

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10, SUBREGION 11

PAC TELL GROUP, INC. D/B/A U.S.  
FIBERS

Employer<sup>1</sup>

and

Case 10-RC-101166

UNITED STEEL, PAPER, AND FORESTRY,  
RUBBER, MANUFACTURING, ENERGY,  
ALLIED INDUSTRIAL AND SERVICE  
WORKERS INTERNATIONAL UNION,  
LOCAL 7898

Petitioner<sup>2</sup>

**ACTING REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION**

The Employer, Pac Tell Group, Inc. d/b/a U.S. Fibers, operates two facilities engaged in the processing and manufacture of recycled polyester fiber. One facility is located in Trenton, South Carolina, and the second facility is located in Laurens, South Carolina. The Petitioner, United Steel, Paper, and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 7898, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time production, janitorial, warehousemen, shipping and maintenance workers employed by the Employer at its Trenton, South Carolina, facility, excluding all other employees, including office clerical employees, professional and confidential employees, and guards and supervisors defined under the Act. A hearing officer of the Board conducted a hearing. The Petitioner and Employer filed post-hearing briefs, both of which have been duly considered.

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<sup>1</sup> The Employer's name appears as stipulated to at the hearing.

<sup>2</sup> The Petitioner's name appears as stipulated to at the hearing.

## **POSITIONS OF THE PARTIES**

As evidenced at the hearing and set forth by brief, two issues were litigated: (1) the geographical scope of the unit; specifically, whether the Employer's satellite facility in Laurens, South Carolina, should be included in the unit; and (2) whether four individuals, labeled by the Employer as "Supervisors," are supervisors under Section 2(11) of the National Labor Relations Act, and should, therefore, be excluded from the unit.

The Petitioner contends the following: that the Laurens facility and Trenton facility do not share a community of interest and, therefore, should not be included in the same unit; and that the four individuals labeled as "supervisors" by the Employer are not supervisors under the Act. The Employer asserts the following: that the Laurens facility employees should be included in the bargaining unit with the Trenton facility employees; and that the four named individuals are supervisors as defined by the Act and should not be included in the unit.

The parties discussed at hearing that the number of employees at the Trenton facility was approximately 125 to 140 employees. The number of employees at the Laurens facility was approximately 17 to 20 employees. The Petitioner and the Employer agreed that they would wait to review the appropriate payroll to determine the precise number of employees at the Laurens and Trenton facilities. The Petitioner is willing to proceed to an election in any alternative unit the Region might direct.

As discussed more fully below, I have concluded that the Laurens facility does not share an overwhelming community of interest with the petitioned-for unit at the Trenton facility; and that the Employer has not met its burden of establishing that the four individuals, Eduardo Sanchez, Jose Lal, David Martinez, and Aduaco Torres, are supervisors as defined by the Act.

## **THE EMPLOYER'S OPERATIONS**

### **A. Overview**

The Employer operates two plants for the purpose of recycling polyester and manufacturing recycle fibers. The Employer buys scrap polyester, like polyester film, special fibers, non-woven, and “lump and chunk,”<sup>3</sup> and recycles it into useable product. The first plant is located in Laurens, South Carolina (hereafter “Laurens facility”). The second plant is located in Trenton, South Carolina (hereafter “Trenton facility”). The Laurens facility and the Trenton facility are located approximately seventy five (75) miles apart. The Employer's operation is set up to receive scrap polyester at the Laurens facility, where it is reduced and densified. The material is then packaged and sent to the Trenton facility to create the useable product. One hundred percent of the output from the Laurens facility goes to the Trenton facility to be manufactured. Approximately 25% of the material used at the Trenton facility comes directly from the Laurens facility. The Trenton facility receives the remaining 75% of its material from outside sources, directly to the Trenton facility.

### **B. Laurens Facility**

The Laurens facility operates in a single building, which is approximately 150,000 square feet, and is situated on approximately 25 acres of land. The Laurens facility is capable of receiving scrap material, processing that material by reducing and densifying it, and packaging the material to be sent to the Trenton facility. The reduction and densifying process is done by two types of machines, an Erema and a densifier. The workers responsible for transporting the material from the Laurens facility to the Trenton facility are contracted out, and therefore are not employees of the Employer.

### **C. Trenton Facility**

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<sup>3</sup> “Lump and Chunk” is a waste product of the polymerization process, which resembles a glob of tar and polyester.

The Trenton facility consists of four separate buildings. Combined, the buildings cover between 500,000 to 600,000 square feet. The Trenton facility has all of the capabilities of the Laurens facility, receiving scrap material (from the Laurens facility or from other outside sources), processing the material by reduction and densifying, and packaging that material. Additionally, unlike the Laurens facility, the Trenton facility is capable of manufacturing the final product. At the Trenton facility, the Employer mixes the material, created by the reduction and densifying process, with other products to produce a backup of polymer. Once the backup of polymer is created, it is first blended and then dried for four to five hours in order to draw moisture out and crystallize the material. After the polymer is crystallized, the material is passed through the “intruder” for dye molding and sizing. The material then passes through a grinder, and finally a spinnarete and “extruder,” which creates the fiber. After the fiber is created, the final step is finishing. Finishing is the process of cooling, drying, and cutting the newly created fibers. Once the fibers are finished, they are packaged and sent to the customer.

