

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14

JACK COOPER TRANSPORT  
COMPANY, INC.

Employer

and

Case 14-RC-132667

AUTOMOBILE TRANSPORT  
CHAUFFEURS, DEMONSTRATORS,  
HELPERS, TEAMSTERS LOCAL 604 <sup>1</sup>

Petitioner

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

The Employer, Jack Cooper Transport Company, Inc., is engaged in the local and interstate transportation of automobiles. The Petitioner, Automobile Transport Chauffeurs, Demonstrators, Helpers, Teamsters Local 604, 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 dispatch supervisors, yard supervisors, loading supervisors, safety supervisors, payroll supervisors, and part-time clerical, excluding professional employees, guards, and supervisors as defined in the Act, and all other employees currently represented by the Petitioner<sup>2</sup>. A hearing officer of the Board held a hearing and the parties filed briefs with me.

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<sup>1</sup> The Petitioner's name appears as amended at hearing.

<sup>2</sup> The unit description was amended by the Petitioner at the hearing. While the Petitioner includes the classification of "loading" supervisors, the record reflects there is no classification with just this title. It is clear from the record, including Exhibit 4 which is the hierarchy at the Employer's facility, that "loading" supervisors refers to the load makeup/dispatch supervisor and the loading/yard supervisor. I will clarify the petitioned-for unit to refer to these specific classifications. I shall also clarify the unit to take out the reference to "part-time" for the clerical. The record reflects she is now a full-time employee.

As evidenced at the hearing, the parties disagree on the appropriateness of the unit. Contrary to the Petitioner, the Employer contends that the petition does not seek an appropriate unit because the dispatch, yard, and safety supervisors are statutory supervisors under Section 2(11) of the Act; and the payroll supervisor should be excluded as either a statutory supervisor or a confidential employee. While the Employer agrees that the one part-time clerical, who is now a full-time employee, is an employee under the Act, she cannot constitute an appropriate unit as a single employee. The Employer and the Union agree that the individual in the classification of load/makeup supervisor is no longer employed by the Employer and is therefore not eligible to vote. The Petitioner contends that the dispatch, yard, and safety supervisors are not supervisors under the Act, and that the payroll supervisor is not a supervisor or a confidential employee, and that they constitute an appropriate residual unit consisting of all the unrepresented employees. The Employer agrees that the employees in the petitioned-for unit constitute a residual unit, but contends it is not an appropriate unit because all but the one clerical employee is a supervisor.

I have considered the evidence and the arguments presented by the parties on these issues. As discussed below, I have concluded that the disputed individuals are not supervisors or confidential employees and therefore constitute an appropriate residual unit. I have also concluded, in agreement with the parties and based on the record evidence, that the individual in the classification of the load makeup/dispatch supervisor is not eligible to vote because he is no longer employed. The position of load makeup/dispatch supervisor is currently vacant. If the position is filled by the time of the election, I will permit the incumbent to vote subject to the challenge ballot procedure. There are approximately 8 employees in the unit found appropriate here.

I take administrative notice of the prior Decision and Direction of Election in Case 14-RC-12308, issued on January 4, 2002, involving the same parties in which the dispatch supervisors and payroll supervisor were found not to be supervisors under the Act, and further finding the payroll supervisor was not a confidential employee. The Employer's and Petitioner's witnesses testified that the duties of the dispatch supervisors and the payroll supervisor have not changed since 2001. Therefore, the duties and responsibilities described in the prior Decision will occasionally be referenced in this Decision. However, I will not rely on the legal analysis for supervisory status with respect to these classifications since that analysis relies on cases that existed prior to *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2001), and is no longer appropriate, particularly for determining what constitutes assignment, responsible direction, and independent judgment.

#### **I. POST-HEARING PROCEDURAL MATTER**

The petition in this matter was filed by the Petitioner on July 14, 2014. The subsequent pre-election hearing was held on July 28 and July 29, 2014. On August 5, 2014, the Petitioner filed a motion to re-open the hearing for the purpose of admitting a July 3, 2012 document relating to discipline. The Petitioner does not state in its motion how the 2012 document was discovered, or why this 2-year old document could not have been discovered with due diligence prior to the hearing. On August 6, 2014, the Employer filed a motion in opposition to the Petitioner's motion to reopen, arguing that the Petitioner's motion should be denied because the evidence should have been discovered prior to the hearing and because the motion was not promptly submitted after discovery of the evidence.

Section 102.65(e)(1) of the Board's Rules and Regulations states that in "extraordinary circumstances", a party may move after the close of the hearing for reopening of the record.

This section further states that only newly discovered evidence – evidence that became available only after the close of the hearing – may be taken. The motion to reopen the record must contain an explanation of why the evidence was not previously presented. In a recent unfair labor practice proceeding, the Board refined the circumstances under which a record would be opened to receive newly discovered evidence in a representation case proceeding. In *Manhattan Center Studios, Inc.*, 357 NLRB No. 139 (2011), the Board articulated a 3-prong test for the receipt of new evidence. The party seeking to introduce new evidence after the record of a representational proceeding has been closed must establish: (1) that the evidence was unavailable to the party before the close of the proceeding; (2) that the evidence would have changed the result of the proceeding; and (3) that it moved promptly upon discovery of the evidence. *Id.* slip op at 4.

With respect to the first prong of the test, the moving party must prove that it was “excusably ignorant” of the evidence at the time it was required to act. To be “excusably ignorant,” the proffered evidence could not have been discovered in time “with reasonable diligence.” *Id.* The Petitioner has failed to establish it exercised reasonable due diligence. The evidence it belatedly seeks to introduce is dated 2 years prior to the hearing. The Petitioner has not offered evidence of any kind that it took reasonable steps to uncover this evidence prior to the close of the hearing. While the Petitioner argues it was hampered by the unavailability of pre-hearing discovery, the issue of the authority to administer discipline and whether that authority was restricted by management directives would have been apparent to the Petitioner at the end of the first day of hearing where that issue was discussed at length. The Petitioner does not indicate the reason why it could not have discovered the 2012 evidence prior to the closing of the second day of hearing. The Petitioner has failed, in these circumstances, to prove it was “excusably ignorant” of the 2012 evidence it now seeks to admit.

In addition to not meeting the first prong of the test, the Petitioner's motion does not meet the second prong of changing the result of the proceedings. I have concluded in agreement with the Petitioner that the employees in the petitioned-for unit are not supervisors and constitute an appropriate residual unit. Thus, the evidence the Petitioner seeks to admit would not change the results of this representation case proceeding. In light of the fact that I find that the Petitioner did not meet the first two prongs, it is not necessary for me to determine whether the Petitioner's motion was promptly filed under the third prong.

Accordingly, the Petitioner's motion to reopen the record is denied.

