	10-29-2008	William Rand, #55	Failure to perform duties	-Observed operator proceed through intersection in a right turn only lane -Observed operator stop coach in order to use cell	Coaching based on Road Supervisor's OBN	CX-72-58; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
				<ul style="list-style-type: none"> <li>phone and failed to chalk tires.</li> <li>-Decided not to issue OBN at scene</li> </ul>		
76	12-07-2010	William Rand, B2	Commendation	<ul style="list-style-type: none"> <li>-Determined operator was following all policies and procedures</li> <li>-Decided not to issue OBN on site</li> </ul>	Commendation based on Road Supervisor's OBN	CX-72-60; TR. 679
77	05-21-2004	Bonnie Doone #54		<ul style="list-style-type: none"> <li>-Observed operator failing to signal appropriately</li> <li>-Discussed issue with operator who said she was signaling properly</li> <li>-Checked functioning of signal, which appeared to be in order</li> <li>-Instructed operator to see senior supervisor</li> <li>-Decided to issue OBN at scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-61; TR. 679
78	11-07-2006	Parent, #40	Failure to follow company policy	<ul style="list-style-type: none"> <li>-Observed operator running behind on route</li> <li>-Determined operator purchased food evidenced by trash in operator's trash can and determined this caused operator to go out of service which resulted in customer delays and dissatisfaction</li> <li>-Instructed operator to see senior supervisor</li> <li>-Decided to issue OBN on site</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-62; TR. 679
79	12-01-2009	Derek Davis #15	Unprofessional conduct toward passengers	<ul style="list-style-type: none"> <li>-Determined that operator was rude to passenger and refused to issue passenger a pass even though passenger had paid for it</li> <li>-Decided to correct issue with passenger</li> <li>-Considered prior complaints made by passengers about operator in making final decision</li> <li>-Decided not to issue OBN on site</li> </ul>	Counseling based on Road Supervisor's OBN	CX-72-63; TR. 679
80	09-24-2007	Barry	Negligent or	<ul style="list-style-type: none"> <li>-Determined operator backed coach into a fixed</li> </ul>	Suspension based on	CX-72-64;