**D. Supervisory Hierarchy**

Vice President Ted Oh is responsible for the overall operation and financial responsibility of the Employer’s business, including both the Trenton and Laurens facilities. Oh’s office is located at the Trenton facility. Although Oh used to routinely visit the Laurens facility once per week up through 2010, the last time that he has gone to the Laurens facility was in 2012.

Jay Alcorta is the plant manager for the Laurens facility and the safety manager for the Trenton facility. Alcorta’s office is located at the Laurens facility, where he spends two or three days a week. Alcorta goes to the Trenton facility once a week to conduct safety meetings for employees at that facility.

Kevin Corey is the director of manufacturing for the Trenton facility. Corey is responsible for the operation of the Trenton facility and answers directly to Vice President Ted

Oh. Corey's office is located in the Trenton facility. Corey travels to the Laurens plant once or twice a year. The last time that Corey was at the Laurens plant was sometime in 2012.

Production Managers Glenn Jang and Kyong Kang are in charge of production at the Trenton facility. Jang is in charge of the recycling and extrusion process, up until the fiber comes through the spinnerette. Kang is responsible for the process after the spinnerette, known as finishing. Jang and Kang answer directly to Director of Manufacturing Kevin Corey. Although Kang did not testify at the hearing, Jang testified that he rarely goes to the Laurens plant. These two managers work from 8 a.m. to 6 p.m.

The above individuals are also compensated by salary rather than compensated hourly. The parties have stipulated that the above individuals are supervisors within the meaning of Section 2(11) of the Act.

In addition, Susan Kelley is the assistant controller. Kelley is responsible for handling the payroll and benefits for employees of both the Laurens and Trenton facilities. Kelley's office is located at the Laurens facility. There is no individual employed in a like position at the Trenton facility. Assistant Administrator Crystal Busbee, located at the Trenton facility, is responsible for relaying payroll information to Kelley on behalf of the Trenton facility.

#### **E. Comparison of the Trenton and Laurens Facilities**

As set forth more fully below, the record establishes that employees share the same wage and benefits package and work schedule structure. The employees also equally lack opportunity to transfer from one facility to the other. In contrast, the employees' training, job duties, and responsibilities differ between the two facilities.

##### **1. Wage and Benefits**

The Trenton and Laurens facility employees share the same wage and benefits structure. The starting hourly rate for employees is \$8.50. Lead employees receive a starting hourly rate of

\$9.50. The four labeled “supervisors” receive a starting hourly rate of \$10.50. The benefits structure offers paid holiday, paid vacation, and medical and dental insurance. The Employer pays 75% of the premiums for insurance and offers a 401(k) with four percent matching. Each April and October, in the Employer’s discretion, raises are given to employees based on their tenure with the company, work quality, and disciplinary record.

## **2. Uniforms**

There is no mandatory uniform for employees at either the Trenton or Laurens facilities. However, the record shows some evidence that maintenance employees at the Trenton facility may have started wearing uniforms. No information was provided as to what this uniform consists of or when it may have been implemented. Although designed for maintenance employees, it is a voluntary uniform for Trenton employees. The Laurens facility does not have a maintenance department, so it is unclear on the record whether or not the Laurens facility employees have been offered the opportunity to wear a uniform.

## **3. Hiring, Transferring, and Training**

The parties have stipulated that the four labeled “supervisors” listed above are not involved in the hiring of new employees for the Employer. Hiring has primarily been done at the Trenton facility by accepting walk-in applications. Only management officials at the Trenton facility participate in the review of those applications and the hiring of employees.

Employees who work at the Laurens facility typically do not transfer to the Trenton facility, and employees hired and working at the Trenton facility do not typically transfer to the Laurens facility. In fact, the record provides no evidence that a permanent, successful transfer has occurred from the Laurens facility to the Trenton facility, or vice versa. The record shows that some employees who are assigned to one facility have occasionally been asked to work at the other facility, but that this is not a normal, routine practice. Thus, such assignments of

employees occur only if the need arises, approximately three or four times a year. The only recent example of such an assignment has been the assignment of three or four employees from the Laurens facility to the Trenton facility to help patch a roof and do some construction on the walls of the facility.

When the Employer conducts training for employees, the training takes place separately for the Laurens and Trenton facilities, because of the 75-mile distance between them. Safety meetings are held on Tuesdays at the Trenton facility. These safety meetings include the Safety Manager Jay Alcorta, who travels from the Laurens facility. For the Laurens facility, because it is a smaller facility, Alcorta simply walks through the plant and speaks with employees about safety throughout the day. A full safety meeting, such as the one that occurs at the Trenton facility, takes place once a month at the Laurens facility.