Additionally, the Employer filed a motion to redact handwritten comments appearing on Exhibit 1 appended to the Petitioner's post-hearing brief. Exhibit 1 is a copy of the prior Decision discussed above. I have no control over the exhibits included by the Petitioner in its brief. Further, I have taken administrative notice of the official 2002 Decision that contains no extraneous markings. Nor have I considered the extraneous markings on Exhibit 1 of the Petitioner's brief to which the Employer objects. Accordingly, the Employer's motion to redact Petitioner's Exhibit 1 appended to the Petitioner's brief is denied.

## **II. OVERVIEW OF EMPLOYER'S BUSINESS**

The Employer transports automobiles manufactured at the General Motors assembly plant in Wentzville, Missouri, as well as new automobiles delivered to Wentzville by rail, to various auto dealerships in the Midwest. The automobiles are transported from the Wentzville terminal to the auto dealerships by hydraulic lift-equipped transport trucks. The Wentzville facility consists of the terminal building containing a dispatch area and other office areas, and the maintenance shop where the transport trucks are repaired; two yards including the GM plant yard facility where the vehicles are manufactured; two "upfitters" areas where components are added

to the vehicles; and a vehicle distribution center (VDC) where vehicles arrive by rail to be distributed to other locations.

The Wentzville terminal employs a terminal manager, an assistant terminal manager, an operations manager, a shop superintendent, a shop supervisor, a quality supervisor, a yard superintendent, an assistant yard superintendent, and an office administrator, all of whom the parties stipulated are supervisors under the Act. The terminal manager is responsible for the overall operations of the Wentzville terminal. The terminal manager reports to the regional vice-president who works out of the Employer's main corporate offices in Kansas City, Missouri. There are other personnel located at the Kansas City office, including a regional safety manager, a president, and an HR department. The record does not disclose the specific duties of these individuals in the Kansas City office.

The assistant terminal manager assists with the day-to-day operations, including dispatch, safety, and quality. The record does not reflect the specific duties of the other stipulated supervisors. In addition to the stipulated supervisors, the terminal employs 120 drivers, 16 mechanics, 31 yardmen, 2 dispatch supervisors, 1 load makeup/dispatch supervisor, 2 yard supervisors, 1 loading/yard supervisor, 1 payroll supervisor, and 1 clerical employee. The Employer's drivers, yard auto handlers, and mechanics are union-represented employees covered by a collective-bargaining agreement with the Petitioner. The employees in the petitioned-for unit constitute the only unrepresented employees at the Wentzville terminal.

#### **A. Dispatch Supervisors**

The two dispatch supervisors and the load makeup/dispatch supervisor report to the operations manager, who in turn reports to the assistant terminal manager. The dispatcher supervisors work primarily in the dispatch office in the terminal building. The record reflects the

3 disputed dispatch supervisors' duties include checking the loads, organizing loads on trucks, dispatching drivers to make deliveries, entering automobile and delivery information into computers, ensuring accurate information is transmitted from General Motors, and keeping track of drivers en route. General Motors prioritizes the delivery of vehicles, including designating some deliveries as "rush" deliveries that need to be expedited. Dispatchers rely on this prioritizing, as well as dealership instructions, shipping guidelines, GM guidelines, safety standards, and company policy including attempting to maximize profit, in organizing and dispatching loads. The load makeup/dispatcher together with the assistant terminal manager use a Manual Load Building (MLB) computer system which helps them determine how to make the most profitable and efficient loads. The MLB has the inventory of vehicles available for loads, the transport trucks available to transport the loads, and maps indicating the stops for the loads. The MLB also helps the load makeup/dispatcher and the assistant terminal manager determine the load's wage revenue to profit margin to better maximize the profit for each load. These loads are then dispatched every 3 hours and drivers choose their loads according to their seniority as required by the contract.

The drivers can call the dispatch supervisors if they have mechanical problems. The dispatch supervisors then refer them to the maintenance shop. If the driver calls concerning a problem with the customer, the dispatch supervisors refer the drivers to either the terminal manager or the assistant terminal manager. The dispatch supervisors, as well as the drivers, have the home phone numbers of both the terminal manager and the assistant terminal manager if problems occur after regular hours when these two managers are not physically present at the terminal.

## **B. Yard Supervisors**

The 2 yard supervisors and the loading/yard supervisor report to the yard superintendent, a stipulated supervisor, who in turn reports to the assistant terminal manager. The record does not reflect the duties and responsibilities of the yard superintendent. These three yard supervisors work mainly at the GM plant yard which is connected to the GM plant and where the Employer receives the majority of its vehicles. Yard supervisors assist the drivers in how best to load the vehicles on the transport trucks for delivery, but the drivers are the ones who actually load the vehicles. Yard supervisors use GM standards and safety standards, as well as the number of stops the driver will have to make, and size and type of the vehicles to be loaded and the transport truck, in determining the safest, most efficient way to load the transport truck. The yard supervisors may assist the drivers by operating the hydraulic system while the vehicles are being loaded, and ensuring the vehicles are properly tied down to the transport trucks in accordance with GM and Employer safety standards. Drivers are given a list of the vehicles and VINs and are the ones responsible for ensuring that the correct vehicles are on the transport truck. Drivers, not the yard or dispatch supervisors, are held responsible for hauling the wrong units. Yard supervisors assist yardmen in where to park the vehicles, and assist drivers in locating missing vehicles. One yard supervisor testified that the drivers generally know what they are doing and can load their trucks without any assistance.

## **C. Safety Supervisor**

The safety supervisor reported to the assistant terminal manager prior to July 3, 2014, and currently reports to the quality supervisor, who in turn reports to the assistant terminal manager. The safety supervisor works in an office in the terminal building. She is responsible for ensuring that the drivers comply with DOT regulations as well as the Federal Motor Carrier Standards

Administration (FMCSA) regulations. She monitors the drivers' logs. Most of these logs are tracked by a computer system which alerts the safety supervisor to violations, including working too many hours and exceeding the allowed break period. The safety supervisor has been trained on DOT and FMCSA regulations, and has trained drivers on how to monitor their logs to comply with DOT regulations, and has trained management on how to use the computer system to monitor logs.

When accidents and injuries occur, the safety supervisor investigates and makes a report to the quality supervisor, terminal manager, and assistant terminal manager. This investigation generally consists of talking to the driver, getting estimates on any damage, and reading any tickets or citations. The safety supervisor reports on whether the accident is chargeable, though the record does not reflect the criteria used in making this determination. If the damage is less than \$2000, then it is considered minor per the contract. If drivers receive tickets or citations, the safety supervisor submits a Fine Request Form that is forwarded to the Employer's corporate office in Kansas City. If the ticket or citation is for a moving violation, such as running a red light, then the safety supervisor checks the form showing that the driver should pay the fine. If the ticket or citation is for a weight or height violation, the safety supervisor checks the form showing that the Employer pays the fine, which is in accordance with the Employer's established policies. The record fails to reflect what, if any, level of review is conducted by the corporate office or terminal management upon receipt of these forms. There is some record testimony that the quality supervisor, a stipulated supervisor, has the overall responsibility for processing claims for damages caused during transportation of the vehicles. The prior Decision also notes that damages are independently investigated by the quality assurance department.

