

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE

ALLIED AVIATION SERVICE COMPANY  
OF NEW JERSEY,

Employer

and

Case No. 22-RC-077044

LOCAL 553, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS

Petitioner

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RECOMMENDED DECISION ON CHALLENGED BALLOTS

I. Statement of the Case

Mindy E. Landow, Administrative Law Judge. On March 20, 2012,<sup>1</sup> Local 553, International Brotherhood of Teamsters (Local 553, or the Union) filed a petition seeking to represent certain employees of Allied Aviation Service of New Jersey (Allied, or the Employer) in a unit of:

All full-time and regular part-time Fueling Supervisors/Dispatchers/Operations Supervisors, Maintenance Supervisors (including Parts Supervisors and Parts Persons), Tank Farm Supervisors and Training Supervisors.

The Employer contended that the petitioned-for unit consisted of statutory supervisors and a hearing on this issue was held before a hearing officer on March 20, April 5, 6 and 11.

On May 7, the Regional Director, Region 22 issued a Decision and Direction of Election finding that none of the job classifications within unit sought by the petition were supervisory within the meaning of Section 2(11) of the Act. On May 21, the Employer filed a request for review of this Decision and on June 5, the Board issued an Order finding that the Employer's request for review "raises a substantial issue solely with regard to the Regional Director's finding that the Training Supervisors are not supervisors under the Act." The Board also determined that the issue could best be resolved through the use of the challenged ballot procedure.

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<sup>1</sup> All dates hereafter are in 2012 unless otherwise noted.

Accordingly, at the Board-conducted election which was held on June 7, the presiding board agent challenged the ballots of the three training supervisors. The tally of ballots prepared at the election showed that there had been 21 votes for representation and 20 votes against representation; thus the ballots of the three training supervisors were determinative.

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The Regional Director determined that this issue raised substantial issues of fact and credibility which could best be resolved through a hearing and I heard this matter on October 16 at which time both the Petitioner and the Employer called witnesses. Post hearing briefs were filed by the parties as well. Based upon the record as a whole, which includes the record of testimony adduced at the underlying representation case hearing, the testimony and other evidence adduced in the hearing before me and the briefs filed by the Employer and the Petitioner here, I make the following

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## II. Findings of Fact

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At the outset, it should be noted that since the initial hearing on the petition, the parties have reversed their positions regarding the supervisory status of the training supervisors. As will be discussed in further detail below, the Employer is now contending that these positions are not supervisory; that the training supervisors perform the same functions as other bargaining unit employees (i.e. the fueling supervisors, tank farm supervisors and maintenance supervisors) and do not possess any of the indicia of supervisory authority under the Act. To the contrary, the Petitioner alleges that they are supervisory employees within the meaning of the Act because they possess the authority to effectively recommend the retention or, conversely, the dismissal of probationary employees.

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### A. Overview of Employer Operations

While this was explored far more extensively in the Regional Director's Decision and Direction of Election, a brief overview of the Employer's operations is warranted to place the following discussion in proper context.

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The Employer provides fueling services at Newark Liberty International Airport, located in Elizabeth, New Jersey. The airport consists of 5 separate terminals, "A," "B," "C," "International" and "Cargo," which each supports different airlines. The Employer's operations are conducted around the clock, every day of the year. There are approximately 50 airlines operating out of the airport, and each carrier has varying procedures for the proper fueling of its airplanes.<sup>2</sup>

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The Employer's rank and file employees are represented for purposes of collective bargaining by the International Association of Machinists and Aerospace Workers – District 142 (IAM). These represented employees include the fuelers, maintenance, utility and tank farm employees, as well as those employees characterized as "leads" in all areas. There are approximately 6 lead employees in the maintenance and tank farm departments. As will be discussed further below, these lead employees participate, to varying degrees, in the training of employees in their respective departments.

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The IAM's collective bargaining agreement with Allied provides for a 90-day probationary period for new employees, including fuelers. Probationary employees may be terminated

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<sup>2</sup> Even though the model of aircraft may be similar in different airlines, the fueling procedures may vary.

without just cause during this period and are not subject to the grievance arbitration provisions of the collective bargaining agreement.

B. The Fuel Training Department

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Allied’s fuel training department bears the responsibility for the training of new and existing fuelers to fuel aircraft and other equipment. Frank Albanese is the Training Manager, and the three training supervisors who are at issue in this proceeding report to him. Presently, these individuals are Thomas Skvasik, Joe Fallon and Samuel Harris. Unlike rank and file employees, who are compensated on an hourly basis under the contract, these individuals are salaried employees who wear different work uniforms and do not punch a time clock. In the underlying representation proceeding, Albanese testified that the training supervisors all have the same title, authority and responsibilities. They receive an employee handbook which deals exclusively with salaried employees.

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The training of fuelers is done on live aircraft, which are soon to become airborne and contain passengers. The fuel training supervisors are responsible to ensure that the fuelers demonstrate the proper technique as prescribed by the Federal Aviation Administration (FAA) and the respective airline, for each particular carrier and its aircraft.