#### **4. Shifts**

The production employees' work schedule for the Laurens and Trenton facilities consists of two 12-hour shifts per day. Employees in the production departments are broken up into three groups: A, B, and C. These groups work five consecutive days followed by four days off. The groups also rotate between day shifts and night shifts. For instance, if Group A works a five day shift schedule, the group returns to work after four days off and works five night shifts.

#### **5. Employee Job Duties**

The Trenton facility, which has the capability to do the recycling and manufacturing process from start to finish, has the following employee classifications: shipping and receiving employees, lab employees, maintenance employees, janitorial employees, and production employees. Production employees include extrusion employees, finishing employees, and recycling employees. The Laurens facility, on the other hand, has shipping and receiving

employees, janitorial employees, and recycling production employees. Thus, the Laurens facility does not have lab employees, maintenance employees, or production employees involved in extrusion and finishing.

Lead employees are responsible for a team of three to five employees. Leads are generally the most experienced person on the team and help to guide the newer employees concerning the operation of department. Lead employees work alongside other production workers on the line, but receive \$1.00 more per hour for their added responsibility. Lead employees report directly to one of the four individuals who the Employer has labeled as “supervisors,” namely Eduardo Sanchez, Jose Lal, David Martinez, and Aduco Torres (hereafter “contested supervisors”). Lead employees are also responsible for filling out the daily production reports setting forth performance factors for the team’s machines. Once the production status reports are filled out with the appropriate output numbers from their team’s machines, lead employees give the reports to the contested supervisors for approval.

**F. Contested Supervisors’ Responsibilities and Job Duties**

The four contested supervisors are responsible for the leads and teams underneath them. Eduardo Sanchez and Jose Lal work under Production Manager Glenn Jang in the extrusion department of the Trenton facility, rotating between day shift and night shift. Lal and Sanchez spend approximately three to four months on one shift before switching from days to nights or vice versa. Sanchez and Lal are responsible for supervising nine lead employees and ultimately the approximately 50 employees underneath the leads. At any given time, Sanchez and Lal are each responsible for 25 employees.

David Martinez works under Production Manager Glenn Jang in the recycle department of the Trenton facility. It is unclear from the record what Martinez’s daily work hours are.

Martinez has six lead men, one high lead man named Jose Ferro, and approximately 20 employees underneath him.<sup>4</sup>

Aduco Torres works under Production & Quality Assurance Manager Kyong Kang in the finishing department of the Trenton facility. It is unclear from the record what Torres' daily work hours are. Torres has seven lead employees, one lead man named Edwin Vincente, and approximately 40 employees underneath him.<sup>5</sup>

Generally, each contested supervisor has the same responsibilities. The contested supervisor must observe his team of employees to make sure that the department is operating correctly. If any issues arise, such as a machine breakdown, the contested supervisor can assign employees to do other work and go to other areas to fill in. The contested supervisors do not have regular production jobs on the line; rather, they are asked to walk around the department to observe. For this reason, the contested supervisors do not have offices. Because the Employer's facility operates 24-hours per day, a contested supervisor must be present when a department manager is not at the facility. Unlike department managers, the contested supervisors are paid hourly and may earn overtime. Contested supervisors can be involved in calling employees in to work to cover absences and granting employee requests to go home due to illness.

Contested supervisors are also involved in creating work schedules for the employees assigned to them. The department manager will set the parameters for how many employees are needed for each shift. With this information, the contested supervisor chooses the employees who will work, as well as the work location in that department.

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<sup>4</sup> While noted on the record that Ferro is an "Acting Supervisor," the Employer did not contend that Ferro should be treated as a Section 2(11) supervisor and excluded from voting in election. Therefore, no such analysis of Ferro is contained in this decision.

<sup>5</sup> The record lacks any detail or description of Vicente. The Employer did not contend that Vicente should be treated as a Section 2(11) supervisor and excluded from voting in election. Therefore, no such analysis of Vicente is contained in this decision.

Finally, contested supervisors are somewhat involved in reviewing lead employee status reports, providing general input for raises, and drafting warnings to employees. Each day, lead employees fill out production status reports that are submitted to the contested supervisor for review. The contested supervisor is asked to review these reports for visible errors, and pass the reports to the department manager for review and approval. If the Employer chooses to offer raises to employees, usually in April and October of each year, contested supervisors can provide limited input for raises. The contested supervisor uses a list to indicate which employees should receive a raise, and then submits that list to the department manager.<sup>6</sup> Also, if the contested supervisors notice any employee issues during the day that warrant discipline, they have been told that they may issue written warnings to the employee, though the record contains no evidence of them actually exercising this authority on their own initiative. If the contested supervisor fails to issue warnings that are apparent to the manager, the contested supervisor may be directed to issue the written warning.