#### **D. Payroll Supervisor**

The payroll supervisor works in the terminal building and reports to the assistant terminal manager. She determines how drivers will be paid using the collective-bargaining agreement. Hauling vehicles from the yards, for example, is paid a different rate than hauling vehicles brought in from the railroad. Drivers also receive different compensation for reloads on trucks, extra mileage, and training time, per the collective-bargaining agreement. The prior Decision on this same individual reflects that she reviews driver trip tickets, verifies driver time, and makes computer entries for drivers. The prior Decision further notes that payroll is reviewed by the assistant terminal manager and then submitted to the Employer's corporate office in Kansas City. With respect to yardmen, the record reflects that their time is reviewed and approved by the assistant yard superintendent and yard superintendent, both stipulated supervisors. The record reflects that the payroll supervisor spends one day a week, Monday, as a dispatch supervisor.

### **III. SUPERVISORY STATUS**

The Employer contends that the dispatch supervisors, load makeup/dispatch supervisor, yard supervisors, loading/yard supervisor, safety supervisor, and payroll supervisor are supervisors within the meaning of the Act, and therefore the petitioned-for unit is inappropriate. The traditional test for determining supervisory status is: (1) whether the individual has the authority to engage in, or effectively recommend, any 1 of the 12 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 (2006); *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711-

712 (2001). The Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g., *Vencor Hospital - Los Angeles*, 328 NLRB 1136, 1138 (1999); *Bozeman Deaconess Hospital*, 322 NLRB 1107, 1114 (1997).

Supervisory status must be established by a preponderance of the evidence. *Oakwood Healthcare, Inc.*, supra at 694. Lack of evidence is construed against the party asserting supervisory status. *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1048 (2003); *Michigan Masonic Home*, 332 NLRB 1409 (2000). "[W]henver the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia." *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Mere inferences or conclusionary 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); *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). Job descriptions and job titles are only paper authority and are not given any controlling weight by the Board. *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006); *Training School at Vineland*, 332 NLRB 1412, 1416 (2000).

The Employer contends that the dispatch supervisors, load makeup/dispatch supervisor, yard supervisors, loading/yard supervisor, safety supervisor, and payroll supervisor are supervisors primarily because they have the authority to assign work, responsibly direct employees, and issue discipline, and also because they possess other primary and secondary indicia which will be discussed separately with respect to each putative supervisor. The

Employer further contends that the payroll supervisor also is a confidential employee, which will be addressed in the discussion of the payroll supervisor's authority below.

### **A. Dispatch Supervisors**

#### 1. Assignment of Work/Granting Time Off

The dispatch supervisors' role in the assignment of work does not demonstrate supervisory status. The Board's recent decisions in *Oakwood Healthcare, Inc.* and *Golden Crest Healthcare Center* provide the framework for determining whether the dispatch supervisors, as well as the other disputed supervisors, assign work to drivers and yard employees using the requisite degree of independent judgment. In *Oakwood Healthcare, Inc.*, the Board explained that assignment means designating an employee to a place (such as location, department, or wing), appointing an individual to a time (such as a shift or overtime period), or giving significant overall duties as opposed to discrete tasks. *Oakwood Healthcare, Inc.*, supra at 689. The authority to make an assignment, by itself, does not confer supervisory status – the putative supervisor must also use independent judgment when making such assignments. *Id.* at 692-693. This means that the individual must exercise authority that is free from the control of others, and make a judgment that requires forming an opinion or evaluation by discerning and comparing data. *Id.* Additionally, the judgment must “rise above the merely routine or clerical” for it to be truly supervisory, even if it is made free of control of others and involves forming an opinion by discerning and comparing data. *Id.*

Dispatch supervisors do not assign employees to a particular place or location. Loads are provided to the drivers by the dispatch supervisors strictly on the basis of driver seniority as required by the drivers' contract. The dispatch supervisors do not determine which route the driver will take in making the delivery; the driver makes this determination based on the route

the driver chooses. The priority of the loads is determined by the manufacturer, as well as dealership requirements.

Dispatch supervisors also do not assign employees to a particular time. There is no evidence dispatch supervisors have any role in scheduling, or in setting the work hours of any particular driver. There is no record evidence that dispatch supervisors can approve requests by employees to change their hours or shifts. There is no evidence dispatch supervisors approve sick leave or vacation. There are no specific instances of dispatch supervisors approving overtime. The prior Decision notes that dispatch supervisors have the authority to grant overtime but that is limited to having employees already on the job stay longer to finish a particular load. There is no evidence, however, that any of the dispatch supervisors can compel a driver, yard employee, or anyone else to stay and work overtime. The ability to request employees stay late, without the ability to require such action, does not constitute supervisory authority. *Golden Crest Healthcare Center*, supra at 729. In addition, the circumstances under which employees can receive overtime, and the limitations on overtime, are set forth in the collective-bargaining agreement and there is no evidence the dispatch supervisors can deviate from these contractual limits. The Board has held that a purported supervisor does not exercise independent judgment when making assignments based on an employer's detailed policies, a collective-bargaining agreement, or other such directives. *Oakwood Healthcare, Inc.*, 348 NLRB at 693.

The terminal manager testified that dispatch supervisors Kurtz and Bunting can grant time off and also affect employees' pay by recommending that a shift be canceled, particularly the night shift and the Saturday shift. The terminal manager stated that in one particular instance, he canceled the night shift based on Kurtz's recommendation without independently checking the inventory. The record does not reflect the basis for what Kurtz's "recommendation" was

based on, or whether that recommendation required the use of independent judgment, which is the Employer's burden to establish. Merely reporting on the inventory of vehicles and transport trucks available for a shift does not require the formulation of an opinion through the process of "discerning and comparing data" and does not require the use of independent judgment. *Oakwood Healthcare*, supra at 693. In addition, the Employer has set policies on the number of vehicles to be placed on transport trucks in order to maximize loads; advising the Employer there are insufficient vehicles to meet this established policy does not require independent judgment. The terminal manager testified that sometimes he follows the recommendations of the dispatch supervisors on whether to cancel a shift, and sometimes he does not. The record does not reflect what other factors the terminal manager takes into account prior to making the final determination on whether to cancel a shift.

The authority to effectively recommend means that the recommendation was taken without any independent review or investigation by higher management, not that the recommendation was eventually followed. *Children's Farm Home*, 324 NLRB 61 (1997). The Employer did not provide the specific circumstances surrounding what other factors, if any, were taken into account when making a particular determination to cancel or keep a specific shift, and thus failed to demonstrate the decision was based solely on the dispatch supervisor's recommendation without any independent review or investigation by higher management. Further, assuming that dispatch supervisors make recommendations on shifts without any independent review or investigation, there is no specific record evidence that such recommendations require the use of independent judgment. Such lack of specific evidence of independent judgment is construed against the Employer. *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1048 (2003).

