

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 18

SECURITAS CRITICAL INFRASTRUCTURE
SERVICES, INC.¹

Employer

And

UNITED SECURITY
PROFESSIONALS, LOCAL 2²

Petitioner

Case 18-RC-120181

DECISION AND DIRECTION OF ELECTION

Petitioner seeks to represent a unit of lieutenants employed by the Employer at the Monticello Nuclear Power plant. The Employer contends that the petition should be dismissed because the petitioned-for lieutenants are statutory supervisors within the meaning of Section 2(11) of the Act. Based on the record and relevant Board cases, including decisions in *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006) and *G4S Regulated Security Solutions*, 358 NLRB No. 160 (2012), I find that the Employer has failed to meet its burden of proving that lieutenants are supervisors. I conclude therefore, that the unit sought by Petitioner is appropriate for collective bargaining.

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
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 herein.³
3. Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
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. I begin this decision by summarizing the relevant facts. This summary includes an overview of the Employer's operations at the Monticello facility, highlighting the management structure and the lieutenants' job duties. Next, I review the evidence concerning the lieutenants' supervisory authority. Finally, I apply the relevant Board precedent to the evidence in this matter to explain my conclusion that the Employer has failed to meet its burden of proving that lieutenants are supervisors.

³ The Employer, Securitas Critical Infrastructure Services, Inc., is a Delaware corporation with a principal office and place of business located in Springfield, Virginia and multiple work sites across the United States, including Monticello, Minnesota, where it is engaged in the business of providing security services. Within the past calendar year, a representative period, the Employer in the course and conduct of its business operations described above, purchased and received at its work site in Minnesota goods or services in excess of \$50,000 directly from points located outside the State of Minnesota.

FACTS

Employer's Operations

The Employer provides security services for the Monticello Nuclear Generating Plant (Monticello plant) located in Monticello, Minnesota. It performs these duties pursuant to a contract it has with its client Xcel Energy, which operates the nuclear plant. The Employer provides security at the Monticello plant 24 hours a day, seven days a week. In addition to providing security personnel, the Employer monitors and responds to various alarms or events which may threaten the security of the Monticello plant. To do so it must maintain various preparedness plans and conduct regular training of employees. While the exact acreage of the property involved is not clear from the record, what is referred to as the "protected area" is about the size of two city blocks.

The Employer took over security operations at the Monticello plant on January 1, 2014. Prior to the Employer taking over the contract, G4S Regulated Security Solutions provided security services and personnel at the Monticello plant. There is no evidence of any disruption of operations or any employee turnover when the transition occurred. Various witnesses testified that day-to-day job duties and positions have remained substantially the same as they were under G4S Regulated Security Solutions.

Management Structure

Area Vice President Nuclear Darrell Williams oversees security at several of the Employer's operations at nuclear power plants, including the Monticello plant. The highest ranking position within the Monticello plant is Project Manager. That position is presently unfilled. Mark Roelike serves as Interim Security Operations Specialist and

would normally report to the Project Manager. Below Security Operations Specialist Roelike, there are five captains at the Monticello plant. Each captain heads a team - referred to as the Alpha, Bravo, Charlie, Delta and Echo teams. On each team there are four to five lieutenants. Each team also has approximately 24-25 security officers, who are the lowest ranking employees at the Monticello plant. Officers and lieutenants are assigned to their respective team by captains. There are two shifts consisting of a twelve hour day shift and a twelve hour night shift.

Security officers may be armed or unarmed. If unarmed, they are referred to as "watchpersons." Watchpersons work with armed security officers in positions that do not require armed guards. At the time of the hearing, there were two watchpersons working at the Monticello facility. Most security officers are assigned to one of two rotations during the course of their shift, which require that they move from post to post. Security officers are represented by United Security Professionals Local 1. The Employer has a collective bargaining agreement with United Security Professionals Local 1. United Security Professionals Local 1 was certified as the collective bargaining representative by Region 18 on November 29, 2013. This certification and related election stipulation excluded "supervisors" as part of the unit, but did not specifically mention the lieutenant position.

Lieutenants' Job Duties

To become a lieutenant, employees must go through 16 hours of classroom training and complete an additional two weeks of on-the-job training. The current job posting for the open position of lieutenant at the Monticello facility states:

The lieutenants are directly responsible to the Captain for supervising the daily activities of the Monticello Security Force. He/she directs and oversees security shifts with consistent application of Securitas Security Services, USA policies. The Lieutenant shall be knowledgeable in all aspects of the Security Plan, crucial tasks required for subordinate positions, rules, regulations, and Xcel Energy management expectation and instructions. He/she has the primary responsibility of Response Team Leader.