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Training supervisors initially will train new fuelers for approximately 3 to 4 weeks, on United Airlines aircraft, trucks and equipment. The new employee will start with classroom instruction, organized by Albanese, and then proceeds to “on the job” training with a training supervisor. Once this initial training has been completed, the employee is trained on other airlines in accordance with their aircraft and procedures. According to the record it will take approximately 400 hours for employees to be trained for all airlines. In addition, employees will require training in driving and the handling of other equipment. In 2012, as of the date of the hearing, Allied had hired approximately 20 new fuelers. About the same number were hired during 2011. In prior years, the number of new fueller hires was significantly higher. Additionally, Federal regulations require current employees to be requalified every 12 months. Testimony in the underlying representation record is to the effect that training supervisors and fueling supervisors<sup>3</sup> are in communication regarding employee skills and trainee availability for fueling particular equipment and planes. Allied currently employs approximately 150 fuelers. To ensure that employees follow proper protocol, new and existing fuelers are trained in accordance with a training checklist. Only Albanese and his 3 training supervisors have the authority to “sign off” that a particular employee has been appropriately trained.

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C. Albanese’s testimony in the underlying representation proceeding

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In the underlying representation case, Albanese offered testimony for the Employer regarding the duties and responsibilities of the training supervisors, much of which is relied upon by the Petitioner here.

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Albanese testified that he serves as a liaison between the airlines, the FAA, the Port Authority of New York and New Jersey and Allied. His department trains everyone on the field. Albanese stressed that as the manager of the department, he does not train employees himself and the three training supervisors are responsible for carrying out these tasks. Once an individual successfully files an application for employment, and receives the appropriate federal

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<sup>3</sup> The fueling supervisors were found to be non-supervisory employees and were therefore included in the bargaining unit sought by the instant petition.

identification, the employee is turned over to the training department. Albanese prefers working with a group of three or four trainees at a time, but the training process could be implemented for only one new hire. If there are more than four or five new employees, Albanese will assign an additional training supervisor to the task.

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As Albanese testified, the training supervisor is “100 percent” responsible for the proper fueling of the live aircraft and for the employees under his direction for the entire shift.<sup>4</sup> However, training supervisors do not “write up” new employees, because their job is to train them to perform their work correctly.

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When asked how much time he spends with new employees on the field during the initial four-week training period, Albanese stated, “Never. I’m not out there with them on the field. My supervisors are.” When asked to explain further, Albanese stated that in the event one of his training supervisors fails to report to work or if an airline had a problem and there were no supervisors to attend to the matter, he would go out to the field to assist, but otherwise would not have occasion to do so. Albanese also noted that during the prior year he, and the three training supervisors, received training organized and paid for by United Airlines which was not available to rank and file or other employees.

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Albanese further testified that in the event a new employee is not living up to expectations, the training supervisor,

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[W]ill come to me and explain the situation. And I’ll ask him what do you want to do? If you want to give him another week or you want to let him go? Our job is to train these people, to train fuelers. Our job is not to let people go, only when we have to. If the supervisor, my supervisor comes to me and says this guy is just not getting it, he can’t do it. He makes the call, that’s it. And then he gives him to me and we let him go. We terminate him.

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Albanese reiterated that this decision was the training supervisor’s call, “because I’m not with them. They are the people that know just what the employee is doing and if he can make it or not.” When asked by the hearing officer to provide a “real life example” of this, Albanese replied:

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I’m talking about probationary fuelers now, okay. This fueler is not working out. I say, okay, you don’t think he is going to make it. No. I say Okay, we’re going to discharge him? Yes.<sup>5</sup>

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Albanese then stated that, out of approximately 30 fuelers hired each year since 2006, 7 employees had been let go on the basis of such recommendations.

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After the initial and each subsequent training period (discussed below) the training supervisor and Albanese will “sign off” that the employee has been trained in the proper procedures according to the FAA and the airlines. Albanese testified that when he signs off he is “going by my supervisor’s judgment that they are qualified to fuel.”

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<sup>4</sup> New employees are typically trained during the afternoon shift primarily as a consequence of contractual bidding rules.

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<sup>5</sup> Although this testimony was not specifically responsive to the hearing officer’s request for a real life example, particular instances of when this has occurred were adduced during the instant hearing and, to the extent they were developed in the record, will be discussed below.

With regard to existing, i.e. non-probationary employees, there are two differing types of training. Allied requires that its employees must be recertified every 12 months. In addition, training supervisors will respond to requests from the fueling supervisors to retrain individual employees on particular airline procedures to cover operating exigencies. When asked whether the training supervisors can reassign employees based upon operational needs as communicated to them by the fueling supervisors, Albanese replied, “[a]ll the time and every day.” As Albanese stated:

[A]s a manger of the department, my supervisors handle the department for me. They work closely with the supervisors, the dispatching supervisors and the outside supervisors. Sometimes if you would ask me what’s our people doing right now, I really couldn’t tell you. We have a meeting when they come in the door. We have a meeting when they, when they end. They are constantly on the phone. I have a company phone on me. They’re texting me and they’re calling me all night, just giving me a heads up what they’re doing. They can’t stop and ask for permission to do things. The place just works too fast. If you do that, you’ll just domino all the flights. You’ll get delays.

Albanese and the training supervisor will also sign off on the annual recertification forms, which are required and subject to audit. Without such a sign off, the employee will not be qualified to fuel for a particular airline.<sup>6</sup> Fuelers are also required to be proficient in the required paperwork for each airline.

Albanese further testified about the importance of proper training for employees generally:

You’ve got to understand the liability on training also. God forbid something happens to an aircraft. Everybody is on call. Everybody is frozen. The training, the first thing they want to see is training, who fueled it, who trained, who trained them. . .

In the event an employee does not perform the fueling function properly, the training supervisor will take over operations so that the flight can leave safely and on time. Albanese further testified that when fueling supervisors see a deficiency in an individual’s performance, they will inform the training supervisor of that fact. Albanese will be informed of the situation at the daily meeting he holds with the training supervisors.