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
		Ryales #25	Dangerous Driving	object – a preventable accident	Road Supervisor's OBN	TR. 679
81	01-26-2009	Johnny Clark, #33	Violation of Company Policy	-Determined operator ended her shift early without doing final trip and without notifying BOC -Decided not issue OBN at scene	Coaching based on Road Supervisor's OBN	CX-72-65; TR. 679
82	02-11-2009	Marino, #41	Leaving the yard late	-Observed operator talking to another operator and pull out of yard two (2) minutes late -Decided not to issue OBN at scene	Coaching based on Road Supervisor's OBN	CX-72-66; TR. 679
83	07-29-2006	Marino, #41	Commendation	-Commended operator for consistently observing safety procedures and being courteous to passengers	Commendation based on Road Supervisor's OBN	CX-72-67; TR. 679
84	03-14-2009	Barry Ryales #25	Commendation	-Commended operator for displaying high degree of customer service	Commendation based on Road Supervisor's OBN	CX-72-68; TR. 679
85	09-26-2008	Harris #38	Failure to zero out fare box	-Observed operator's fare box and determined it had not been zeroed out -Determined operator did not understand fare box policy and counseled operator on proper fare box procedures -Decided not to issue OBN at scene	Counseling based on Road Supervisor's OBN	CX-72-69; TR. 679
86	06-28-2010	Richard Burnes #64	Commendation	-Commended operator for showing great customer service, never receiving any complaints against him and doing an overall excellent job	Commendation based on Road Supervisor's OBN	CX-72-70; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
87	10-08-2003	Vargas #50	Failure to stop at stop sign	<ul style="list-style-type: none"> <li>-Observed operator not stop at a stop sign after passing the probe area</li> <li>-Determined operator's conduct was not a safe practice</li> <li>-Decided to issue OBN at scene</li> <li>-Instructed operator to see senior supervisor</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-71; TR. 679
88	08-24-2006	Marcella Jackson #5		<ul style="list-style-type: none"> <li>-Observed operator make a U-turn in the middle of the road</li> <li>-Determined operator's conduct was an unsafe practice</li> <li>-Decided to issue OBN as scene</li> <li>-Instructed operator to see senior supervisor</li> </ul>	Counseling based on Road Supervisor's OBN	CX-72-72
89	10-08-2003	David Hargas #50	Failure to stop at stop sign	<ul style="list-style-type: none"> <li>-Observed operator fail to stop at stop sign after passing the probe area</li> <li>-Determined operator's conduct constituted an unsafe practice</li> <li>-Decided to issue OBN at scene</li> <li>-Instructed operator to see senior supervisor</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-73; TR. 679
90	08-28-2004	Bonnie Doone #54	Unprofessional conduct Speeding	<ul style="list-style-type: none"> <li>-Observed operator speeding on two (2) separate occasions on same trip.</li> <li>-After advising operator of speed limit, operator yelled at supervisor, accused her of lying, and slammed window.</li> <li>-Determined operator's conduct was unprofessional and inappropriate</li> <li>-Instructed operator to see senior supervisor</li> </ul>	1-day suspension and 1-year condition of employment based on Road Supervisor's OBN	CX-72-74, 75, 76, 77, and 78; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
91	03-11-2003	Bill Betts #52	Failure or refusal to perform job duties	-Observed operator sleeping on the job and then observed operator smoking instead of pulling out -Determined operator violated company policy -Advised operator to see senior supervisor -Decided to issue OBN at scene	1-day suspension based on Road Supervisor's OBN	CX-72-79 & 80; TR. 679
92	03-18-2004	Dante Hunt #29	Speeding	-Observed operator exceeding speed limit on two separate occasions -Decided not to issue OBN at scene	Coaching based on Road Supervisor's OBN	CX-72-81; TR. 679
93	04-24-2010	Cassandra Rice #27	Commendation	-Commended operator for preventing a late pull out by alerting road supervisors of other coaches impeding the way of his coach	Commendation based on Road Supervisor's OBN	CX-72-82; TR. 679
94	11-09-2010	Johnny Clark, #33	Leaving the yard late	-Observed operator leaving the yard late -Determined operator received his paddle on time -Determined operator's coach had no mechanical problems -Determined operator used the restroom and this made her late and violate policy regarding schedule adherence -Decided not to issue OBN at scene	Coaching based on Road Supervisor's OBN	CX-72-84; TR. 679
95	05-22-2010	Hatch, #39	Failure to adhere to spacing rules	-Observed operator pull away from a stop quickly while the traffic light was green and come very close to hitting the coach in front of her coach -Determined operator failed to adhere to spacing rules -Decided not to issue OBN at scene	Coaching based on Road Supervisor's OBN	CX-72-85; TR. 679
96	01-22-2011	Marcella	Leaving the yard late	-Observed operator leaving yard late	Written Warning based	CX-72-86,