Lieutenants may hold the title of first lieutenant or second lieutenant, although there is no difference in their duties and responsibilities. Once an employee is promoted to be lieutenant, the employee is considered a second lieutenant. After approximately 18 months of serving as a second lieutenant, the employee is promoted to first lieutenant. Lieutenants may also hold the title of "executive officer," also referred to as "XO." This is a designation given by a captain to one of the five lieutenants on the team which is designated to act as captain in the captain's absence.

Lieutenants perform different work from security officers, although they may be called upon from time to time to perform security officer work due to staffing needs. Included among the duties of a lieutenant is that they serve as a "response team leader." Serving as response team leader requires that they assume command in the event of a "contingency event," which is anything which may threaten the security of the plant. There is one lieutenant designated as response team leader at all times during the shift. The designation rotates among lieutenants during the course of the shift. There was general testimony that when acting as response team leader, lieutenants deploy and redeploy security officers in responding to what is referred to as a contingency event, using guidelines provided by the Employer as well as their experience from performing various drills. The sole lieutenant who testified stated that much of the strategy he would employ in responding to a contingency security event

was formulated by the Employer. The record does not contain any examples where a response team leader has performed this role during a contingency event; rather, various hypothetical scenarios were discussed in the record.

Lieutenants also serve as “Central Alarm Station” or “CAS,” where various alarms are received and dispatched. Additionally, they may serve in the position as “Secondary Alarm Station,” or “SAS” which functions as back up for the CAS.

Lieutenants, like security officers, also rotate between positions during their shifts.

EVIDENCE REGARDING LIEUTENANTS’ SUPERVISORY AUTHORITY

Authority to Discipline

The evidence reflects that the lieutenants play a limited role in the Employer’s progressive disciplinary policy. The progressive disciplinary policy is not specific to the Monticello location. The policy first lays out a partial list of conduct which may warrant immediate termination on the first occurrence. There is a separate list of conduct which will “normally result in warning prior to termination of employment.” The policy provides that the “normal application” of discipline would include a first occurrence, which is described as a verbal discussion memorialized by memorandum. According to the policy, a second occurrence calls for a written warning issued to the employee using a “Counseling and Corrective Action Report.” Subsequent occurrences after the second occurrence may lead to various actions depending on “the severity of the conduct” including a final written warning, suspension or termination. The disciplinary policy took effect when the Employer took over security operations on January 1, 2014. Other than the disciplinary policy described above, there is no evidence of other directives being issued related to the disciplinary policy.

Four examples of counseling and corrective action reports issued to security officers are included in the record. Three are verbal and one is written. None of the lieutenants that signed these corrective actions testified. Each counseling and corrective action is signed by the employee receiving the action, the lieutenant and by Interim Security Operations Specialist Roelike. The top of the form indicates whether the warning is considered a verbal, written, first, second or final. There is no record evidence as to how the level of discipline was decided in any of the four incidents.

There is contradictory evidence as it relates to lieutenants' autonomy when it comes to issuing discipline. Interim Security Operations Specialist Roelike, who is two levels removed from the position of lieutenant, testified that lieutenants determine what level of corrective action is appropriate and present the counseling and corrective action report to the security guard or watchperson. Roelike also testified that before the corrective action becomes part of the employee file, he reviews the document and signs it. Roelike stated that since coming into his position, he could not think of an instance in which he has not signed a warning issued to a security officer by a lieutenant, although he has only acted in his current position since January 1, 2014. He testified that when he was a lieutenant in the past, he issued discipline to security officers, which was never revoked by higher management. However, he did not provide any specific examples.

Captain Joshua Neubert also testified. He oversees five lieutenants on his team. He stated that lieutenants could issue discipline and recommend more serious discipline. Neubert stated that while he is notified of discipline that is issued, he leaves it to the project manager to overturn or correct the discipline. Two of the counseling and

corrective action reports in the record are from lieutenants on his team. With regard to both of those corrective action reports, he testified that he could not recall whether he discussed the corrective action report with the lieutenant prior to the lieutenant preparing the form.