In the underlying representation hearing, Albanese also mentioned one unnamed probationary employee who was given an extra week of training. His training supervisor had signed him off, but nevertheless recommended termination because the employee was responsible for two delays. One involved a failure to show up to fuel an aircraft, and the other an overfueled jet. Albanese testified as follows, “My supervisor went back and tried to retrain him. He was very argumentative, knew everything, claims that he doesn’t need the training. My supervisor then came back to me and says that we have to let him go.”

#### D. Testimony adduced in the instant hearing

The witnesses in the hearing held before me included Albanese, called by the Petitioner. The Employer adduced testimony from Training Supervisors Skvasik and Harris. Additional witnesses called to testify by the Employer were Operations Manager Jorge Quintero, as well as

<sup>6</sup> Although certain airlines require recertification less frequently, Allied requires annual recertification.

lead men Raymond Covington, Mark Colasurdo and Fueling (also known as Ramp) Supervisor Marc Anthony Wilkins.<sup>7</sup>

5 As noted above, Petitioner places significant reliance on Albanese’s testimony in the underlying representation proceeding, as augmented in the instant case. In this regard, Albanese confirmed that his testimony in the prior case was accurate, except for the fact that he previously had testified that there were seven probationary employees who were not retained as fuelers, but presently could recall only six. He also noted that currently Skvasik is primarily responsible for training new employees. From the record, it appears that at the present time,  
10 Harris and Fallon train existing employees but fill in for Skvasik when he is on vacation or otherwise absent from the job, or when there are too many new employees for Skvasik to handle on his own. According to Skvasik, this happened on one occasion during the prior year when there were 7 new employees at one time.

15 Albanese’s role in training new employees is primarily to provide two to three days of initial classroom instruction and then Skvasik (or another training supervisor, as assigned) takes over for three to four weeks. In the event an employee needs more time to learn the job, additional training will be provided. Albanese testified that the training supervisors currently are the only people training new employees, but if the facility was really in a bind, he could take  
20 another supervisor had have him train.<sup>8</sup> Only the designated trainers (Albanese and the three training supervisors) are empowered to sign off that an employee is qualified to fuel a jet. If the employee in question is not appropriately signed off he is deemed not qualified to fuel.

25 Generally, new employee training starts at United Airlines, which is the hub carrier at Newark Airport. There are five types of equipment for this airline. As of the date of the hearing, in 2012, 20 new employees were hired: two were in training and 18 had been signed off by the training supervisors. After a training supervisor signs off on an employee, they are then referred to Albanese, who does the final sign off. He testified that the training supervisors will come to him with “feedback” that a particular employee can handle the job. Albanese sits down with the  
30 employee and their file. The employee signs the training document as does Albanese. In the year 2011, approximately 20 new employees were signed off as qualified; however the number of new employees varies from year to year. When Albanese was asked whether, at any time since 1988 (the year he became training manager) until the present, he had ever refused to sign off on an employee that a training supervisor had deemed qualified, he replied, “No.”

35 Skvasik testified that he is one of three training supervisors, the others being Harris and Fallon. Only they and Albanese are certified to train by the various airlines. After about one month of training, Skvasik reports to Albanese and informs him whether he needs more time with the employee or he is ready to go out. According to Skvasik’s testimony, it is Albanese who determines whether the employee needs additional training. While he will tell Albanese if  
40 someone is not working out, he does not recommend termination. Rather, he provides the information to Albanese, who makes that decision in conjunction with others. Skvasik confirmed that Albanese does not go into the field to observe employees; rather, he relies upon what Skvasik tells him. Skvasik does not train employees in the tank farm or maintenance area.

45 As noted above, Albanese stated that there were six occasions where a training supervisor recommended that an employee was not proficient in fueling. In such an instance, Albanese typically will ask the training supervisor if some additional training would be of help to

50 <sup>7</sup> Fallon did not testify in this proceeding.

<sup>8</sup> No specific examples of when this occurred were adduced in the record.

the employee. If so, then additional training will be provided. If the training supervisor feels that more training will not rectify the situation, then Albanese takes this information to the operations manager and a decision is made as to whether to let that employee go. If another position is open within the company, for example in “utility,”<sup>9</sup> and the employee is otherwise acceptable and willing to take a downgrade in pay, he will be kept within the organization. In this regard, Albanese noted that there is a strong incentive to keep employees on as the company has already spent three or four weeks with the employee and has spent hundreds of dollars on physical examinations, federal identification and fingerprints.

Within the past five years there have been certain occasions where an employee who, while unsuccessful in his probation as a fueller, was transferred into a utility position. One involved an employee referred to in the record as “Eddie.” He applied to become a fueller about 4 or 5 years ago and was trained by Skvasik. After about two weeks, Skvasik informed Albanese that Eddie had told him that he was too old to be climbing up on ladders all day and that he was unable to meet the physical requirements of the job. According to Albanese, he asked Skvasik to give Eddie another week after which Skvasik reported that Eddie could not do the job. Skvasik testified that he told Albanese that Eddie was a good guy and to see if they could move him around. Albanese consulted with the operations manager and, as there was an opening in utility at the time, Eddie was offered the downgrade, which he accepted. Aside from Skvasik, no other training supervisor assessed this individual’s performance. Albanese’s participation consisted of checking Eddie’s attendance records and then consulting with the operations manager.

“Alfred” was another probationary employee, hired shortly after Eddie. Skvasik, who was training him, realized shortly thereafter that he could not be relied upon to drive fueling vehicles near the planes as he became too anxious. Alfred was terminated during the probationary period. Albanese did not independently test Alfred’s driving ability before his termination. Skvasik testified that Albanese relied upon his feedback and recommendation.