## **UNIT SCOPE ANALYSIS**

### **A. Applicable Case Law**

The Employer contends that the bargaining unit should include employees from the Trenton facility, as well as employees from the Laurens facility. A single-facility unit is presumptively appropriate for collective bargaining. See *J&L Plate, Inc.*, 310 NLRB 429, 429 (1993). Overcoming this presumption requires a finding that the single facility has been effectively merged into a more comprehensive unit, or so functionally integrated with another unit that it has lost its separate identity. *R & D Trucking*, 327 NLRB 531 (1999). Moreover, a single facility can include more than a single building. *Child's Hospital*, 307 NLRB 90 (1992). Finally, the burden here is ““on the employer to overcome the presumption and demonstrate that

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<sup>6</sup> The department manager makes his own suggestions for raises and submits that input to Vice President of Operations Ted Oh, who is ultimately responsible for approving all employee raises.

a single facility is inappropriate.”” *Marine Spill Response Corporation*, 348 NLRB 1282, 1285 (2006), quoting *Dattco, Inc.*, 338 NLRB 49 (2002). This burden is a substantial one, as noted by the Board in *Specialty Healthcare*, 357 NLRB No. 83, slip op. at 11, holding that “the proponent of the larger unit must demonstrate that the employees in the more encompassing unit share ‘an overwhelming community of interest’ such that there ‘is no legitimate basis upon which to exclude employees from it,”” quoting *Blue Man Vegas, LLC v. NLRB*, 529 F.23d 417, 421 (D.C.Cir. 2008).

In determining whether a single-facility unit is appropriate, the Board reviews the following factors: (1) central control over daily operations and labor relations, including the extent of local autonomy, (2) similarity of skills, functions, and working conditions, (3) degree of employee interchange, (4) distance between the locations, and (5) any previous bargaining history. *New Britain Transportation Co.*, 330 NLRB 397 (1999)

## **B. Application of the Case Law to Unit Scope**

The record shows that the Employer has not satisfied its burden to rebut the single-facility presumption, and, therefore, the Trenton facility constitutes an appropriate bargaining unit. In this regard, the Laurens and Trenton facilities lack sufficient centralized control, are somewhat dissimilar in employee skills and functions, and lack employee interchange based on the distance between the facilities. Finally, the record indicates that there has been no previous bargaining history at either facility.

### **1. Centralized Control**

Although the Trenton and Laurens facility share centralized control at the top of the Employer’s management hierarchy, the bulk of day-to-day labor relations is handled locally. A review of the Employer’s organizational chart shows that the vast majority of the Employer’s management representatives are assigned to the Trenton facility. There are only three

individuals who are responsible for activities at both facilities. Of these, Vice President Ted Oh testified that he is responsible for both locations and oversees both operations. However, Oh's office is located at the Trenton facility and Oh has not been to the Laurens facility since late 2012. Jay Alcorta holds the position of safety manager at the Trenton facility and plant manager of the Laurens facility. Alcorta's office is located at the Laurens facility, but he travels to the Trenton facility once a week to conduct safety meetings for employees. Finally, Assistant Controller Susan Kelley is responsible for payroll at both locations. Kelley's office is located at the Laurens facility, and she receives all relevant information on wages and hours worked from an assistant at the Trenton facility.

Apart from these three named individuals, direct day-to-day management responsibilities are vested in personnel at each location. "Common to those cases in which a single-facility or a multi-facility unit smaller than the unit requested by the Employer was found appropriate, are local autonomy of labor relations in the smaller unit, including the ability of local supervisors to schedule work [and] grant time off." *Marine Spill Response Corporation*, 348 NLRB at 1286. In that regard, Director of Manufacturing Kevin Corey operates the Trenton facility and Jay Alcorta, acting as plant manager, operates the Laurens facility. Corey visits the Laurens facility approximately once or twice a year to fill in for Oh when he is unavailable. The Employer has provided no evidence showing that the Laurens facility depends on the Trenton facility, or its management structure, to grant time off, develop work schedules, and the like. In fact, although there is some evidence of centralized control over operations, in the sense that Oh is technically in charge of both facilities, the bulk of the day-to-day operations is managed by each of the facilities' respective managers. Even if this limited central control were enough to establish this factor, it would not be sufficient to rebut the single-facility presumption alone. See, e.g., *Carter Hawley Hale Stores*, 273 NLRB 621, 623 (1984); cited by *New Britain Transportation Co.*, 330

NLRB 397 (1999) (despite centralized administration of the Employer's beauty salons, single store units were found to be appropriate).

## **2. Similarity of Skills, Functions, and Working Conditions**

Although the Laurens and Trenton facilities share a degree of similarity with regard to employee positions, the overall operation of the Trenton facility requires a wider range of employee functions and skills. Both the Laurens facility and Trenton facility have shipping and receiving employees, janitorial employees, and recycling production employees. These individuals, regardless of location, perform similar functions that require the same skills. However, the Trenton facility has additional classifications of employees that are not found at the Laurens locations. These classifications include lab employees, maintenance employees, and extrusion and finishing production employees. The lab and additional production employees are involved in the production and manufacture of the Employer's final product, which the Laurens facility does not have the capability to do. In addition, maintenance employees are housed solely in the Trenton facility, with no counterparts at the Laurens facility. Facilities that differ with respect to the types of employee positions that are available support the presumption that a single-facility unit is appropriate. See *D&L Transp., Inc.*, 324 NLRB 160, 161 (1997)

The record contains scant evidence regarding working conditions in the facilities themselves. Alcorta, who is the only manager who makes regular trips to both the Trenton and Laurens facilities, testified that he has more interaction with the employees at the Laurens facility, because it is a smaller plant. However, the record is devoid of sufficient evidence to make this element determinative.