In addition to not assigning employees a place or time using independent judgment, dispatch supervisors do not assign employees “significant overall job duties.” The duties of the employees are determined by their job classifications as drivers, yard men, and mechanics. Even assuming assigning employees to a particular load in order of seniority as required by the contract is the assignment of significant overall duties and not simply ad hoc instructions to perform discrete tasks, there is no evidence this assignment requires the use of independent judgment. Dispatch supervisors do not determine which drivers receive which loads based on the dispatch supervisor’s assessment of the individual skills of the drivers, or the varying degree of difficulty of the loads. Making assignments without regard to individualized assessments of the employees’ skills in relation to the work being assigned are routine and do not require independent judgment. *Oakwood Healthcare, Inc.*, supra at 693. The record reflects dispatch supervisors may request a yard employee jump start a vehicle or look for a missing vehicle. Again, there is no evidence the dispatch supervisors can compel yard employees to perform these discrete tasks, or that these tasks constitute the assignment of significant overall job duties. There is no evidence that dispatch supervisors use independent judgment in making such assignments. Thus, the ability to request yard employees to perform these tasks does not constitute supervisory assignment authority. *Id.* See also *Alternate Concepts, Inc.*, 358 NLRB No. 38 (2012), slip op at 8.

## 2. Responsible Direction

In *Oakwood*, the Board explained that direction means the putative supervisor has employees working “under” him and has the authority to instruct those employees on what work needs to be done and who will do it. *Oakwood Healthcare, Inc.*, supra at 691. Such direction is not supervisory, however, unless it is also done “responsibly,” i.e., if the putative supervisor is

held accountable for the performance of other employees. *Id.* at 691-692. To establish accountability, the party asserting supervisory status has to show both that the putative supervisor has “the authority to take correction action” and can potentially receive “adverse consequences” for the performance errors of other employees. *Id.* For the adverse consequences to establish “responsible direction,” the consequences must flow from the other employees’ performance failures, not from the purported supervisor’s own performance failure. Finally, the purported supervisor must also exercise independent judgment in responsibly directing the work of the employees under him. Where tasks are highly regulated, repetitive, and well-known to employees, the degree of independent judgment is reduced when directing employees in such tasks. *Id.* at 693; *Croft Metals, Inc.*, 348 NLRB 717, 721 (2006); *Franklin Home Health Agency*, 337 NLRB 826, 831 (2002).

The dispatch supervisors do not responsibly direct employees. With respect to the first criteria, the dispatch supervisors and load makeup/dispatch supervisor do have employees “under” them, the drivers, and they do provide direction to the drivers with respect to what vehicles go on what loads. Dispatch supervisors do not direct drivers in how to drive the transport trucks. The dispatch supervisors also provide direction on the best way to load the vehicles so they are within the GM and company safety standards. The drivers do the actual loading of the vehicles onto the trucks. One dispatch supervisor testified that the drivers primarily know how to load their trucks and do so without any assistance.

While the dispatch supervisors meet the first criteria of having employees under them, they do not meet the criteria of “responsible” direction. There is some evidence that dispatch supervisors can issue corrective action to drivers such as when they deliver the wrong vehicles. The issuance of disciplinary actions will be discussed in more detail below. However, there is no

record evidence that dispatch supervisors are held accountable for the mistakes of the drivers. No dispatch supervisor has received discipline due to a driver improperly loading a vehicle onto a transport truck or for delivering the wrong vehicles. There is no evidence of any potential adverse consequences to a dispatch supervisor for the performance mistakes of other employees, nor is there any evidence the dispatch supervisors, or any of the other disputed supervisors, have been informed that they could receive adverse consequences for performance mistakes. The Board has declined to find accountability where the putative supervisor has never been informed of the prospect of adverse consequences for the poor performance of other employees. See *Rockspring Development, Inc.*, 353 NLRB 1041, 1042 (2009).

Even assuming the dispatch supervisors were held accountable for the mistakes of the drivers, they do not meet the third criteria of exercising independent judgment in providing direction to the drivers. As previously noted, the dispatch supervisors' directions must conform to the instructions of the terminal manager, as well as to the requirements of GM, the dealerships, and the collective-bargaining agreement. These limitations on the dispatch supervisors' authority reflect a lack of independent judgment. *Oakwood Healthcare, Inc.*, 348 NLRB at 693; *Community Education Centers, Inc.*, 360 NLRB No. 17 (2014), slip op at 2. Finally, directing employees in tasks well-known to the employees and which require minimal guidance does not require the degree of independent judgment necessary to constitute independent judgment. *Croft Metals, Inc.*, 348 NLRB 717, 722 (2006); *Franklin Home Health Agency*, 337 NLRB 826, 831 (2002).

### 3. Discipline

The dispatch supervisors do not exercise independent judgment in issuing disciplinary notices. To confer supervisory status, the exercise of discipline must lead to personnel actions

without the independent investigation or review of higher management personnel. *Franklin Home Health Agency*, 337 NLRB 826, 813 (2002). The evidence does not establish that the dispatch supervisors issue discipline that is not subject to independent investigation or review by higher management. Even if the evidence did establish such authority, the statutory authority to discipline also requires the use of independent judgment. There are no record examples of dispatch supervisors exercising independent judgment when issuing discipline. There is no evidence any of the 3 dispatch supervisors in dispute have suspended or discharged employees, or effectively recommended such actions using independent judgment.

The Employer presented only 4 disciplinary notices issued by the 2 dispatch supervisors and the load makeup/dispatch supervisor since 2003. Two, Exhibits 39 and 40, were issued by load makeup/dispatch supervisor Derrick Bunting – a verbal counseling in 2003 and a written reprimand in 2014.<sup>3</sup> A third, Exhibit 41, was issued by dispatch supervisor Alex Kurtz – a written reprimand in 2014 that does not contain the signature of the dispatch supervisor. The fourth, Exhibit 42, was issued by dispatch supervisor Scott Ritter– a written reprimand in 2013. The driver counseling form from 2003, Exhibit 39, is different from the more recent forms. This counseling form does not state the specific company rule that has been violated as do the more recent disciplinary notices, nor does it contain any statements of what future discipline would issue, if any, for further misconduct. This 2003 counseling notice, which was for shipping the wrong vehicles, an obvious violation of the Employer’s policies and the collective-bargaining

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<sup>3</sup> I have concluded that Bunting is not eligible to vote because he is no longer employed by the Employer. However, the parties stipulated that the duties of one of the dispatch supervisors apply to all of them. Therefore, the testimony of Bunting is relevant to the determination of whether the dispatch supervisors as a whole possess supervisory authority.

agreement, was sent to two other individuals, the office administrator and the assistant terminal manager at that time, both stipulated supervisors. Neither of those individuals testified.

Load makeup/dispatch supervisor Bunting testified that while he believed he had the authority to issue discipline, the record fails to reflect on what he based this belief. There is no record evidence that the terminal manager or any other member of management verbally or in writing advised Bunting or any other dispatch supervisor that they could issue discipline. An employee's perception of having supervisory authority is only a secondary indicia of supervisory status and is not sufficient, by itself, to establish supervisory authority. *Ken-Crest Services*, 331 NLRB 777 (2001); see also *Rockspring Development, Inc.*, 353 NLRB 1041, 1042 (2009) (disputed supervisor's assumption that he had supervisory authority does not constitute the requisite evidence of actual accountability).