“Aguilar” applied to become a fueller in about 2008. Albanese did not specifically recall who the training supervisor was for this employee, but surmised that it was Skvasik since he trained most new employees. Skvasik, however, could not specifically recall having trained Aguilar. In any event, during the training period, the training supervisor notified Albanese that Aguilar was not meeting the requirements of the job. Albanese testified that he got feedback from the training supervisor who advised him that Aguilar could not fuel airplanes; he then reviewed Aguilar’s attendance records and consulted with the operations manager. Albanese did not independently assess this individual’s ability on the field prior to terminating him.

Another fueller who did not pass probation was “Sherman,” who was hired about two years ago. Skvasik was his trainer and after about three weeks, Skvasik informed Albanese that Sherman could not perform the work because he did not have the requisite upper body strength. He was given another week, but did not improve his performance. Albanese did not independently assess this employee’s performance but took the information Skvasik had provided to the operations manager. At the time, as Albanese testified, there was no opening in any other department, so the employee was terminated.<sup>10</sup> Albanese confirmed that he was relying on Skvasik’s recommendation in making the decision to terminate this employee.

Albanese testified about certain other employees who did not pass probation. One

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<sup>9</sup> From the record this appears to be a position more oriented toward maintenance than fueling.

<sup>10</sup> Skvasik testified that it was his belief that Sherman was offered a utility position, but declined it.

individual, “Cummings,” was terminated in September 2012, largely due to time and attendance problems. Skvasik brought these problems to Albanese’s attention and Albanese met with Cummings to inform him that he must improve in these areas. At the time, Skvasik had a large class of new hires, and this employee caused difficulties for him and the other trainees.

5 Albanese told this employee that he would give him one more week of training but that he had to pick up his attendance. Skvasik agreed to provide this employee additional training time, but three days later he called out sick again. Skvasik told Albanese that it looked as though Cummings did not want the job. Albanese consulted with the operations manager and a decision was made to let him go.

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Skvasik testified that several years ago another employee, referred to as “John,” was being trained by a training supervisor named O.B. Ryles, who was Fallon’s predecessor in the position. He was unable to perform the functions of the job and was transferred to a utility position.

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20 There were other employees who were let go during the probationary period. At first, Albanese surmised that they had been trained by Skvasik, but he later stated that their trainers could have been Fallon or Harris, and that he simply did not recall. When asked whether he recalled whether the training supervisors came to him at any point telling him that these employees were not working out, Albanese replied, “Yes. Otherwise I wouldn’t have let them go. I trust my people to give me the feedback. . . . So I’m going by their, whatever they tell me.”

25 Albanese confirmed that although he will check employee attendance records, he does not independently assess their work on the field. Similarly, his consultations with the operations manager do not constitute an independent investigation of any particular employee.

#### E. Range of work duties of training supervisors

30 The Employer points to Skvasik’s testimony that at various times he responds to calls for assistance from the fueling department, at which time he takes over the functions of fueling supervisor, outside supervisor or ramp supervisor. Initially, Skvasik testified that this happened “every day.” Typically he will receive a call on the radio and he is “a body” who can go help to get the plane off at the gate on time. He also testified that he has covered for a fueling supervisor for a shift on a few occasions based upon sick calls and the like. In later testimony, 35 however, Skvasik’s account about how often this actually occurs varied, and it seems from the record as a whole that the frequency with which he is called upon to cover for or assist a fueling supervisor varies with the exigencies of any particular day. For example, Skvasik testified that recently he has operated as a fueling supervisor a few times, the last being in May 2012 and only for one shift. He then characterized this as “very rare,” occurring twice this year and two to 40 three times in the prior year. Skvasik added that he trains 99 percent of the day until he hears a call, which he might not hear at all in a day, or he could hear 5 in any particular day.

45 Harris, the other training supervisor who testified in the hearing before me, stated that he primarily trains current employees, i.e. those who have already passed probation, on new airlines and for their annual recertifications. He also trains initial hires. He stated that he has never encountered a situation where an employee has been unable to perform the work he is training them to perform and has never recommended that an employee be terminated. He stated that he has substituted as a fueling supervisor when there is a shortage due to illness or vacation. At times he has done a fair amount of that and at others he has not. When an 50 employee is not learning the training he is providing, he provides feedback to Albanese who then decides on the next step. Albanese has put people back in retraining more than once. While he corrects fuelers in their job performance, he typically does not issue write ups. On one

occasion a fueler failed to come to fuel the plane and he reported this circumstance to his superiors. Harris asserted, however, that none of his trainees have failed to pass the trial period. On cross-examination, Harris estimated that he spends about 90 percent of his time training existing employees. Although he trained new employees in 2012, he could not recall any of their names. He stated that he personally might have trained 20 new employees in 2012 (although he acknowledged that he was uncertain of the actual number) and 15 during 2011. Regarding the sign off procedure, Harris testified that Albanese sets up the file, he assists the employee with the paperwork and they both sign off.

#### F. Work duties of other employees

As noted above, in support of its contention that the work of the training supervisors does not differ from that of other bargaining unit employees, the Employer called two of its current lead men and one fueling supervisor to testify. Their testimony is summarized below.

Raymond Covington, a so-called “tank man,”<sup>11</sup> is not a supervisor. Rather he is a lead man who is a member of the IAM bargaining unit. He assists in the training of employees and, in particular, shows new hires how to do the job. The department utilizes a training checklist and, as Covington testified, it could take a couple of years to go through all the items on that training checklist. He will sign off on this checklist for employees that he trains along with the employee and that employee’s supervisor.