## **3. Employee Interchange**

The record shows that employee interchange is virtually non-existent. The presumption of a single-facility unit has not been rebutted when the Employer's interchange data is

represented in aggregate form rather than as a percentage of total employees. *Dunbar Armored, Inc. v. NLRB*, 186 F.3d. 844, 849 n. 5 (7<sup>th</sup> Cir. 1999), enforcing *Dunbar Armored, Inc.*, 326 NLRB No. 139 (1998). Oh testified that “three, four times a year” employees are asked to go from one facility to another. He further testified, as did other witnesses, that recently some production employees had been sent from Laurens to Trenton to patch the facility’s roof, approximately two or three times a year. Alcorta testified that these three or four employees participated in maintenance work a few times a year, traveling to Trenton from Lauren. Alcorta stated that these employees stayed for approximately two or three days, and further testified that these individuals were managed by the Maintenance Manager Joey Walker. Finally, Oh testified that some maintenance employees, Kevin and Adam Vorhees, have traveled between facilities to do some additional maintenance work for the Employer, but could not identify when this occurred or for how long. Oh testified that allowing employees to fill in for absent employees from one facility to another was “not normally” done.

Training for employees occurs separately for each facility. Trenton facility employees have a weekly safety meeting at their facility, whereas Laurens employees receive informal safety training throughout the day from Alcorta in conjunction with his regular supervisory duties. Formal safety meetings occur monthly at Laurens. Oh testified that Trenton facility employees and Laurens facility employees do not train together because of the expense involved in travel and the distance between facilities.

In addition to the lack of specific evidence presented by the Employer regarding the total number employees subject to interchange between the facilities, I find that the low number of temporary transfers and no known permanent transfers, coupled with the apparent infrequency of such transfers, is insufficient to rebut the single-facility presumption. *New Britain Transportation Co.*, 330 NLRB 397, 398 (1999)

#### **4. Distance Between the Two Locations**

The 75-mile distance between the two facilities, especially given the lack of employee interchange, strengthens the presumption that a single-facility unit is appropriate. The Board would consider this distance, in conjunction with other factors that support the single-facility presumption, to be significant. *New Britain Transportation Co.*, 330 NLRB 397, 398 (1999)

#### **C. Conclusion of Unit Scope Analysis**

Based upon the foregoing, I find that the Employer has not rebutted the single-facility presumption. Therefore, the petitioned-for unit of Trenton facility employees, excluding the employees at the Laurens facility, is an appropriate bargaining unit.

### **The 2(11) SUPERVISOR ANALYSIS**

#### **A. Applicable Case Law**

The Employer contends that the contested supervisors should be excluded from the unit because they are supervisors within the meaning of Section 2(11) of the Act. The traditional test for determining supervisory status is: (1) whether the individual has the authority to engage in or effectively recommend any one of the twelve criteria listed in Section 2(11) of the Act; (2) whether the exercise of such authority requires the use of independent judgment; and (3) whether the individual holds the authority in the interest of the employer. *NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571, 573-574 (1994). The burden of proving supervisory status lies with the party asserting that such status exists. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2001). Supervisory status must be established by a preponderance of the evidence. *Oakwood Healthcare, Inc., Id.* at 694. Finally, lack of evidence is construed against the party asserting supervisory status. *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1048 (2003).

In regard to the first prong of the supervisory test, that is, whether the individual possesses the authority to perform one of the primary indicia, it is necessary to establish the

presence of at least one of the primary indicia before secondary indicia, such as employee/supervisor ratios, for example, may be considered. *Pacific Beach Corp.*, 344 NLRB 1160, 1161 (2005). In regard to the second prong, regarding the use of independent judgment, it is within the Board's discretion to determine, within reason, what scope or degree of independent judgment meets the statutory threshold. *NLRB v. Kentucky River Community Care*, 121 S.Ct. 1861 (2001). In this regard, mere inferences or conclusory statements, without detailed, specific evidence of independent judgment, are insufficient to establish supervisory authority. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006); *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006).

**B. Application of the Case Law Concerning Primary Indicia and Use of Independent Judgment**

The record shows that the Employer has not met its burden to establish that the contested supervisors have the authority to engage in any of the 12 primary indicia listed in Section 2(11), or that they exercise independent judgment in the interest of the Employer in regard to any of the primary indicia. Thus, neither the first or second prong of the supervisory test is satisfied. Although there is evidence here of some secondary indicia, including some imbalance in supervisory/employee ratio, differences in pay, and the use of the title "supervisor," it is settled that supervisory status cannot be obtained through secondary indicia alone. *Willamette Indus.*, 336 NLRB 743 (2001). Thus, as the Employer has not met its burden of establishing any primary indicia, the presence of secondary indicia is not dispositive.