Despite Bunting's belief, he testified that he did not issue discipline, including the counseling warning in Exhibit 39, unless instructed to do so by upper management; in this case, the assistant terminal manager at the time. Bunting has not been disciplined for any failure to issue disciplinary notices without first being told to, indicating such authority is not a requirement for the position. Bunting further testified that he did not have the authority to issue discipline that did not conform to the disciplinary steps set forth in the collective-bargaining agreement or that did not conform to other company policies. The collective-bargaining agreement covering the drivers and yardmen contains 8 pages of misconduct and outlines detailed progressive disciplinary steps for the various types of misconduct. Bunting testified the warning in 2003 was not only issued because it was prompted by upper management, but also because it was a violation of the collective-bargaining agreement. While the current assistant terminal manager testified he did not direct anyone to issue the 2003 discipline, he was not the

assistant terminal manager at the time this warning was issued and that manager was not called to testify.

Load makeup/dispatch supervisor Bunting also testified that the reprimand notice dated January 10, 2014, Exhibit 40, was issued at the direction of the current assistant terminal manager. The driver received this reprimand for shipping the wrong vehicles, an obvious violation of the collective-bargaining agreement. This reprimand includes the penalty for future discipline, again in accordance with the collective-bargaining agreement. The current assistant terminal manager admitted that he did direct Bunting to issue the 2014 reprimand notice. The assistant terminal manager said that usually there is an investigation before discipline is issued, and the person or persons responsible for that investigation differed depending on the circumstances. The assistant terminal manager did not specify what the normal procedures were for investigating misconduct prior to issuing discipline, what the investigation would entail, or who would be involved in which circumstances.

Other than the two notices discussed above, there were no other disciplinary notices presented that were issued by this dispatch supervisor. The terminal manager recently requested the authority from the corporate office to hire a replacement for this dispatch supervisor who had informed the Employer he was going to be leaving his employment. This requisition request submitted by the terminal manager, Exhibit 46, submitted on July 3, 2014, describes the primary functions of this load makeup/dispatch supervisor as making up loads, dispatching domiciled drivers, and keeping loads for the backhaul drivers, who pick up loads and then return to their home terminals. The only skill sets listed for this position are computer knowledge and excellent communication skills. There is nothing on this form indicating the ability to discipline employees is part of the responsibilities or skill set required for the position.

The record fails to reflect that load makeup/dispatch supervisor Bunting has the authority to issue discipline on his own without being instructed to do so by upper management, or that any discipline he issues is free from review by upper management. The current assistant manager admitted he directed Bunting to issue the only disciplinary notice Bunting has issued in the last 11 years. The record also reflects the terminal manager, who receives copies of the disciplinary notices, has the authority to rescind and reduce discipline. While the terminal manager testified he did not override any of the discipline issued by the dispatch supervisors, that is not the test. He does have the authority to override the discipline, as noted above, and has done so. The terminal manager further testified that even his decisions on discipline are not final because they are subject to the grievance procedure.

Even assuming Bunting did have the authority to issue discipline on his own without review from upper management, the record fails to reflect he exercises independent judgment in issuing such discipline. While the Employer's witnesses gave conclusory testimony that the disputed employees could potentially issue discipline that did not conform to the collective-bargaining agreement or other company policies, there is no specific record evidence of any dispatch supervisor doing so. Conclusory statements such as those made by the terminal manager and assistant terminal manager, without detailed, specific evidence of the use 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). Further, the authority to issue discipline pursuant to the terms of a collective-bargaining agreement which dictates the level of discipline to be imposed for various offenses, does not involve the use of independent judgment and thus is not supervisory disciplinary authority. *Oakwood Healthcare*, 348 NLRB at 731; see also *Alternate Concepts, Inc.*, 358 NLRB No. 38

(2012), slip op at 7-8 (restricted and sporadic authority limited to predetermined types of conduct does not require the use of independent judgment); *The Wackenhut Corp.*, 345 NLRB 850, 854 (2005), (issuing warnings that consistently cited to specific, enumerated regulations that mandated the type of discipline to be issued in each particular instance, did not reflect the use of independent judgment and did not make the individual a supervisor).

The single reprimand notice issued in 2014 by dispatcher supervisor Alex Kurtz and the single reprimand notice issued in 2014 by dispatch supervisor Scott Ritter, both of which were issued for shipping the wrong vehicles, does not reflect that they possess the supervisory authority to discipline employees using independent judgment. Neither of these two dispatchers was called to testify with respect to the circumstances behind the one-time issuance of this discipline. The reprimand issued by Kurtz states it is a “corrected copy.” Again, the record does not reflect who corrected the discipline, or why the discipline had to be corrected. Both reprimands were sent to the terminal manager and the assistant terminal manager, and, as noted, the terminal manager testified he had the authority to rescind discipline and to reduce discipline. While the terminal manager testified that he did not instruct these two reprimands to be issued, the record fails to reflect whether the reprimands were prompted or reviewed by other higher management. Because there is no record testimony regarding the circumstances of how these reprimands came to be written, whether they were reviewed by any upper management including officials at the corporate level, whether they were prompted by any upper management, and whether the level of corrective action reflected the input of higher management, the reprimands have little probative value and do not establish by a preponderance of the evidence that the dispatch supervisors possess disciplinary authority. See *Trinity Continuing Care Services*, 359 NLRB No. 162 (2013), slip op at 5.

#### 4. Recommendation to Hire

The Employer contends the dispatch supervisors have the authority to effectively recommend hiring. With respect to hiring, there is no record evidence the dispatch supervisors have this authority, nor is there any evidence they participate in the hiring process. The record indicates that the terminal manager submits requisition requests for employees to the regional vice-president, which then has to go through the president, and then ultimately has to be approved by the corporate director of human resources. The terminal manager, therefore, does not have final authority to make hiring decisions, but rather those must be approved by layers of corporate managers. With respect to the authority of the dispatcher supervisors to make recommendations, dispatch supervisor Bunting testified he put in an employment application for both his son and his step son. Bunting stated anyone could turn in an application. Bunting did tell the terminal manager that his son and step son were good workers. His son was not hired but his step son was ultimately hired. The record does not reflect who made the final decision on hiring, or what went into the decision on hiring. There is no evidence his step son or anyone else was hired solely on his recommendation without any independent review or investigation by higher management; therefore the record fails to reflect he has the authority to effectively recommend on hiring decisions. *Children's Farm Home*, 324 NLRB 61 (1997); see also *Ten Broeck Commons*, 320 NLRB 806, 813 (1996).