Covington testified that after the first 30 days of training he will speak with Department Manager Steven Guarino about employee performance and indicate whether he feels that the employee is going to make it or not. Covington asserted that he has been successful in his teaching and training and has never recommended that any employee is not appropriate to work in the tank farm. He does not discuss such matters with the employee’s supervisor; however, he has told Guarino on various occasions that someone is not catching on as quickly as desired. Guarino will decide whether to extend the training period, after which Covington and Guarino will discuss the employee. Covington neither assigns nor directs work, but rather acts as a conduit from the tank farm supervisor in that regard. Covington further testified that he occupies the position of lead man because he is the most senior employee on his shift. As of this moment, there are no new hires in his department so he just performs his regular job functions. The last new hire was sometime in 2011. If Covington is unavailable for any reason, the next most senior employee will train any new hire. He has never recommended the termination of any employee and no one has ever told him what would happen if he did.

Mark Colasurdo is an hourly employee in the maintenance department and a member of the IAM bargaining unit.<sup>12</sup> He is considered a lead. Colasurdo does not personally train anyone unless it is incidental. In such instances, he shares his experience and knowledge. He will pair a new employee up with a more experienced one to show how things are done. In the event the employee being trained is not doing well, he has no role. The supervisor makes the call and he does not speak with supervisors about how new employees are doing. Colasurdo will sign off on a checklist which indicates that employees have sufficient familiarity with their assigned tasks so

<sup>11</sup> The “tank farm,” where Covington works, receives, stores and provides fuel to the airlines through a long series of fuel lines, all maintained by the Employer. It is located approximately one mile from the airport ramps. It also contains a waste water facility, gas station and fuel selection area that the tank farm crew is responsible for maintaining.

<sup>12</sup> The maintenance shop is where equipment, trucks and pumps used in the fueling of aircraft are serviced, maintained and repaired.

that they no longer have to be paired up with a more experienced employee.

5 More specifically, when asked what his role would be if an employee being trained is not performing well, Colasurdo replied, “[a]t that point, I have no role. I mean they just get trained, shown a little bit more and hopefully it’ll catch on. Some people take a lot longer than others. And everyone is usually given a chance.” When asked whether the people training employees speak with him to tell him that things are not working out, Colasurdo replied, “[n]o, not exactly. You usually hear it, you know, locker room talk.” When shown the multi-page training materials particular to the maintenance department, Colasurdo stated that he was familiar with only the 10 top sheet which consists of a checklist showing “that this person in particular has at least been shown that he can do this or he has been this.” The exemplar shown to Colasurdo, that of employee “Perez” contains his signature. Colasurdo could identify one of the other signatures as that of the employee, but not the other. When asked what he had been signing off on, Covington replied, “That he’s shown that he can do it, at least to some extent, that he can do it.” 15 He added, “He might not do it proficiently, but he could do it. He is maybe at the point where we could leave him alone on his own to do it.”

20 Mark Anthony Wilkins, a “ramp” or fueling supervisor (and therefore included in the petitioned-for unit), trains existing employees in airline procedures with which they are unfamiliar. He shows them how to use the pump cart (which actually fills the plane with fuel) and fill out the requisite paperwork. He estimated that he assisted in training such employees about 10 times in 2012. He asserted that the training he provides to employees is similar to that provided by the training supervisors and confirmed that on occasion a training supervisor has 25 assisted a fueling supervisor when that person is unavailable due to days off or vacations, and that this happens fairly frequently. Although no specific examples were provided, Wilkins testified that both Harris and Fallon have responsibilities similar to those of fueling supervisors.

30 As noted above, Operations Manager Quintero is consulted about and involved in all termination decisions, often in conjunction with the Employer’s human resources department. He also takes part in decisions to transfer probationary fuelers to other departments. He conducts disciplinary hearings for all bargaining unit employees, and participates in arbitrations and grievances brought under the IAM contract.

### III. Analysis

#### 35 A. Applicable legal principles

40 As indicated above, the parties, having reversed their initial positions, nonetheless continue to differ as to whether the training supervisors are supervisory employees within the meaning of Section 2(11) of the Act.

45 Under Section 2(11) of the Act, an individual is not considered a supervisor, even if the employer refers to that employee by such a title, unless that individual possesses, in the interest of the employer, at least one of the types of authority listed therein.<sup>13</sup> In addition, the exercise of that authority cannot be merely routine or clerical, but must require independent judgment. This

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50 <sup>13</sup> “The term ‘supervisor’ means 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 conjunction with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”

means that the authority requires making a judgment which involves “a degree of discretion that . . . is not dictated or controlled by detailed instruction whether set forth in company policies and rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement.” *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687, 693 (2006). See also  
 5 *Sears, Roebuck & Co.*, 304 NLRB 193 (1991) (presence or absence of exercise of independent judgment significant factor in supervisory determinations).

It is widely acknowledged that Section 2(11) is to be interpreted in the disjunctive and that the possession of any one of the authorities listed in that section of the Act places the  
 10 employee invested with this authority in the supervisory class. See e.g. *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6<sup>th</sup> Cir. 1949), cert. denied 338 U.S. 889 (1949); *NLRB v. Health Care & Retirement Corp of America*, 511 U.S. 571 (1994).