Neubert testified that if a lieutenant saw a procedural failure, the lieutenant would be required to issue a counseling and corrective action report. Neubert also testified that a security officer could add comments on the counseling and corrective action report. Those comments are reviewed by the project manager. Neubert also testified that the lieutenant issuing the counseling and corrective action report could not stop the disciplinary process once it had been initiated.

The only lieutenant who testified at the hearing stated that he must report any errors or violations of policy. He further testified that in the past, under G4S Regulated Security Solutions, there were times when he would recommend an oral discipline be issued but was told to go to a higher level of discipline and other times when he recommended a higher form of discipline and was told to downgrade it. He stated that while he may perform an investigation into an error, he consistently talked to his captain on such matters. He stated generally that if he learned of a policy violation, he would notify the captain. The only lieutenant who testified has not issued or signed any counseling or corrective action reports since the Employer took over operations at the Monticello facility, except that during the week prior to the hearing, an officer made an error and after conferring with his captain, the captain decided that a coaching and counseling was sufficient.

Authority to Promote

Lieutenants may write letters of recommendation for security officers for an open lieutenant posting. However, they do not sit on the promotions board which ultimately decides upon the selection of the candidate. At the time of the hearing, there was an open lieutenant position at the Employer's Monticello operation. To apply for the position, the employee must submit a letter of recommendation from a lieutenant or other higher ranking officer. The record includes letters of recommendation for the open position written by lieutenants on behalf of a security officer. None of the lieutenants who wrote the letters were called to testify. Based on the testimony of the only lieutenant to testify, recommendation letters are typically solicited by employees who are interested in being promoted. The Employer then convenes a promotions board, which ultimately makes the decision as to who will receive the promotion. No lieutenants sit on the board, nor is there any evidence of their involvement with the promotions board beyond their submission of a letter of recommendation. There is no evidence of the weight such letters are given by the promotions board.

Authority to Adjust Grievances

The Employer contends that lieutenants may adjust simple and routine mistakes as part of the first step of the grievance procedure. However, since the Employer took over security operations on January 1, 2014, there have been no grievances filed. According to the first step of the grievance procedure in the United Security Professionals Local 1's collective bargaining agreement, the security officer is to discuss the grievance with "his shift supervisor or his designee" to see if it can be resolved. However, the only specific examples presented of when a lieutenant may

adjust a grievance were limited to correcting numerical errors on paychecks or timecards.

Authority to Responsibly Direct and Authority to Assign

Lieutenants cannot assign employees to certain shifts or teams. There is evidence that lieutenants, when requested, can approve employees' requests to switch rotations with one another, though the lieutenant who testified stated that he was coached recently because he should not have approved a switch without his captain's input. Lieutenants may call security officers for overtime using a rotating seniority list. In terms of assigning employees to a different post in the event of a contingency or other abnormal event, the lieutenant who testified stated that he would do so based on whoever was available at the time, in compliance with staffing requirements. According to the lieutenant, all employees are generally equally qualified. Moreover, the lieutenant testified that if it was a large or complex project, he would consult with the captain so as to avoid regulatory issues.

The record contains no evidence that lieutenants have been held accountable in some way by the Employer for the actions of the security officers on their team.

Authority to Hire, Transfer, Suspend, Reward, and Discharge

There is very limited evidence with regard to lieutenants' authority to hire, transfer, suspend, reward or discharge employees. Darrell Williams, the Area Vice President Nuclear, testified that at other locations the Employer has had lieutenants sit on hiring boards, but no hiring had taken place at the Monticello facility at the time of the hearing. Interim Security Operations Specialist Roelike testified that when he served as

a lieutenant at an unspecified time before 2010, he recommended that an employee be hired and the employee was in fact hired. This is the only evidence presented on lieutenants' authority to hire.

Lieutenants have no authority to transfer employees to other locations. While the Area Vice President testified that lieutenants "could" recommend that an employee be granted a transfer to another facility, the record contains no specific evidence as to lieutenants ever having done so.

Lieutenants do not have authority to suspend security officers. While the sole lieutenant who testified during the course of the hearing stated that that "[he] wanted to say [he] had" recommended a suspension and that this recommendation was followed, there is no evidence as to when that recommendation occurred or the circumstances surrounding that recommendation. Additionally, while Interim Security Operations Specialist Roelike stated that lieutenants had recommended suspensions in the past, he did not provide specific examples of when this has been done and did not know whether any lieutenants' recommendation to suspend an employee was followed.