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
		Jackson #5		-Road supervisor determined that operator did not notify road supervisor or maintenance of any mechanical issues and therefore violated Company's rules and regulations. -Decided not to issue OBN on scene	on Road Supervisor's OBN	87 &88; TR. 679
97	10-03-2009	Michael Cannon, #42	Failure to Refusal to Perform Duties	-After dispatch smelled alcohol on operator's breath, road supervisor interviewed operator and decided that there was reasonable suspicion for operator to undergo drug and alcohol testing.	Written warning and 5 day unpaid suspension based on Road Supervisor's OBN	CX-72-89; TR. 679
98	10-23-2010	Ken Green #37	Commendation	-Road supervisor determined that operator remained compliant with Company's rules and regulations regarding schedule adherence. -Road supervisor decided to issue OBN on scene.	Pat on Back/ Commendation based on Road Supervisor's OBN	CX-72-90; TR. 679
99	10-29-2009	Murray, #23	Backing coach without backer	-Road supervisor observed operator backing coach without a backer. -Road supervisor decided not to issue OBN on scene	Verbal warning based on Road Supervisor's OBN	CX-72-91 &92; TR. 679
100	1-29-2009	Kevin Vandeventer, #70	Using cell phone while operating coach	-Road supervisor observed operator using a cell phone while operating a coach through an intersection and continuously for about one mile -Road supervisor decided to issue OBN on scene	One day unpaid suspension, one year condition of employment based on Road Supervisor's OBN	CX-72-93&94; TR. 679
101	5/29/2010	Barry Ryales, #16	Violation of policies and procedures	-Road supervisor observed operator operating coaching with passengers in front of standee line and on staircase -Road supervisor determined that operator's	Coaching based on Road Supervisor's OBN	CX-72-95; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
				conduct violated the Company's policies and procedures -Road supervisor decided not to issue OBN on scene		
102	11-15-2008	Hatch, #39	Maintaining Proper Distance	-Road supervisor observed coach pull out directly behind another coach and then pass the forward coach, resulting in several buses pulling into the bus terminal at the same time. -Road supervisor noted that operator is a veteran and road supervisor knew "he can do better." -Road supervisor decided not to issue OBN on scene.	Counseling based on Road Supervisor's OBN	CX-72-96&97; TR. 679
103	10-13-2010	Marcella Jackson #5	Leaving the yard late	-Observed operator leaving yard late -Road supervisor determined that coach did not have any mechanical problems that would warrant a late pullout, and therefore, operator violated Company's rules and regulations. -Decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-98; TR. 679
104	08-29-2010	Rand, #B-2	Failure to put out triangles	-Observed operator failing to put out triangles after accident -Decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-99; TR. 679
105	10-05-2009	Davis, #15	Backing out without backer	-Road supervisor observed operator back out without backer. -Road supervisor interviewed witness who stated that operator left on his own -Road supervisor spoke to BOC who stated that operator just turned out of bay and left Road supervisor decided not to issue OBN on	Coaching based on Road Supervisor's OBN	CX-72-100; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
				scene		
106	08-19-2010	Ken Green, #37	Commendation	<ul style="list-style-type: none"> <li>-Road supervisor decided to recognize operator after determining that operator exhibited professionalism by following Company's policies and procedures with regard to safety at rail crossings and schedule adherence.</li> <li>-Road supervisor determined that operator's work ethic was excellent with regard to safety and customer service.</li> <li>-Road supervisor decided not to issue OBN on scene.</li> </ul>	Pat on Back/Commendation based on Road Supervisor's OBN	CX-72-101; TR. 679
107	10-22-2010	Cannon, #42	Moving violations	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator engaged in "poor" uses of signaling while entering and exiting bus stop, and also observed operator using four-way lights while the bus was in motion and improperly passing other vehicles</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-102; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
108	04-13-2011	Marcella Jackson #5	Leaving the yard late	<ul style="list-style-type: none"> <li>-Observed operator leaving yard late</li> <li>-Road supervisor determined that operator did not notify road supervisor or maintenance of any mechanical issues and therefore violated Company's rules and regulations.</li> <li>-Decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-103; TR. 679
109	08-07-2010	Parkerson#30	Shuttle Key Procedure Violation	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator engaged in shuttle key procedure violation.</li> <li>-Road supervisor observed operator take shuttle key from relief driver without first checking with road supervisor.</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-104; TR. 679
110	09-17-2011	Ken Green, #37	Commendation	<ul style="list-style-type: none"> <li>-Road supervisor decided to recognize and thank operator for providing what road supervisor determined to be outstanding service during a special event.</li> <li>-Road supervisor determined that operator's conduct was in compliance with Company's policies and procedures and thanked and advised the operator that he did a "Great Job".</li> <li>-Road supervisor decided not to issue OBN on scene.</li> </ul>	Pat on Back/ Commendation based on Road Supervisor's OBN	CX-72-105; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
111	09-27-2010	Gregory Hunt, #66	Leaving the yard late	<ul style="list-style-type: none"> <li>-Road supervisor observed operator leaving yard late.</li> <li>-Road supervisor determined that operator failed to call a road supervisor or maintenance and there was no known reason for the late pull out</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-106; TR. 679
112	10-04-2010	Rand, #B2	Safety Violation	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator failed to use turn signal while entering bus stop and failed to use four-ways while stopped at bus stop</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-107; TR. 679
113	08-24-2010	Marcella Jackson #5	Leaving the yard late	<ul style="list-style-type: none"> <li>-Observed operator leaving yard late</li> <li>-Road supervisor determined that operator violated Company's rules and regulations.</li> <li>-Decided not to issue OBN on scene</li> </ul>	Written Warning based on Road Supervisor's OBN	CX-72-108; TR. 679
114	11-11-2010	Ken Green, #37	Violation of Rules and Regulations	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator violated Company's rules and regulations regarding accident/incident reporting.</li> <li>-Road supervisor stressed to the operator the importance of contacting BOC immediately after accidents or incidents while at the scene and not after.</li> <li>-Road supervisor determined that operator departed the scene of an accident prior to reporting the accident to BOC.</li> <li>Road supervisor decided to issue the OBN on</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-109; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
				scene		
115	04-25-2011	Tom Gilbert, #32	Failure to transport passenger	-Road supervisor determined that operator improperly declined a ride to a passenger -Road supervisor decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-110; TR. 679
116	11-25-2009	Marcella Jackson #5	Leaving the yard late	-Road supervisor observed operator still at yard after pullout time. -Road supervisor questioned operator about leaving late, and operator stated that he was looking for safety triangles. -Road supervisor determined that operator did not notify road supervisor or BOC that he needed assistance -Road supervisor decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-111; TR. 679
117	02-01-2010	Thomas, #45	Failure to follow procedures	-Road supervisor recommended that operator be advised that incident report must be done before clocking out. -Road supervisor determined that operator left a lost and found bag with relief operator and recommended that operator be reminded to follow the Company's procedures by accounting for any lost and found items found by operator.	Coaching based on Road Supervisor's OBN	CX-72-112; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
118	01-04-2008	Marcella Jackson, #5	Failure to sweep coach	-Road supervisor determined that operator did not sweep coach at the end of run and two sleepers were left on coach. -Road supervisor directed operator to see senior supervisor before start of operator's next shift. -Road supervisor decided to issue OBN on scene.	Coaching based on Road Supervisor's OBN	CX-72-113; TR. 679
119	07-3-2009	Laura Bennett, #38	Leaving yard late	-Road supervisor determined that operator received coach on time and pre-trip was the reason operator left yard late -Road supervisor decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-114; TR. 679