Moreover, possession of authority consistent with any of the indicia of Section 2(11) is  
 15 sufficient to establish supervisory status even if this authority has not yet been exercised. See *Pepsi-Cola Co.*, 327 NLRB 1062, 1063-4 (1999)(account representatives found to be statutory supervisors because all possessed the same authority to discharge employees even though some had not been presented with the opportunity to exercise that authority); *Fred Meyer Alaska, Inc.*, 334 NLRB 646, 649 fn. 8 (2001)(meat and seafood managers were statutory  
 20 supervisors because they all possessed authority to hire or effectively recommend hiring even though some had not been presented with the opportunity to exercise that authority). See also *U.S. Gypsum Co.*, 93 NLRB 91 (1951); *Wasatch Oil Refining Co.*, 76 NLRB 417 fn. 17 (1948).

The burden of establishing supervisory status rests on the party asserting that status.  
 25 *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711-712 (2001); *Oakwood Healthcare*, supra. Any lack of such evidence is construed against the party asserting supervisory status. *Elmhurst Extended Care Facilities*, 329 NLRB 535 fn. 8 (1999). Conclusionary statements without supporting evidence do not establish supervisory authority.  
 30 *Volair Contractors, Inc.*, 341 NLRB 673 (2004).

### B. Contentions of the Parties

The Employer argues that the training supervisors do not recommend the retention or  
 35 termination of employees and that any such contention is conclusionary and inaccurate. The Employer refers, in this regard, to the Decision and Direction of Election where the Regional Director, relying upon *Elmhurst Extended Care Facilities*, supra, found that certain employees’ authority to evaluate employees was insufficient to confer supervisory status.

In *Elmhurst*, charge nurses evaluated certified nurses’ aides (CNAs) after a 3-month  
 40 probationary period using a 3 point rating system in 7 general categories including: job knowledge, quality of work, team relations, resident relations, observing regulations, attendance, safety and potential for the job. After the successful completion of the 90-day probationary period, the aides received an additional 25 cents per hour. There was no space  
 45 specifically reserved on the form for recommendations; however, the charge nurse could write narrative comments which included recommendations for continued employment, transfer to other units or termination. None of the evaluations submitted into evidence by the employer, however, contained a specific recommendation. 329 NLRB 535, fn. 3. The director of nursing made the decision to retain or terminate a CNA, or to extend a probationary period. The director  
 50 of nursing testified that she never rejected the recommendation of a charge nurse and that

terminations were rare.<sup>14</sup>

5 The Board found that these evaluations were those of a more experienced employee, the charge nurse, assessing whether a particular CNA possessed knowledge of the requirements of the job, the potential for performing the job competently and ability to interact with other employees and residents and to comply with various regulations. The Employer argues that the training supervisors here perform functions equivalent to those performed by the charge nurses in *Elmhurst* insofar as they: (1) follow a prescribed training checklist to provide direct on-the-job instruction to trainees; (2) observe the trainee performing the task; (3) retrain, if needed, upon the determination of the department manager; (4) again observe whether the trainee performs the task in the required manner, and when the trainee does so; (5) records that fact on a checklist which is submitted to the training manager and (6) provides feedback and report to the training manager of their personal observations.

15 The Petitioner argues that the Regional Director's reliance on *Elmhurst* is inapposite. In particular, the Petitioner contends that in the instant matter, the training supervisors have the authority to utilize independent judgment in recommending the retention (or, conversely, the termination) of probationary employees and that this is sufficient to confer supervisory status. Although Petitioner argues that *Elmhurst* stands generally for the proposition that the authority to effectively recommend the retention of a new employee establishes supervisory status, 20 Petitioner attempts to distinguish the outcome in that case by noting that there the Board found that the "evidence does not establish that there is a direct link between the probationary evaluations and a decision to retain a probationary employee or to extend an aide's probationary period." *Elmhurst*, 329 NLRB at 537. Specifically, the Board held that "when an evaluation does not, by itself, affect the wages and/or job status of the employee being 25 evaluated the individual performing such an evaluation will not be found to be a statutory supervisor." *Id.* at 536. Petitioner further notes that in *Elmhurst*, the evaluations were being performed by a more experienced employee, rather than by someone designated to train the employee.

### 30 C. Authority to effectively recommend whether to retain probationary employees

The authority to recommend is considered "effective" under Section 2(11) if the recommendations usually are or would be followed by the deciding official without conducting an independent investigation. See e.g. *DirectTV*, 357 NLRB No. 149, slip op. at 3 (2011)(and cases cited therein). In *Pine Manor Nursing Center*, 270 NLRB 1008 (1984), the Board found that charge nurses were supervisors where they effectively recommended termination or retention of probationary employees where the director of nursing reviewed, but did not independently investigate, the basis for the recommendation. See also *Venture Industries*, 327 NLRB 918, 919-920 (1999) (department and line supervisors effectively recommended selection of applicants where the department managers followed their recommendations 80-90 percent of the time).

45 The evidence fails to support the Employer's contention that the training supervisors are simply observing to see if the trainee is performing the task but do not recommend personnel actions. As has been set forth above, the evidence establishes that Albanese follows the recommendations of his training supervisors in deciding whether to retain probationary

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50 <sup>14</sup> The charge nurses also evaluated CNAs annually, on or about their anniversary dates. With the exception of "potential for the job" category, these general categories are the same as those that were on the probationary evaluation forms. *Id.* at fn. 4.

employees in the fueling department based solely upon their evaluations (also referred to, in an unconvincing attempt to minimize their significance, as “feedback”) without conducting an independent investigation. As Albanese testified, when he signs off on any particular employee, he is, “is going by my supervisor’s judgement that they are qualified to fuel.” Conversely, with regard to decisions affecting the termination or transfer of probationary employees, when a new employee is not living up to expectations and “my supervisor comes to me and says this guy is just not getting it, he can’t do it. He makes the call, that’s it. And then he gives him to me and we let him go. We terminate him.” Albanese further testified that he is “never” out on the field with employees: “I’m not out there with them on the field. My supervisors are.” Albanese reiterated the significance of the training supervisor’s recommendation with regard to probationary employees in testifying to the following conversation: “This fueler is not working out. I say, okay, you don’t think he is going to make it. No. I say Okay, we’re going to discharge him? Yes.”