#### 5. Secondary Indicia

The Employer contends the dispatch supervisors are supervisors because they have the title of supervisor, have a key code to the terminal building as do the maintenance employees, have an office, and attend supervisory meetings. While the Board has examined secondary indicia not set forth in Section 2(11) of the Act, these secondary factors, without more, are

insufficient to establish supervisory status. *International Transportation Service, Inc.*, 344 NLRB 279, 285 (2005), enf. denied on other grounds, 449 F.3d 160 (2006); *Ken-Crest Services*, 335 NLRB 777, 779 (2001); *Carlisle Engineered Products*, 330 NLRB 1359, 1361 (2000).

## **B. Yard Supervisors**

### 1. Assignment of Work

The 2 yard supervisors and the loading/yard supervisor do not assign employees to a place or time, or to significant overall duties. With respect to place, yard supervisors do not assign yardmen, drivers, or any other employees to work at a particular place. The terminal manager testified that GM tells the Employer where the various vehicles are going to be parked. The drivers select their own loads by seniority, receive their VINs to be transported for those loads, and then go to the areas at the facility where those vehicles are parked. There is no specific record evidence of any of the three yard supervisors assigning anyone to work in a particular yard as opposed to another yard.

With respect to time, there is no evidence that yard supervisors determine employees' schedules. The terminal manager testified that yard supervisors can assign employees to work a weekend shift. There is no record evidence, however, on what such a determination would be based, whether it would involve independent judgment, or whether it would be subject to review by higher management. There is also no evidence a yard supervisor could compel anyone to work a specific shift. As such, this conclusory testimony is insufficient to establish the yard supervisors assign employees to weekend shifts.

Similarly, the terminal manager testified that yard supervisors could send employees home if there is not enough work or if the work has been completed for the day. Again, there is no specific record evidence of a yard supervisor making a determination to send employees

home for lack of work, and no specific evidence that such a decision would require the use of independent judgment. There is no evidence that the yard supervisors can force anyone to go home because of insufficient work, and supervisory authority is not established where an individual can request, but not require, that a certain action be taken. *Golden Crest Healthcare Center*, 348 NLRB 727, 729 (2006). Finally, the limited authority to allow employees to go home when work is slow does not require the use of independent judgment and is insufficient to confer supervisory status. *Azusa Ranch Market*, 321 NLRB 811, 812 (1996); see also *Harborside Healthcare, Inc.*, 330 NLRB 1334, 1336 (2000).

The Employer also contends that the yard supervisors have the authority grant employees' requests to leave early. There is only one record example of an employee requesting to leave early. Here, a casual driver was involved in an accident in one of the yards at the terminal and asked if she could leave because she was shaken up after the accident. Yard supervisor R. J. Rayner told her she could if she wanted to, and had no further involvement in the matter. He did not sign off on any leave forms. There is no evidence that this yard supervisor, or any other yard supervisor, can deny any request from employees to leave early. Assuming the yard supervisor's actions in this instance constituted granting time off, simply granting leave, without the discretion to deny such requests, does not require the use of independent judgment and therefore is not supervisory. *Hydro Conduit Corp.*, 254 NLRB 433, 439 (1981). There is no record evidence of any other yard supervisor approving a request for an employee to leave early, nor is there any specific record evidence of a yard supervisor making a determination on his own to send employees home using independent judgment.

The assistant terminal manager testified that the same yard supervisor incorrectly sent employees home on one occasion after a shift was canceled, and he therefore affected

employees' pay. The record does not reflect that the yard supervisor made the determination to send employees home, or that he had the authority to choose who would go home or to compel anyone to go home. Rather, the assistant terminal manager testified employees were to be selected to go home according to seniority in this instance and the yard supervisor did not follow the correct order. The record reflects that if employees complain about not being sent home in the proper order, as was the case in this one record example, the assistant terminal manager looks into the situation to determine if the employees were sent home correctly, thus conducting his own independent investigation. The yard supervisor's actions in sending employees home in order of seniority as contractually required does not require the use of independent judgment, and such actions are subject to review by the assistant terminal manager. The fact that the yard supervisor may make a mistake in the order in which employees are sent home, thus creating a situation where the Employer has to recompense one of the employees, does not make the yard supervisor a statutory supervisor.

The Employer's assistant terminal manager testified that yard supervisors could determine which yard crew employees would work during the 2013 Memorial Day holiday. The assistant terminal manager presented an e-mail he sent in May 2013, Exhibit 55, to the yard supervisors, dispatch supervisors, and several members of upper management, stating they would need four crew members for the holiday and to let the assistant terminal manager know who those individuals would be. The assistant terminal manager could not recall who responded to him with the list of crew members. He testified that the yard supervisors would call the yard crew employees by seniority and ask them if they wanted to work the holiday. There is no evidence the yard supervisors could force anyone to work the holiday. Calling employees by seniority as required by the contract, and asking for volunteers to work the holiday, without any

ability to compel the employees to do so, does not confer supervisory status on the individual. *Golden Crest Healthcare Center*, supra at 729; see also *Regal Health & Rehab Center*, 354 NLRB 466, 471 (2009).

The Employer also contends at least one yard supervisor, Rayner, has the authority to approve timecards because his initials appear on one time card. The evidence is conflicting as to why the yard supervisor initialed the time card. Yard supervisor Rayner testified that the employee did not clock out and he initialed as a witness to her actual time of departure. The terminal manager testified he investigated the incident to determine what happened and states the yard supervisor failed to call the employee and tell her not to come in on a day when work had been cancelled. Per the contract, this employee was entitled to a certain amount of pay. The Employer contends the yard supervisor “approved” the time and the employee’s pay by the simple fact that he initialed the time card. However, the facts as set forth in the prior Decision, as well as the testimony of the yard supervisor, reflect that pay for drivers is reviewed by the assistant terminal manager and ultimately submitted to the corporate office in Kansas City for approval. Additionally, the Board has consistently held that the authority to verify employees’ time cards is routine and clerical and does not indicate supervisory authority. *Golden Crest Healthcare Center*, supra at 730, fn. 10

In addition to not assigning a place and time, the yard supervisors do not assign employees significant overall duties. The primary duties are determined by an employee’s job classification as a yardmen, driver, or mechanic, and there is no evidence a yard supervisor can compel an employee in one classification to perform the job duties of another. The terminal manager testified that the yard supervisors assign employees significant overall duties by giving them the functions they will be performing for the day, such as loading rail cars, which is paid by

incentive pay, or loading units at the GM plant yard, which is paid by the hour. Assuming these duties constitute an assignment of overall duties and not simply ad hoc instructions to perform discrete tasks, there is no evidence the yard supervisors use independent judgment when making such assignments. There is no specific record evidence of yard supervisors making assignments based on the supervisor's individualized assessment of the employees' skills in relation to the work being assigned. Therefore, the Employer has failed to meet its burden of establishing yard supervisors assign employees using independent judgment. *Oakwood Healthcare, Inc.*, supra at 693; see also *Alternate Concepts, Inc.*, 358 NLRB No. 38 (2012), slip op at 8.