120	08-16-2005	Jefferson	Excessive speed	-Road supervisor used radar to determine that operator was speeding in terminal -Road supervisor directed operator to see senior supervisor -Road supervisor decided to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-115; TR. 679
121	08-08-2008	Ramsaran #73	Leaving yard late	-Road supervisor determined that operator received pre-trip on time and failed to report any mechanical problems yet still left the yard late. -Road supervisor decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-116; TR. 679
122	03-30-2010	Marcella Jackson #5	Leaving the yard late	-Road supervisor observed operator leaving yard late. -Road supervisor determined that operator was late due to excessive pre-trip time. -Road supervisor decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-118; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
123	04-29-2010	Marcella Jackson #5	Leaving the yard late	<ul style="list-style-type: none"> <li>-Road supervisor observed operator leaving yard after pull out time.</li> <li>-Road supervisor questioned BOC who stated that operator told BOC that coach was slow.</li> <li>-Road supervisor determined that operator did not notify road supervisor or BOC of any problems.</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Operator was terminated before any discipline could be issued	CX-72-119; TR. 679
124	02-07-2011	Rand, #B2	Failure to Wear Seatbelt	<ul style="list-style-type: none"> <li>-Road supervisor entered coach and observed operator sitting on seat belt.</li> <li>-Road supervisor instructed operator to put his seat belt on and not sit on it.</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-120; TR. 679
125	10-26-2010	Rand, #B2	Failure to Signal	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator failed to use left turn signal while exiting bus stop</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-121; TR. 679
126	10-10-2010	John Brown #76	Improper U-Turn	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator made u-turn to assist passenger.</li> <li>-Road supervisor determined that, after operator made u-turn, passenger was unable to walk to where the coach had stopped</li> <li>-Road supervisor instructed operator to avoid making u-turns and to call BOC for assistance</li> <li>-Road supervisor decided to issue OBN on scene</li> </ul>	Written Warning based on Road Supervisor's OBN	CX-72-122, 123 & 124; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
127	11-08-2010	Parent, #40	Commendation	-Road supervisor determined that operator exhibited excellent driving skills and use of four-way and turn signals. -Road supervisor thanked operator for "being safe!" -Road supervisor decided to issue OBN on scene	Pat on back/commendation based on Road Supervisor's OBN	CX-72-125; TR. 679
128	07-23-2010	Kevin Vandeventer, #70	Leaving yard late	-Road supervisor determined that operator pulled out of yard three minutes late. -Road supervisor determined that operator received paddle on time and failed to report any mechanical problems. -Road supervisor decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-126; TR. 679
129	03-29-2011	Barnes, #64	Late pull out	-Road supervisor determined that operator left terminal late, after scheduled pull out time. -Road supervisor decided not to issue OBN on scene	Verbal warning based on Road Supervisor's OBN	CX-72-127, 128, 129; TR. 679
130	01-13-2010	Cassandra Rice, #27	Failure to follow procedures	-Road supervisor observed operator fail to perform walk through during layover. -Road supervisor additionally observed operator leave coach without chocking tires and zeroing out fare box -Road supervisor decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-131; TR. 679
131	04-27-2009	William Rand, #55	Failure to chock tires	-Road supervisor observed operator step off coach to use cell phone and advised operator of a "good job". -Road supervisor observed operator fail to chock	Counseling based on Road Supervisor's OBN	CX-72-132; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
				tires until asked to do so. -Road supervisor decided not to issue OBN on scene		
132	03-19-2009	Parkerson#30	Use of electronic devices on duty	-Road supervisor observed operator leave coach with a Bluetooth headset in his ear. -Road supervisor decided to issue the OBN on scene	Verbal warning based on Road Supervisor's OBN	CX-72-133; TR. 679
133	09-12-2010	Ramsaran#73	Leaving yard late	-Road supervisor observed operator leave yard late. -Road supervisor determined that operator received coach on time and failed to report any mechanical problems. -Road supervisor decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-135; TR. 679
134	07-03-2010	Ramsaran #73	Leaving yard late	-Road supervisor observed operator leave yard late. -Road supervisor determined that operator received coach on time and failed to report any mechanical problems. -Road supervisor interview operator who stated she thought she had more time -Road supervisor decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-136; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
135	11-16-2004	#18	Excessive speed	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator was exceeding speed limit in terminal.</li> <li>-Road supervisor spoke to operator who admitted he was speeding.</li> <li>-Road supervisor instructed operator to see him after trip.</li> <li>-Road supervisor decided to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-137; TR. 679
136	04-24-2010	Cassandra Rice, #27	Leaving yard late	<ul style="list-style-type: none"> <li>-Road supervisor observed operator leave yard after scheduled pull out time.</li> <li>-Road supervisor determined that operator received coach on time.</li> <li>-Road supervisor spoke to operator who stated that she thought pull out time was later and did not intend to leave late.</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-138; TR. 679
137	07-09-2009	Cassandra Rice, #27	Failure to Chock Tires	<ul style="list-style-type: none"> <li>-Road supervisor observed operator outside the coach without first chocking tires.</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-139; TR. 679
138	03-26-03	Hargett, #26	Failure to Carry Accident Kit	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator did not have an accident kit.</li> <li>-Road supervisor advised operator to "please remember to have one, two or more" and thanked operator for cooperation.</li> <li>-Road supervisor decided to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-140; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
139	05-11-2009	Davis, #15	Using Cell Phone while Operating Coaching	-Road supervisor determined that operator was using phone while backing out coach. -Road supervisor told operator that he could not back coaches up while talking on the phone even if talking to BOC. -Road supervisor decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-141; TR. 679
140	03-28-2009	Ramsaran#7 3	Leaving yard late	-Road supervisor observed operator left yard late -Road supervisor determined that operator received coach on time and failed to report any mechanical problems -Road supervisor decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-142; TR. 679
141	11-01-2010	Parent #40	Commendation	-Road supervisor observed operator chock tires and zero out farebox -Road supervisor decided to issue Pat on the Back and advised operator he did a "good job"	Pat on the Back/Commendation based on Road Supervisor's OBN	CX-72-143; TR. 679
142	06-30-2003	William Rand, #55	Failure to Stop at Stop Sign	-Road supervisor observed operator fail to come to a complete stop at a stop sign -Road supervisor decided not to issue OBN on scene	Written Reprimand based on Road Supervisor's OBN	CX-72-144, 145, 146; TR. 679
143	04-22-2008	Thomas#45	Leaving yard late	-Road supervisor recommended that operator be reminded that pull out time is imperative. -Road supervisor coached operator on pull out times and advised that operator is aware and should not have problem again. -Road supervisor decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-72-147; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
144	02-08-2004	Richardson-Hunt	Excessive Speed	<ul style="list-style-type: none"> <li>-Road supervisor warned operator several times in the past about excessive speed.</li> <li>-Road supervisor observed operator using excessive speed in terminal.</li> <li>-Road supervisor addressed operator about excessive speed and determined that "attitude was not so pleasant"</li> <li>-Road supervisor instructed operator to see senior supervisor</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-148; TR. 679
145	01-07-2010	Dwight O'Neil, #B3	Proceeding through red stoplight	<ul style="list-style-type: none"> <li>-Road supervisor observed operator drive coach through red light</li> <li>-Road supervisor interviewed operator who stated that he thought he could get through the light.</li> <li>-Road supervisor instructed operator to see senior supervisor</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Written Warning based on Road Supervisor's OBN	CX-72-149, 150; TR. 679
146	05-25-2010	John Brown, #76	Failure to Stop at Bus Stop	<ul style="list-style-type: none"> <li>-Road supervisor observed operator fail to stop at bus stop while passengers were waiting at stop for 45 minutes</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-72-152; TR. 679