The only evidence as it relates to rewarding security officers is that the lieutenant who testified stated that when employed by G4S Regulated Security Solutions, he could recommend an employee for employee-of-the-month and did so, which resulted in the employee winning some sort of monetary award. However he was not involved in the actual selection of the employee-of-the-month. There is no evidence whether the employee-of-the-month program has been continued by the Employer.

BOARD LAW AND ITS APPLICATION TO THE FACTS

Section 2(11) of the Act defines a “supervisor” as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The Board will refrain from construing supervisory status too broadly, because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. *Quadrex Environmental Co.*, 308 NLRB 101, 102 (1992). The party alleging that an individual is a supervisor has the burden of proof. *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 710-713 (2001). Any lack of evidence on an element necessary to establish supervisory status will be held against the party advocating supervisory status. *G4S Regulated Security Solutions*, 358 NLRB No. 160 (2012). Moreover, in this case the Employer will not be found to have established supervisory status where the evidence in the record is inconclusive or otherwise in conflict. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). The burden of proof cannot be met with “mere inferences or conclusionary statements, without detailed, specific evidence.” *Alternate Concepts, Inc.*, 358 NLRB No. 38, slip op. at 3 (2012). Job descriptions, job titles or other “paper authority” without more, do not demonstrate actual supervisory authority. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006).

The party alleging supervisory status must establish: (1) that the individual(s) held the authority to engage in any one of the twelve enumerated supervisory functions listed above; (2) that the “exercise of such authority [was] not of a merely routine or

clerical nature, but require[d] the use of independent judgment”; and (3) that the authority was held “in the interest of the employer.” See, *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 710-713 (2001), *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006). To “exercise ‘independent judgment’ an individual must at a minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data.” *Oakwood Healthcare, Inc.*, 348 NLRB 692-693. A “judgment is not independent if it is dictated or controlled by detailed instructions whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement.” *Id.* at 693.

Particular emphasis must also be given to the Board’s recent holding in *G4S Regulated Security Solutions*, in which it found the lieutenants in that matter not to be statutory supervisors under Section 2(11) of the Act. 358 NLRB No. 160 (2012). Notably, that case contains many factual parallels to this matter.⁴ The lieutenants at issue in that case also worked at a nuclear power plant and reported to captains. Those lieutenants were likewise responsible for monitoring the central and secondary alarm systems and played a nearly identical role in the employer’s operations as in this matter. In *G4S Security Solutions*, the Respondent also maintained a very similar progressive disciplinary policy as presented in this matter. While the Board’s conclusion that lieutenants were not 2(11) supervisors in that matter does not require the same result in

⁴ As an example of the factual similarities, in *G4S Regulated Security Solutions* each captain headed five teams, with identical names as those at issue here (Alpha, Bravo, Charlie, Delta and Echo), of approximately seven lieutenants and 37 security officers, which is a strikingly similar ratio to the unit at issue here.

this matter, it does require the Employer to present specific and detailed evidence of the lieutenants' supervisory authority at the Monticello facility.

Applying the above principles to the facts of this matter, I find that the Employer has not met its burden of establishing that lieutenants possess any of the supervisory indicia as set forth in Section 2(11) of the Act. Overall, the record is replete with conclusionary testimony as it relates to the lieutenants' supervisory authority. Generally the testimony lacks the specific and detailed evidence required to establish supervisory status.

Below I discuss in further detail the lieutenants' authority to discipline or effectively recommend discipline, effectively recommend promotion, assign employees, adjust grievances, and responsibly direct employees, which the Employer relies upon in asserting lieutenants to be 2(11) supervisors.⁵

The Authority to Discipline or Effectively Recommend Discipline

I find that the Employer has not established that lieutenants are able to discipline or effectively recommend discipline because: (1) there is contradictory and inconclusive testimony as it relates the lieutenants' independence in issuing discipline and (2) the record lacks the specific evidence concerning the role that lieutenants play and the discretion they exercise in performing this function.