Further, as has been noted above, specific examples of when this has occurred were adduced by the Petitioner. In several of these instances, Albanese (and other managerial personnel, as appropriate) relied solely upon the real-time observations and information provided by the employee’s training supervisor in deciding whether to retain, discharge or transfer the employee in question.

Thus, contrary to the situation presented in *Elmhurst*, supra, here there is a “direct link” between the recommendation of a training supervisor and the Employer’s decision to retain, continue training, transfer or discharge a probationary employee. The training supervisors are the only designated trainers empowered to not only complete forms denoting tasks successfully completed but to make effective recommendations that directly affect the job status of probationary employees.

Moreover, the evidence establishes that the recommendations of the training supervisors require the use of “independent judgment” as to whether a particular probationary employee is qualified to perform the necessary job functions which require both physical strength and technical skills. In *Oakwood*, supra at 693, the Board majority defined “independent judgment” to be “at a minimum” the authority to “act or effectively recommend action, free of the control of others” and “to form an opinion or evaluation by discerning and comparing data.” Independent judgment “contrasts with actions that are of a merely routine or clerical nature.” Here, as is apparent from Albanese’s testimony, given the real-time nature of the fueling operations and the necessary press of business at the airport there is little, if any, room for error and the consequences of a mistake could not only be severe and crippling to the airport’s operations but place life and property in jeopardy as well. As has been stated above, but bears repetition in this context, the recommendations of the training supervisors which are arrived at through personal observation and assessment of employee work skills are accepted without other independent investigation on the part of Allied’s managerial personnel. Thus, the training supervisors have been delegated substantial authority to ensure that management’s objectives have been met and are, by necessity, held accountable for the work of others. Thus, I conclude that the recommendations of the training supervisors are a product of the exercise of “independent judgment.”<sup>15</sup>

D. The Employer’s other contentions regarding the supervisory status of the training

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<sup>15</sup> I have concluded based upon the record as a whole, including Albanese’s testimony in the underlying representation and instant hearings, that both Skvasik and Harris have unpersuasively attempted to minimize the significance of their participation in the recommendation of the retention of probationary employees.

supervisors

5 The Employer additionally contends that the training supervisors train employees in a fashion substantially similar to those IAM represented lead employees in that their functions merely involve those of a more experienced employee. *Elmhurst*, supra. In particular, the Employer contends that the role of training supervisor is identical to that done by tank farm and maintenance lead employees when they train staff within their relative departments. The Employer contends that these functions are similar because these lead men perform functions congruent to those of the training supervisors, i.e.: follow a prescribed training checklist to provide on-the-job instruction to employees, observe the trainee, retrain, if needed; observe the trainee performing the task in the required manner and record it on the checklist which is submitted to their respective department managers. Thus, the Employer has framed an argument by negative implication: if the lead men are not supervisory employees then neither are the training supervisors. I disagree with both the logic as well as the evidentiary assertions put forth in this regard.

20 While the evidence shows that these most senior and experienced lead employees participate, to varying degrees, in the training of new employees, I disagree with the contention that this demonstrates that the training supervisors are not statutory supervisors within the meaning of the Act. As an initial matter, I am constrained to note that the status of the lead men, which is not an issue before me, is not determinative of whether the three training supervisors are statutory supervisors. Further, while Covington, as a senior employee, will show new employees how to perform their job functions, sign off on a training checklist and report their performance to department manager Guarino, there is no evidence that Covington is authorized to or has ever made any effective recommendation that an employee is not appropriate for the job or that would otherwise affect employee status. And, even if he had, that would not prove whether the training supervisors do or do not possess such authority under Section 2(11) of the Act.

30 Lead man Colasurdo testified that although he does sign off on a checklist indicating that employees have familiarity with assigned tasks, he does not regularly participate in the training of employees and that if such training were to occur it would be limited to sharing his experience and knowledge. He testified that in the event a new employee is not catching on he has “no role” in the matter and that reports of employee performance come to him in the form of “locker room talk.” When shown the training documents for employee “Perez,” Colasurdo was familiar only with the top sheet (consisting of a checklist) and asserted that he was unfamiliar with the remainder of the training materials. While he could identify his signature as well as that of the employee in question, did not know the identity of the third person signing off on the form. Moreover, Colasurdo’s testimony is to the effect that he neither assigns nor directs work; but rather acts as a conduit between supervision and less senior employees.

45 Thus, acknowledging the Employer’s general argument that the training responsibilities of the bargaining unit lead men and the training supervisors are (somewhat) coextensive, the evidence shows that whatever role the lead personnel may take with regard to training new employees, such functions are far more circumscribed than those of the training supervisors. Furthermore, whatever agreement the Employer and the IAM have reached regarding an appropriate bargaining unit is largely irrelevant to the statutory issue presented here. More importantly, with regard to the instant case, there is no evidence that either of these lead men provide recommendations which have a direct effect on the terms and conditions of employment of those employees with whom they interact and presumably train. It is this factor which distinguishes the training supervisors here.