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
147	06-16-2011	Ken Green, #37	Gross Misconduct	<ul style="list-style-type: none"> <li>-Road Supervisor coached operator for Gross Misconduct in violation of the Company's rules and regulations.</li> <li>-Road Supervisor determined that operator's conduct was insubordinate and coached operator to be patient and professional</li> <li>-Road Supervisor decided not to issue OBN on scene</li> </ul>	In-Field Coaching	CX-74-52; TR. 718-39
148	09-05-2011	Marcella Jackson, #5	Driving coach through red stop light	<ul style="list-style-type: none"> <li>-Road Supervisor observed coach drive through red stop light and followed coach.</li> <li>-Road Supervisor spoke to operator and determined that operator engaged in unsafe driving</li> <li>-Road Supervisor decided not to issue OBN on scene</li> <li>-Road Supervisor coached operator on scene</li> </ul>	In-Field Coaching	CX-74-87; TR. 718-39
149	06-08-2010	Marcella Jackson, #5	Failure to Perform Proper Pre-Trip	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator arrived to the coach with only 3 minutes to complete pre-trip. Road supervisor concluded that the 15 minutes allocated for pre-trip was not properly utilized by operator.</li> <li>-Road supervisor determined that operator failed to discover that rear door was not secured, which operator should have noticed during proper pre-trip.</li> <li>-Road Supervisor decided not to issue OBN on scene.</li> </ul>	Coaching based on Road Supervisor's OBN	CX-76; TR. 1034