In regard to the specific 2(11) indicia, the parties stipulated that the contested supervisors do not have the authority to hire employees. Further, the record is devoid of evidence establishing that contested supervisors can, in their own independent judgment, hire, transfer, lay

off, recall, promote, or adjust grievances for other employees. Set forth below, therefore, is my analysis of these indicia on which there is some record evidence.

### **1. Discipline, Suspension or Discharge**

Although there is some evidence that the four contested supervisors have been told to write up employees who do not meet safety and work requirements, the record does not contain sufficient evidence to satisfy the Employer's burden in establishing the presence of this indicium. That is, there are six written warnings in evidence. Of those, three warnings were specifically directed by Production Manager Jang. On the remaining three, the record contains no evidence concerning the circumstances giving rise to the warnings, so it is unknown whether the contested supervisor initiated and issued those warnings. Moreover, there is no evidence to establish that a contested supervisor exercised independent judgment in regard to these warnings. Further, there is no evidence that any of these warnings resulted in a loss of pay or other adverse consequence. See *Bredero Shaw*, 345 NLRB 782, 783 (2005), citing *Azusa Ranch Market*, 321 NLRB 811 (1996) (Board declined to find supervisory status based on the issuance of discipline that did not result in a loss of pay).

The record establishes that contested supervisors are provided with blank "Employee Warning Notice Forms" to fill out in case an infraction occurs, and that accumulated written warnings could result in termination of employment for the employee. However, generalized testimony is insufficient to establish supervisory status. *G4S Regulated Security Solutions*, 358 NLRB No. 160 (2012). If no "single specific instance in which [the supervisor] had used discretion or independent judgment regarding discipline" can be found, then supervisory status cannot be established with regard to that primary indicia. *Id.*, 358 NLRB No. 160.

In regard to the asserted use of independent judgment, one contested supervisor, Jose Lal, testified that he had been directed by Production Manager Glenn Jang to write up "every person

that would not satisfy the safety requirements or work requirements.” However when Lal failed to fill out the written warnings for each employee’s safety violations, Jang again directed Lal to do so. This oversight belies any assertion that the contested supervisors have exercised independent judgment in regard to issuing discipline. Moreover, as set out above, the Employer has provided no evidence establishing that a contested supervisor has actually initiated the disciplinary process. Compare *Progressive Transportation Services*, 340 NLRB 1044 (2003) (lack of supervisory authority to discipline was found when the alleged supervisor only initiated one of thirty three warnings, with the single initiated warning having been rescinded by a manager). Therefore, the Employer has failed to meet its burden of showing supervisory status with regard to issuing discipline, and a ruling against the Employer on this indicium is appropriate. See *Dean & Deluca New York, Inc.*, 338 NLRB at 1048.

With regard to the contested supervisors’ involvement in suspension and discharge, the Employer has also failed to meet its burden. Production Manager Jang testified that contested supervisors are involved in the suspension of employees. Jang testified that suspensions are rare, but that if he is not in the facility, the contested supervisors have the authority to suspend. Jang gave two examples of suspensions that had occurred in the last year, but could not state definitively which contested supervisor, Sanchez or Lal, was involved. In fact, Jang’s testimony did not indicate the circumstances surrounding the suspension, the reason for the suspension, or provide any further evidence regarding those suspensions. Contested supervisor Lal testified later that contested supervisors are not involved in suspensions and that he does not have authority to unilaterally suspend an employee. Moreover, Lal also testified that Jang is responsible for suspensions, and that Jang can decide whether or not to suspend someone. No specific evidence was produced by the Employer on the contested supervisors’ authority to discharge an employee. Again, a lack of evidence must be construed against the party asserting

supervisory status; here the Employer. *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1048 (2003).

## **2. Assignment of Work**

Authority to assign work refers to the act of “designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving an employee significant overall duties or tasks.” See *Oakwood Healthcare, Inc.*, 348 NLRB 686, 689 (2001). Such action is not independent “if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement.” *Id.*, 348 NLRB 686, 693.

The testimony on record suggests that contested supervisors participate in three types of scheduling “assignments”: initial work schedule drafting, machine break-down scheduling, and approving of overtime or sick leave. With regard to initial work schedule drafting and machine break-down scheduling, the evidence tends to show that such action is dictated by verbal company policies and does not require independent judgment. Contested supervisor Lal testified that he and contested supervisor Eduardo Sanchez draft the work schedule together. Lal and Sanchez determine which employees will be grouped together, based solely on their ability to operate the machines and with a goal of having one experienced employee, or a lead, in each group. Any substantive changes in the production schedule are made by Director of Manufacturing Kevin Corey and passed down through managers to the contested supervisors. Moreover, the number of employees needed to work on a particular shift is determined by the department managers.