## 2. Responsible Direction

While the record is unclear as to whether yard supervisors have employees "under" them, since there is no record evidence of employees reporting directly to the yard supervisors, yard supervisors do provide direction to employees. The loading/yard supervisor, for example, does provide direction to the drivers on how to load the vehicles on the trucks within the safety guidelines of GM and the Employer. The loading/yard supervisor uses a loading diagram with pictures of different types of vehicles loaded onto different types of transport trucks to demonstrate to drivers, particularly backhaul drivers from other terminals, how the vehicles should be loaded. Yard supervisors also provide assistance in helping drivers locate vehicles.

While yard supervisors do provide some direction to employees, they do not do so responsibly, or exercising independent judgment. Yard supervisors can issue corrective action to employees for such things as not shipping the correct vehicles. However, there is no record evidence the yard supervisors are held accountable for the performance mistakes of other employees. There is no evidence any yard supervisor has been disciplined or has received other adverse consequences due to the performance mistakes of other employees. Therefore, there is

no record evidence they responsibly direct employees. Assuming yard supervisors were held accountable for the performance errors of other employees, there is no specific record examples of yard supervisors using independent judgment in directing employees. Conclusory testimony about the yard supervisors' authority, without detailed, specific evidence of them exercising independent judgment, is insufficient to establish supervisory authority. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006); *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006); *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). Thus, the Employer has failed to meet its burden of establishing the yard supervisors and the loading/yard supervisor have the supervisory authority to responsibly direct employees.

### 3. Discipline/Suspension/Termination

The Employer claims the yard supervisors have the authority to discipline employees, and that at least one yard supervisor, Ray Hardrick, has the authority to terminate employees. The Employer presented one reprimand notice from 2013, Exhibit 34, signed by yard supervisor Rayner. A copy was sent to the terminal manager. The reprimand notice, like those signed by the dispatch supervisors, is on a printed form that contains a specific article in the collective-bargaining agreement that has been violated. It contains discipline for the offense – leaving working without permission – and the next level of discipline, in accordance with the collective-bargaining agreement. The terminal manager testified, in response to leading questions, that this yard supervisor, as well as the other disputed supervisors, has the discretion to interpret the contract to determine which provision has been violated. Interpreting a contract, however, is not one of the Section 2(11) indicia. Therefore, such authority does not make the yard supervisors statutory supervisors. Further, with respect to this warning for leaving work without permission,

there is no record evidence that it would be anything other than routine to determine that such misconduct was a violation of the article cited in the reprimand.

Yard supervisor Rayner testified that he did not make the determination to issue the reprimand in Exhibit 34. Rather, he was instructed to do so by the operations manager, a stipulated supervisor. Rayner also testified that the level of discipline and the next level of discipline for future misconduct set out on the reprimand was determined by the operations manager and the requirements of the collective-bargaining agreement. The operations manager did not testify. The terminal manager testified that when he interviewed Rayner, approximately 2½ years ago, he told Rayner that he had the authority to discipline employees if they did not follow his directions, as a corrective method. There is no evidence, however, that Rayner was told he could issue disciplinary actions for misconduct as opposed to not following directions, or that such discipline would not be subject to review by any of upper management. Rayner testified he was never told he had the authority to discipline, and there is nothing in writing to indicate Rayner was told he had the authority to discipline. Even assuming yard supervisor Rayner was told 2½ years ago that he had the authority to discipline, the record evidence fails to establish the actual existence of true authority to discipline as opposed to mere titular or theoretical power. See *RMS Foundation, Inc., d/b/a Queen Mary*, 317 NLRB 1303, 1309 (1995); *Lakeview Health Center*, 308 NLRB 75, 78 (1992); *Winco Petroleum Co.*, 241 NLRB 1118, 1122 (1979). The yard supervisor's lack of true disciplinary authority is evidenced by the fact that the only disciplinary notice he issued was at the direction of an admitted supervisor. In these circumstances, particularly where the testimony is conflicting, the evidence is insufficient to establish that this yard supervisor has the actual authority to discipline employees. *Northwest Steel, Inc.*, 200 NLRB 108 (1972); *Ten Broeck Commons*, 320 NLRB 806 (1996).

The Employer presented 6 disciplinary notices to employees signed by yard supervisor Smith, dating from May of 2009 to June of 2013. One was a counseling notice in 2012 for not parking a vehicle in the correct place. Four were reprimands, one in 2009 and 3 in 2012. Of these 4, three were for parking vehicles in the wrong place and one was for not clocking in and out for lunch. The last notice, dated in June of 2013, states at the top that it is a suspension notice, but says in the body of the notice that it is a counseling notice. Yard supervisor Smith did not testify. The terminal manager testified he did not authorize these warnings, but has no knowledge whether they were issued with the input of any other higher management. The terminal manager testified he does have the authority to rescind or reduce the discipline issued by this yard supervisor, as he does with respect to all the disputed supervisors, which reflects the discipline is not issued free from involvement and review by higher management.

Further, these disciplinary notices, like the others, contain references to the specific contractual provisions that have been violated. There is no evidence this yard supervisor has the discretion not to issue discipline for contractual violations, or can decide not to follow the contract with respect to the level of discipline set forth in the contract. The terminal manager testified that even he would be bound by the terms of the contract with respect to discipline, as are all supervisors and managers at the facility. Because there is no specific record evidence on the circumstances of how these disciplinary notices came to be written, whether they were reviewed by any upper management including officials at the corporate level, whether they were prompted by any upper management, and whether the level of corrective action reflected the input of higher management, the disciplinary notices have little probative value. *Trinity Continuing Care Services*, 359 NLRB No. 162 (2013), slip op at 5. Finally the Employer failed to present any specific evidence of yard supervisor Smith using independent judgment in issuing

counseling, reprimand, or suspension notices. Conclusory testimony that Smith has the authority to issue discipline using independent judgment, without specific record examples of her doing so, is insufficient to establish supervisory authority. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006); *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006).

The Employer presented only one instance of a termination to support its contention that yard supervisors possess the authority to terminate employees. The Employer presented a written statement by loading/yard supervisor Hardrick in June of 2013. Hardrick was upset because a backhaul driver used profanity toward him and came at him in a threatening manner when Hardrick tried to advise him on how to load his truck. In the statement, Exhibit 28, Hardrick told the backhaul driver he was “terminated” and that Hardrick was going to call the terminal manager over to take care of it. The Employer contends that just because Hardrick told an employee he was terminated means Hardrick has the actual authority to do so. The record, however, does not reflect that Hardrick or any other yard supervisor has the authority to terminate an employee free from management involvement or using independent judgment.

Hardrick testified that he did not believe he had the authority to terminate any employee, and that he has never been told he has such authority. He told the backhaul driver he was terminated in the heat of the moment. The record reflects that Hardrick contacted the terminal manager who then came to the scene and spoke with the backhaul driver. The regional vice-president also went to the scene. The terminal manager testified he attempted to “deescalate” the situation by talking with the driver, and then testified that he, the terminal manager, relieved the driver of his duties and sent him on a plane back to his home terminal. The terminal manager, in addition to the yard supervisor, prepared a statement on what happened in this incident, which statement is referenced in a statement of facts, Exhibit 29 and was presented later at an

arbitration of this termination. The Employer did not present the terminal manager's statement, nor did the terminal manager testify as to the specifics of the conversation he had with the driver at the scene. There was also a termination notice given to the driver, referenced above in the statement of facts, that was not signed or prepared by Hardrick. This termination notice was not presented and the record does not reflect who signed this termination notice or who made the ultimate decision to terminate the backhaul driver. The terminal manager testified he did not know who signed the termination notice, implying it was signed by someone above the terminal manager.