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
150	10-28-2009	Marcella Jackson, #5	Leaving yard late	-Road supervisor determined that operator left yard late and failed to contact road supervisor or BOC for help. -Road supervisor decided not to issue OBN on scene.	One day suspension, one year condition of employment based on Road Supervisor's OBN	CX-77 at 1; Tr. 1083
151	02-02-2010	Marcella Jackson, #5	Leaving yard late	-Road supervisor determined that operator left yard late. -Road supervisor determined that operator received paddle on time and failed to get help from a road supervisor if necessary. -Road supervisor decided not to issue OBN on scene.	Coaching based on Road Supervisor's OBN	CX-77 at 2; TR. 1017-19, 1083
152	02-10-2010	Marcella Jackson, #5	Leaving yard late	-Road supervisor determined that operator left yard late. -Road supervisor interviewed operator who stated he had to use the restroom. -Road supervisor determined that operator received paddle on time. -Road supervisor decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-77 at 3; 1019-20, 1083
153	02-17-2010	Marcella Jackson, #5	Leaving yard late	-Road supervisor determined that operator left yard late "for no apparent reason" -Road supervisor determined that dispatch issued paddle to operator on time -Road supervisor decided not to issue OBN on scene.	Coaching based on Road Supervisor's OBN	CX-77 at 4; Tr. 1083