The Employer further argues that training supervisors also function as fueling supervisors, and that, since the fueling supervisors have been deemed to be non-supervisory employees, a similar conclusion should be reached with regard to the training supervisors. Again, I disagree.

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While there is some general evidence that, due to operational exigencies, a training supervisor may offer assistance to and function as a fueling supervisor, such evidence is unpersuasive. In *Oakwood Healthcare*, supra at 694, the Board found that any individual who “spends a regular and substantial portion of his/her worktime performing supervisory functions” is a supervisor. The Board noted that it “has not adopted a strict numerical definition of substantiality: but that 10-15 percent of total worktime is sufficient to find supervisory status.” Here, it is apparent that whatever ad hoc responsibilities the training supervisors may have and fulfill to assist the Employer’s operations, a substantial portion of their work time is devoted to their primary job functions; i.e. the training and certification of employees to fuel jet airplanes.

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The Employer’s contention that fuel supervisors also function as training supervisors is without any probative evidentiary support. While Albanese testified in the instant hearing that he may call upon a fuel supervisor to function as a training supervisor in the event he is short-staffed, there is no specific evidence to support this contention. Notably, neither Albanese, Skvasik, Harris nor fuel supervisor Wilkins ever testified to any occasion where this occurred. Moreover, it is contradicted by Albanese’s testimony in the underlying representation proceeding which was to the effect that he would go onto the field in the event there was no training supervisor available to attend to events. Further, the evidence is clear that only the training supervisors and Albanese have the authority to sign off that an employee has been appropriately trained.

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Although not specifically urged by the Employer, one further matter raised by the evidence, which I find appropriate to address, is whether the current differences in the work assignments of the training supervisors would compel the conclusion that, while one or more of the group may function as supervisors they do not all possess such authority or exercise it sufficiently to be deemed to fall within that statutory exclusion. After careful consideration of this issue, I have reached the conclusion that the record supports a finding that all three training supervisors have similar authority to effectively recommend the retention of probationary employees. While it is the case that both Albanese and Skvasik testified that Skvasik is primarily responsible for training probationary employees, Albanese testified in the underlying representation hearing that all three training supervisors possess the same title, authority and responsibilities. This testimony is supported by the fact that all three training supervisors are salaried employees, while others are not, wear different uniforms, have a separate employee manual setting forth Employer policies for their job title, attend training not offered to other employees and, as noted above, are the only employees who may “sign off” that an employee is qualified to fuel any particular aircraft. In addition, the record shows that the training supervisors will fill in for each other when necessary.<sup>16</sup> I further note that in the underlying representation case, Albanese consistently referred to the authority of the training supervisors as a group and made no distinction among them. Thus the record shows that the authority to effectively

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<sup>16</sup> While Harris testified that he trained 20 new employees in 2012 and 15 new employees in 2011, based upon the record as a whole I find this number to be overstated. I note however, that Harris testified without contradiction from the Employer on this issue, who most certainly would be in a position to know how many new employees he had, in fact, trained. I conclude therefore, that Harris did participate in the training and assessment of a significant cadre of new employees during the prior two year period of time.

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recommend whether probationary employees be retained is not solely vested in Skvasik.<sup>17</sup>

As noted above, it is the possession of authority consistent with any of the indicia of Section 2(11) confers supervisory status. It is not necessary that this authority be exercised. *Pepsi-Cola*, supra at 1063-4 (1999) *Fred Meyer Alaska*, supra at 649 fn. 8 (2001); See also *Arlington Masonry Supply, Inc.*, 339 NLRB 817, 818 (2003) (quoting *NLRB v. Roselon Southern, Inc.*, 382 F.2d 245, 247 (6<sup>th</sup> Cir. 1967)) (“The employee is [not] required to regularly and routinely exercise the powers set forth in the statute. It is the existence of the power which determines whether or not an employee is a supervisor.”)

Accordingly, based upon Albanese’s testimony at the underlying representation case and the evidence adduced in the hearing before me, I conclude that the training supervisors as a group possess, at the least, the authority to recommend that probationary employees be retained for employment; that these recommendations are routinely followed without independent investigation by others and that such recommendations require the use of independent judgment, as that term has been defined by the Board. I further find that this is sufficient to confer supervisory status to the training supervisors as a distinct job classification. *DirectTV*, supra; *Pine Manor Nursing Center*, supra.

#### IV. Conclusion and Recommendation<sup>18</sup>

For the foregoing reasons, I conclude that the Petitioner has met its burden of showing that Thomas Skvasik, Joe Fallon and Samuel Harris have supervisory authority within the meaning of Section 2(11) of the Act. Accordingly, I recommend that the challenges to their ballots be sustained and that the Regional Director shall prepare and cause to be served upon the parties a Certification of Representative.

Dated, Washington, D.C. January 15, 2013

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Mindy E. Landow  
Administrative Law Judge

<sup>17</sup> The anecdotal evidence adduced at the hearing supports this conclusion. For example, Skvasik pointed to one example where training supervisor O.B. Ryles, who was Fallon’s predecessor, recommended the discharge of a probationary employee named “John.” Moreover, Albanese exhibited uncertainty in pinpointing the identity of the training supervisor who recommended that “Aguilar” and others, whose names he could not recall, be discharged. Had it been the case that neither of the other two training supervisors (Harris or Fallon) possessed such authority, it is unlikely that Albanese would have exhibited such doubt.

<sup>18</sup> Under the provisions of Section 102.69 of the Board’s Rules and Regulations, exceptions to this report may be filed with the Board in Washington, D.C. within 14 days from the issuance of this report and recommendations. Exceptions must be received by the Board in Washington by January 29, 2013.