The testimony of witnesses during the hearing is contradictory as to the amount of discretion that lieutenants exercise in the disciplinary process. The captain of two of the lieutenants who have signed disciplines testified generally about the incidents

⁵ With regard to the lieutenants' ability to hire, transfer, suspend, discharge, reward, or effectively to recommend any such action, I find that the record fails to establish that the lieutenants possessed any such authority. The parties stipulated that lieutenants do not have the authority to layoff or recall employees, or effectively recommend such action.

described on two of the four forms submitted. However, when asked whether he could recall if he told either of the lieutenants to complete the forms, the captain stated he could not recall. The sole lieutenant who testified described that the practice is to confer with a captain concerning such matters. The lieutenant also testified that as recently as a week before the hearing, his captain informed him that discipline was not necessary as a result of an error that was made by an officer and that coaching and counseling were sufficient. The lieutenant repeatedly expressed his view that he did not have discretion; rather, he is to report errors to his captain. When an individual does “little more than report employee infractions to management,” such action does not constitute either discipline or the recommendation of discipline. *Willamette Industries*, 336 NLRB 743, 743 (2001), and cases cited therein.

The record does not contain specific testimony as to when lieutenants have disciplined security officers. While four counseling and corrective action reports that were signed by lieutenants are included in the record, none of the lieutenants who purportedly signed these counseling and corrective action reports testified. The evidence presented in support of lieutenants’ authority to discipline employees is strikingly similar to the evidence presented in *G4S Regulated Security Solutions*. In concluding that the employer in that matter had failed to meet its burden, the Board noted that, as in this matter, none of the lieutenants who signed the disciplinary forms contained in the record testified. Also, as in *G4S Regulated Security Solutions*, there was no testimony about any specific instances in which a lieutenant used discretion or independent judgment.

The Authority to Effectively Recommend Promotions

In its brief the Employer argues that lieutenants are able to effectively recommend promotion because they may write letters of recommendation for security officers looking to be promoted to the lieutenant position. The authority to “effectively recommend” an action “generally means that the recommended action is taken without independent investigation by superiors, not simply that the recommendation is ultimately followed.” *Children's Farm Home*, 324 NLRB 61, 61 (1997). There is no evidence that lieutenants are able to select or effectively recommend the individual that is promoted to lieutenant. Rather, lieutenants write letters of recommendation for security officers who are interested in being promoted to the position of lieutenant. The ultimate decision is left to the promotions board, and lieutenants do not serve on the board. I also note that there is no evidence in the record as to what weight these letters are given by the promotions board. I find that the Employer has not met its burden in establishing that lieutenants, by simply writing letters of recommendation, are effectively recommending promotion of security guards.

The Authority to Adjust Grievances

The Employer contends that lieutenants also have the ability to adjust grievances at the first step of the officers' grievance procedure. There have been no grievances filed since the Employer took over operations. The record discusses grievances only in a general sense—no specific instance was described. While there is some general testimony that a lieutenant may be able to independently correct a numerical error on a timesheet or paycheck, there is no evidence that the lieutenant, in making such a correction is exercising any “discretion that rises above the ‘routine and clerical.’” *Croft*

Metals Inc., 348 NLRB 717, 722 (2006). Therefore, I find that the Employer has not met its burden with respect to establishing that lieutenants adjust grievances.

The Authority to Responsibly Direct

In its brief, the Employer argues that lieutenants are responsible for serving in the role of response team leader and, in doing so, responsibly direct employees. Under *Oakwood Healthcare*, to show that a putative supervisor possesses the authority to “responsibly to direct” employees, there must be evidence that the asserted supervisor is held accountable for subordinates’ performances. 348 NLRB 686 at 691-692 (2006). The record does not contain even one instance where a lieutenant has been disciplined or otherwise impacted by the performance of officers on their team, whether in relationship to the role as response team leader or otherwise. Evidence of actual accountability must be presented to prove responsible direction. *Astyle Apparel*, 351 NLRB 1287, 1287 (2007); *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006). Given the lack of evidence of lieutenant accountability, the Employer has not met its burden of showing that lieutenants possess the authority to responsibly direct officers.

The Authority to Assign

In its brief, the Employer argues that lieutenants exercise the authority to assign by assigning security officers to posts, calling security officers for overtime, preparing the daily work schedule, approving a rotation switch for security officers, approving officers’ requests for time off, assigning security officers to certain tasks as required by compensatory measures, conducting pre-job briefings and ensuring that all officers are fit for duty. Section 2(11) authority to “assign” 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, i.e., tasks. *Oakwood Healthcare*, 348 NLRB 686 at 689.

With regard to the Employer's argument that the lieutenants' role in taking compensatory measures, performing "pre-job briefings" and administering the Employer's Fitness for Duty policy constitute assignment of work, I again note the lack of specific, detailed evidence as it relates to lieutenants who have actually performed these tasks and what, if any, independent judgment was exercised when performing any of these measures.