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
154	02-18-2010	Marcella Jackson, #5	Leaving yard late	-Road supervisor determined that operator left yard late for "no reason". -Road supervisor decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-77 at 5; TR. 1021-22, 1083
155	02-22-2010	Marcella Jackson, #5	Leaving yard late	-Road supervisor determined that operator left yard late. -Road supervisor determined that operator could have left yard on time -Road Supervisor cleared operator to pull out of yard -Road supervisor decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-77 at 6: TR.1022-24, 1083
156	03-29-2010	Marcella Jackson, #5	Leaving yard late	-Road supervisor determined that operator left yard late. -Road supervisor determined that operator was sitting in break room during scheduled pull out time. -Road supervisor decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-77 at 7; TR. 1024-26, 1083
157	03-29-2010	Marcella Jackson, #5	Leaving yard late	-Road supervisor determined that operator left yard late. -Road supervisor determined that operator did an excessive pre-trip -Road supervisor decided not to issue OBN on scene	Coaching based on Road Supervisor's OBN	CX-77 at 8; Tr. 1083

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
158	03-30-2010	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator left yard late.</li> <li>-Road supervisor determined that operator received paddle on time and left late for an unknown reason</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-77 at 9; Tr. 1083
159	05-19-2010	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator left yard late.</li> <li>-Road supervisor determined that operator received paddle on time, and road supervisor spoke to and instructed coach to leave at scheduled pull out time</li> <li>-Road supervisor determined that late pull out was due to slow pre-trip</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-77 at 10; TR. 1026-29, 1083
160	05-25-2010	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator left yard late.</li> <li>-Road supervisor interviewed operator who stated that she was later because she was speaking to senior supervisor; road supervisor spoke to senior supervisor who stated that operator had plenty of time to complete pre-trip and pull out on time.</li> <li>-Road supervisor determined that operator completed excessive pre-trip.</li> <li>-Road supervisor decided not to issue OBN on</li> </ul>	Coaching based on Road Supervisor's OBN	CX-77 at 11; TR. 1029-31, 1083

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
				scene		
161	10-13-2010	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator left yard late.</li> <li>-Road Supervisor made an assessment that operator was wasting time.</li> <li>-Road supervisor determined that coach had no problems that could warrant a late pullout, and operator violated Company's rules and regulations.</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-78 at 1; TR. 1031-34
162	05-25-2010	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator left yard late.</li> <li>-Road supervisor interviewed operator who stated that he was speaking to senior supervisor</li> <li>-Road supervisor interviewed senior supervisor who stated that operator was excused with plenty of time to make timely pull out</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-79 at 1; TR. 1037-39, 1084
163	05-26-2010	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator left yard late.</li> <li>-Road supervisor determined that operator received paddle on time, yet told BOC that he was late because he was trying to get familiar with the coach.</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-79 at 2; TR. 1084

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
164	06-16-2010	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator left yard late.</li> <li>-Road supervisor determined that operator did not report any problems and operator completed the pre-trip inspection too slowly.</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-79 at 3; TR. 1084
165	06-16-2010	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator left yard late.</li> <li>-Road supervisor determined that operator did not report any problems and operator completed the pre-trip inspection too slowly.</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-79 at 4; TR. 1084
166	06-21-2010	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator left yard late.</li> <li>-Road supervisor determined that operator did not report any problems to road supervisor or maintenance</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Formal Counselin based on Road Supervisor's OBN g	CX-79 at 5; TR. 1084

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
167	06-22-2010	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator left yard late for no reason.</li> <li>-Road supervisor repaired door and air pressure problem on coach so that operator could leave yard on time.</li> <li>-Road supervisor instructed operator to leave yard.</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Formal Counseling based on Road Supervisor's OBN	CX-79 at 6; TR. 1039-42, 1084
168	06-22-2010	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator left yard late.</li> <li>-Road supervisor determined that operator completed pre-trip on the wrong coach.</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-79 at 7; TR. 1084
169	06-24-2010	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator left yard late.</li> <li>-Road supervisor determined that operator completed the pre-trip inspection too slowly.</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-79 at 8; TR. 1084
170	08-24-2010	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>-Road supervisor determined that operator left yard late in violation of Company's rules and regulations.</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-79 at 9; TR. 1084