Routine assignment decisions based solely on basic experience and seniority are insufficient to confer supervisory status. See *Alternate Concepts, Inc.*, 358 NLRB No. 38, sl. op.

6 (2012). Lal testified that machine break downs take up two to three hours of his 12-hour day, suggesting that this is a regular occurrence. Testimony from Vice President of Operations Ted Oh confirms that the “rule of thumb” for these situations is that employees are instructed to clean the area first, followed by instructions to find other stations on which to help out. These restrictive verbal policies for machine break-downs reduce the independent judgment of the contested supervisors to such an extent that supervisory status cannot be obtained through this indicium. See *Oakwood Healthcare, Inc.*, 348 NLRB 686, 693 (2001)

Further, the Employer has failed to provide enough evidence of the contested supervisors’ authority to assign and authorize overtime. Vice President Oh and Production Manager Jang testified that contested supervisors have the authority to grant overtime to employees based on need at the facility. An employee, Walter Tillman, testified that contested supervisor David Martinez has granted him overtime on several occasions upon his request. However, the Employer did not present Martinez as a witness in order to corroborate Tillman’s testimony. The only contested supervisor who testified, Jose Lal, stated that all instances of overtime initially pass through Jang. In fact, Lal testified that Jang has rejected his choice for an employee replacement in the past because the employee would receive overtime. Similarly, while Oh, Jang, and Lal testified consistently that contested supervisors have the authority to approve an employee’s request to leave work for an emergency or illness, no evidence was provided to show specific examples of the exercise of this authority under these circumstances or that such a decision even required independent judgment. A lack of independent judgment in granting overtime, coupled with the lack of evidence on this indicium, requires a finding that the Employer has not satisfied its burden. Compare *Illinois Veterans Hospital Home at Anna L.P.*, 323 NLRB 890, 892 (1997) (where supervisory status was not found when volunteers are solicited for overtime and no authority to require overtime existed).

### **3. Responsible Direction**

The Employer also contends that the contested supervisors responsibly direct work, citing *Croft Metals, Inc.*, 348 NLRB 717 (2007). The Employer, on brief, however, does not address whether the contested supervisors do so with independent judgment. I find that neither element is satisfied on the record evidence.

In regard to responsible direction, it is clear that, within set parameters, the contested supervisors oversee the production on the plant floor and monitor production and efficiency. As noted above, they prepare work schedules. The contested supervisors also review production status reports for teams of employees, and the Employer contends that they are held accountable for poor production, thereby demonstrating that their direction of work is “responsible.”

Contrary to the Employer’s argument, however, the cited record evidence on this issue is ambiguous, and appears speculative. That is, the extrusion and recycling manager responded, in answer to the question, “If certain production is not satisfied, are [the contested supervisors] penalized?” by stating, “They will receive warnings if it hasn’t happened before. They are to make a report about the amount. They have to explain.” No documentary proof was adduced by the Employer on this issue, and no instances of discipline were proffered. I find, therefore, that the record is insufficient to establish that the contested supervisors are held accountable by the issuance of discipline to them.

Moreover, even assuming that responsible direction is demonstrated, the record does not establish that the contested supervisors use independent judgment in their direction of work. Notably, the Board in *Croft Metals* found that, although the leads in that case, who had actually received discipline for poor production and did responsibly direct work, they did not exercise independent judgment in doing so, and, therefore, were not statutory supervisors. *Croft Metals*, 348 NLRB at 722. The Board noted that “proffered examples of instructions given to employees

by lead supervisors consisted of matters such as ‘where to put it and how to put it,’” and noted further that the production employees generally “perform the same job or repetitive tasks on a regular basis and, once trained in their positions, require minimal guidance.” *Id.* The Board’s rationale in *Croft* obtains on the facts of this case.

Further, the oversight of the contested supervisors in regard to the production reports similarly does not support a finding of independent judgment. Vice President Oh testified that these reports, while important to the Employer because they track quality of production, do not require much discretion. The preparer of the report, usually the lead, simply reads the machine meter and fill out the report. Vice President Oh testified that the contested supervisor would conduct an investigation if, in his review, the report had errors in it, but Oh did not describe the scope of this investigation, or provide any specifics. In fact, no evidence was presented on the depth and level of independent judgment required in these investigations. Further, the Employer did not provide evidence that such an independent investigation by the contested supervisor had ever, in fact taken place. Finally, contested supervisor Jose Lal testified that he signs the form, and that Manager Jang later reviews the report himself. A routine and clerical task that requires no independent judgment will not trigger supervisory status. *G4S Regulated Security Solutions*, 358 NLRB No. 160 (2012).

Finally, the record does not establish that during the night shift, when managers Jang and Kang are not physically present at the facility, the contested supervisors exercise independent judgment in their oversight of the production process. Rather, it appears that the managers give the contested supervisors sheets that contain instructions, telling them “what to do” during the night shift.