To prove independent judgment, it must be shown that, when the putative supervisor makes a decision exercising the supervisory authority, that decision is "free of the control of others" and "not...dictated or controlled by detailed instructions." *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006). Similar to the testimony in *G4S Regulated Security Solutions*, while there is a generalized discussion of the role a response team leader plays in emergency or "contingency events," there are no specific examples or details of how these duties have functioned at the Employer. *G4S Regulated Security Solutions*, 358 NLRB No. 160 (2012) citing to *Alternate Concepts*, 358 NLRB No. 38, slip op. at 3 (2012) (detailed, specific evidence needed to show supervisory authority). According to the sole lieutenant's testimony, the role of lieutenants is highly regulated and dictated by various procedures and protocols. This is certainly true of the fitness for duty policy, which is 93-page document addressing various fitness-for-duty scenarios, and gives detailed instructions as to what should be

done in various scenarios. A judgment is not independent if it is dictated or controlled by detailed instructions. *Oakwood Healthcare, Inc.*, 348 NLRB 686 at 693.

It is undisputed that lieutenants do not assign officers to specific shifts or are permitted to assign officers to different teams. There is evidence that the daily work schedule may be created by a lieutenant or a security officer who would then have the schedule approved by a lieutenant or captain. While Interim Security Operations Specialist Roelike testified that lieutenants would base daily assignments on “their performance, their proficiency in their tasks, proven performance, past history,” no specific examples were given on how those items come into play when creating the daily schedule. With the exception of one or two “utility guards” which are not assigned to posts, security officers rotate through their posts on what are called “rotations.” There are only two rotations which are apparently interchangeable as there was some evidence that employees could request to switch rotations with another employee on a voluntary basis. The evidence with regard to whether lieutenants can approve switches in rotation is in conflict, with the generalized testimony of the Employer contradicted by the lieutenant who testified. In any event, schedule changes based on employees’ expressed preferences do not demonstrate “independent judgment” to assign.

Children’s Farm Home, 324 NLRB 61, 67 (1997).

With regard to assignment of overtime and time off scheduling, there is no evidence of any independent judgment by the lieutenants. For purposes of overtime, the lieutenant has very specific instructions to call employees in order of a rotating seniority list and the hours already worked by an individual. There is no evidence that in calling individuals from a set list, taking into account the amount of hours already

worked, is anything more than a “routine or clerical” type of responsibility which does not require independent judgment. The same is true of approval of vacation requests—the evidence reflects that to approve the request, the lieutenant must go to the schedule book and verify that it does not exceed the number of officers allowed to be off on a given day and that the officer has accrued the time that he or she wishes to take off. Again, I find this to be no more than “routine or clerical” and not sufficient to establish supervisory status.

Secondary Indicia of Supervisory Authority

The Employer also presented evidence of secondary indicia in support of its argument. However, evidence of secondary indicia alone is insufficient to confer supervisory status. *Springfield Terrace Ltd.*, 355 NLRB 937 (2010).

DIRECTION OF ELECTION

The following employees of Securitas Critical Infrastructure Services, Inc., constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time lieutenants employed by the Employer at the Monticello Nuclear Generating Plant, excluding, all other employees, office clerical employees, managerial employees, and supervisors as defined in the Act.

An election by secret ballot will be conducted by the Regional Director of Region 18 among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.

A. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding 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 an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike 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. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (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.

Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **United Security Professionals, Local 2**.

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 within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The 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.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **February 18, 2014**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this 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 to the Regional Office by electronic filing the Agency's website, **www.nlr.gov**,⁶ by mail, or by facsimile transmission at **(612) 348-1785**. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

⁶ To file the eligibility list electronically, go to the Agency's website at **www.nlr.gov**, selection ***File Case Documents***, enter the NLRB Case Number, and follow the detailed instructions.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

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 at least 3 working days prior to 12:01 a.m. of the day 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 full 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 provisions 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 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **February 24**,

2014. The request may be filed electronically through the Agency's website, www.nlr.gov,⁷ but may not be filed by facsimile.

Signed at Minneapolis, Minnesota, this 10th day of February, 2014.

/s/ Marlin O. Osthus

Marlin O. Osthus, Regional Director
National Labor Relations Board – Region 18
330 South Second Avenue, Suite 790
Minneapolis, MN 55401-2221

⁷ To file the request for review electronically, go to www.nlr.gov, selection **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.