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
171	09-14-2010	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>- Road supervisor determined that operator left yard late in violation of Company's rules and regulations.</li> <li>-Road supervisor determined that operator failed to report any mechanical issues</li> <li>-Road supervisor instructed operator to leave yard</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-79 at 10; TR. 1084
172	11-22-2010	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>- Road supervisor determined that operator left yard late in violation of Company's rules and regulations.</li> <li>-Road supervisor determined that no mechanical issues prevented operator from leaving yard on time</li> <li>-Road supervisor instructed operator to see senior supervisor</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-79 at 11; TR. 1084
173	11-25-2010	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>- Road supervisor determined that operator left yard late in violation of Company's rules and regulations.</li> <li>-Road supervisor determined that operator failed to report any mechanical issues</li> <li>-Road supervisor determined that operator was late due to slow pre-trip</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-79 at 12; TR. 1084

## OBSERVATION NOTICES ISSUED BY ROAD SUPERVISORS

No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
174	11-29-2010	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>- Road supervisor determined that operator left yard late in violation of Company's rules and regulations.</li> <li>-Road supervisor determined that operator failed to report any mechanical issues</li> <li>-Road supervisor determined that operator received paddle on time</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-79 at 13; TR. 1084
175	12-22-2010	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>- Road supervisor determined that operator left yard late in violation of Company's rules and regulations.</li> <li>-Road supervisor determined that operator failed to report any mechanical issues to road supervisor, BOC or maintenance</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-79 at 14; TR. 1084
176	12-13-2010	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>- Road supervisor determined that operator left yard late in violation of Company's rules and regulations.</li> <li>-Road supervisor instructed operator to see senior supervisor</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-79 at 15; TR. 1084

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No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
177	01-20-2011	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>- Road supervisor determined that operator left yard late in violation of Company's rules and regulations.</li> <li>-Road supervisor determined that operator failed to report any mechanical issues to road supervisor or maintenance</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-79 at 16; TR. 1084
178	04-11-2011	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>- Road supervisor determined that operator left yard late in violation of Company's rules and regulations.</li> <li>-Road supervisor determined that operator failed to report any mechanical issues to road supervisor or maintenance</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-79 at 17; TR. 1084
179	04-13-2011	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>- Road supervisor determined that operator left yard late in violation of Company's rules and regulations.</li> <li>-Road supervisor determined that operator was late due to slow pre-trip</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-79 at 18; TR. 1084

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No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
180	04-13-2011	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>- Road supervisor determined that operator left yard late in violation of Company's rules and regulations.</li> <li>-Road supervisor determined that operator failed to report any mechanical issues to road supervisor or maintenance</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-79 at 19; TR. 1084
181	04-28-2011	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>- Road supervisor determined that operator left yard late in violation of Company's rules and regulations.</li> <li>-Road supervisor determined that operator failed to report any mechanical issues to road supervisor or maintenance</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-79 at 20; TR. 1084
182	06-09-2011	Marcella Jackson, #5	Leaving yard late	<ul style="list-style-type: none"> <li>- Road supervisor determined that operator left yard late in violation of Company's rules and regulations.</li> <li>-Road supervisor determined that operator received paddle on time</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-79 at 21; TR. 1084

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No.	Date of Event	Road Supervisor	Violation/Commendation	How Independent Discretion was Exercised by Road Supervisor	Level of Disciplinary Commendation	Reference
183	08-01-2011	Marcella Jackson, #5	Commendation	<ul style="list-style-type: none"> <li>- Road supervisor determined that operator conducted himself professionally and was in control and ready for the unexpected.</li> <li>-Road supervisor decided to recognize operator for his “incredible display of professionalism, safety awareness and pure skill”.</li> <li>-Road supervisor thanked operator for “a job well done”</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Pat on the Back/ Commendation based on Road Supervisor's OBN	CX-79 at 22, 23, 24; TR. 1044-46, 1084
184	04-11-11	Ila Meyers, #63	Failure to follow procedures	<ul style="list-style-type: none"> <li>-Road supervisor interviewed operator and determined that operator improperly left coach without zeroing out fare box</li> <li>-Road supervisor decided not to issue OBN on scene</li> </ul>	Coaching based on Road Supervisor's OBN	CX-92; TR. 1142-43