#### **4. Authority to Recommend Raises or Reward**

An individual's recommendation to reward employees, including a recommendation of raises or bonuses, can suggest supervisory status, depending on the effectiveness of the recommendation. *Harvey's Resort Hotel*, 271 NLRB 306, 311 (1984). If, however, the alleged supervisor's superiors "conducts their own independent investigation rather than relying on the word of that individual, it can hardly be said that the recommendation is effective." *Id* 271 NLRB at 311. On this record, the Employer provided two sheets, marked as Employer Exhibit 4 and dated April 1, 2013, that purport to be recommendations of raises for employees. Testimony from contested supervisor Jose Lal confirms that similar documents are drafted by him and Eduardo Sanchez. However, Lal denies having filled out the documents labeled in Exhibit 4. Contested supervisor Eduardo Sanchez was not presented to testify about these documents. However, notwithstanding the lack of evidence, Production Manager Jang testified that he would "of course" make changes to the document after contested supervisors made their recommendation for raises and that Ted Oh had the final decision. Jang testified that management agreed with 90% of the previous year's contested supervisors' recommendations and that the other 10% were disputed because Jang had a different opinion, such as Jang's review of absences, for example.<sup>7</sup> No evidence was produced by the Employer of the previous year's recommendations for raises, which raises were effectuated, and the reasons for denying those recommendations. On the basis of Jang's testimony, it is unlikely that the contested supervisor's recommendations are effective in determining the raises of employees. More significant, as the record does not provide enough evidence to make a sound determination of effectiveness, that

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<sup>7</sup> Jang also testified that he was unfamiliar with the "I" markings on the written recommendations in Exhibit 4, and assumed that they stood for a "1."

lack is properly construed against the party asserting supervisory status. *Dean & Deluca New York, Inc.*, 338 NLRB at 1048.

#### **5. Authority to Transfer, Layoff, Recall, Promote, or Adjust Grievances**

As noted above, a review of the record shows no evidence that the contested supervisors have the authority to transfer employees, lay off or recall employees, promote employees, or adjust grievances for employees. Testimony from Jang shows that contested supervisors are not involved in transfers. Jang testified that he did not know if contested supervisors were involved in layoffs or recalls. There is no testimony that establishes the contested supervisors' authority to promote or adjust grievances.<sup>8</sup> As noted above, when evidence is insufficient to adequately determine supervisory status, the evidence is construed against the party asserting supervisory status; in this case, the Employer. *Dean & Deluca New York, Inc.*, 338 NLRB at 1048.

#### **C. Conclusion of Supervisory Status**

Based upon the foregoing, I find that there is insufficient evidence to conclude that the four named individuals, Eduardo Sanchez, Jose Lal, David Martinez, and Aduco Torres, are statutory supervisors under Section 2(11) of the Act. As a result, I shall include these four individuals in the unit found appropriate herein.<sup>9</sup>

### **CONCLUSIONS AND FINDINGS**

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

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

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<sup>8</sup> Jang simply testified, when asked about adjusting grievances, that contested supervisors can provide employees with ice when "it's too hot" or "if they need to have more gloves."

<sup>9</sup> Production Supervisors Bobby Rice and Marcos Cabrera were not considered for supervisory status because (1) it was not alleged by the Employer that these individuals should be excluded from the bargaining unit and (2) it was determined that Laurens facility employees would not be included in the bargaining unit, thereby excluding Rice and Cabrera regardless of their supervisory status.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction here.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

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

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production, janitorial, warehousemen, shipping and maintenance employees, employed by the Employer at its Trenton, South Carolina facility, excluding all other employees, including office clerical employees, professional and confidential employees, and guards and supervisors as defined in the Act.

#### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees in this unit will vote on whether or not they wish to be represented for purposes of collective bargaining by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 7898. The date, time, and place of the election will be specified in the Notice of Election that the Subregional Office in Winston-Salem, North Carolina, will issue subsequent to this Decision.

#### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately prior to the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees

engaged in any economic strike, who have retained their status as strikers and who have been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls.

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

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that on **May 10, 2013**, the Employer must submit to the Subregional Office in Winston-Salem, North Carolina, an election eligibility list, containing the full names and addresses of all the eligible voters in the unit. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Winston-Salem Subregional Office located at Republic Square, Suite 200, 4035 University Parkway, Winston-Salem, North Carolina, 27106-3325. No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file the list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (336) 631-5210. Because the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Subregional Office located at Republic Square, 4035 University Parkway, Winston-Salem, North Carolina, 27106-3325. To file the eligibility list electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, 1099 14<sup>th</sup> Street, N.W., Washington D.C. 20570-0001. This request must be received by the Board in Washington by May 17, 2013. The request may be filed electronically through the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>10</sup> but may not be filed by facsimile.

Dated at Winston-Salem, North Carolina, on this 3<sup>rd</sup> day of May 2013.

/s/ Mary L. Bulls

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Mary L. Bulls, Acting Regional Director  
Region 10, Subregion 11  
National Labor Relations Board  
4035 University Parkway, Suite 200  
Winston-Salem, NC 27106

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<sup>10</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov), select File Case Documents, enter the NLRB Case Number, and follow the detailed instructions.