Regardless of who signed the termination notice, the record fails to reflect that Hardrick had the authority to terminate employees on his own authority without independent review or involvement by higher management officials. There is no evidence that the backhaul driver was terminated solely on the word of the yard supervisor, particularly given the fact that the terminal manager went to the scene and spoke with the backhaul driver himself. The record evidence is insufficient to establish that Hardrick's actions constituted an effective recommendation of termination, because as noted the record fails to reflect the backhaul driver was terminated solely on Hardrick's account of the incident. More importantly, Hardrick testified that he was later told by the terminal manager that the next time a disciplinary situation came up, that he was to contact the terminal manager and the terminal manager would take care of it. While the Employer recalled the terminal manager to testify after Hardrick had testified, the terminal manager did not rebut this testimony. This statement calls into question the conclusory testimony of the terminal manager and assistant terminal manager that the disputed supervisors have the actual authority to issue discipline on their own. This record reflects that the terminal manager expects to be involved in all disciplinary actions and expects the yard supervisors to

contact him to handle these issues. There are no other instances of Hardrick issuing any discipline, either before or after this incident from a year ago. The Board will not find individuals to be supervisors based on authority they have not been notified they had, particularly where the exercise of such authority is sporadic and infrequent. *Golden Crest Healthcare Center*, supra at 730 fn. 9. The Employer has failed to establish, through this single discharge action, that Hardrick or any other yard supervisor uses independent judgment when exercising such disciplinary authority and that they exercise such authority on a regular as opposed to a sporadic basis.

In addition, the fact that Hardrick reported the backhaul driver's conduct to higher management, where the conduct was so egregious and obvious that no independent judgment is necessary, reporting such conduct does not constitute supervisory authority. *Alternate Concepts, Inc.*, 358 NLRB No. 38, slip op at 8 (2012); *Michigan Masonic Home*, 332 NLRB 1409, 1411, fn. 5 (2000); see also *Greyhound Airport Services*, 189 NLRB 291 (1971) (dispatchers whose primary duties were to assign vehicles to transport customers but who also participated in a limited extent in the creation of incident reports for drivers who engaged in misconduct were not supervisors under the Act.)

#### 4. Adjustment of Grievances

The Employer additionally contends that loading/yard supervisor Hardrick is a supervisor because he participated in the arbitration hearing on the termination of the backhaul driver as a Employer representative. Participating in arbitrations is not one of the supervisory indicia. Rather, the putative supervisor must possess the authority on his own to adjust grievances. While Hardrick testified at the arbitration as a witness for the Employer, Hardrick testified he was simply there as a fact witness to the incident. There are no specific record examples of

Hardrick adjusting grievances between employees, or examples of how Hardrick would use independent judgment in resolving such grievances. There is no evidence Hardrick had the authority to adjust this termination grievance or any other grievance, or that he did so using independent judgment.

#### 5. Layoff/Recall

The Employer contends yard supervisor Rayner has the authority to layoff and recall employees. The Employer presented 3 layoff recall notices, Exhibits 30, 31, and 32, all issued on the same day, January 29, 2014, signed by Rayner. These notices do not establish that this yard supervisor has the authority to layoff or recall employees, or does so using independent judgment. The collective-bargaining agreement covering the drivers and yard employees specifies layoffs and recall from layoffs are determined by seniority. There is no evidence yard supervisor Rayner determined that a layoff or recall was necessary, or assessed the skills and abilities of the various employees to determine who would be laid off or recalled. Yard supervisor Rayner testified that he issued the three recall notices at the direction of the operations manager. The operations manager was not called to testify. Since the record reflects the operations manager made the determination to recall employees, and the record does not reflect on what this determination was based, or whether the operations manager relied solely on any recommendations from Rayner in making the decision, the terminal manager's conclusory statements that Rayner has the authority to layoff or recall are insufficient to establish supervisory authority to layoff or recall or to effectively recommend such actions using independent judgment. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006); *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006); *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).

## 6. Secondary Indicia

The Employer contends the yard supervisors are also supervisors because they have the access code to the shop at the terminal building and they attend supervisory meetings. As discussed above, this secondary evidence, alone, does not confer supervisor status on these individuals. The Employer also argued that yard supervisor Rayner is a supervisor because he is the only member of supervision present in the evenings and on some weekends. The Board has long held that the mere fact that the individual is at times the highest ranking employee at the site does not, by itself, establish supervisory authority. *McCullough Environmental Services*, 306 NLRB 565, 566 (1992). Further, the yard supervisors have the home telephone numbers of the terminal manager and the assistant terminal manager, as do the drivers. Having these managers available by telephone is further evidence that the yard supervisors does not exercise independent judgment when they are the highest ranking employees physically present at the facility. *Loyalhanna Care Center*, 352 NLRB 863, 864-865 (2008); *Golden Crest Healthcare Center*, 348 NLRB 727, 730 fn. 10 (2006).

### **C. Safety Supervisor**

#### 1. Discipline/Effective Recommendation to Discharge

The Employer contends the safety supervisor is a statutory supervisor because she has the authority to issue discipline and to effectively recommend discipline. The Employer has failed to meet its burden of establishing the safety supervisor issues discipline or effectively recommends discipline exercising independent judgment. The Employer produced 16 disciplinary notices issued by the safety supervisor. Every disciplinary notice contains a specific section of the collective-bargaining agreement that has been violated, along with pertinent language from that section of the contract and the next level of discipline dictated for future

offenses. As previously noted, the contract contains 8 pages of detailed levels of progressive discipline for numerous different types of misconduct. The disciplinary notices issued by the safety supervisor are all for obvious violations of the contract, as well as clear violations of DOT and FMCSA regulations. These violations include failure to log DOT inspections, going over the DOT service hour rule, going over the break rule limit, speeding, running red lights, and causing damage to a vehicle. The safety supervisor testified that she used a template that contains the language from the contract as well as the next level of discipline for that offense in issuing the discipline.

The safety supervisor testified that with respect to the October 2012 counseling notice to a driver for not signing his logs, Exhibit 8, she was told to issue this notice by Cathy Crenscenzo, an official from the Employer's corporate office. Crenscenzo did not testify. With respect to the June 2013 reprimand in Exhibit 9 for failing to call in to the Network Planning, which is the Employer's central dispatch office, the safety supervisor testified this discipline was issued at the direction of someone from Network Planning.

With respect to Exhibit 10, a reprimand notice for having a minor chargeable accident, the safety supervisor testified she was required by company policy and the contract to issue this disciplinary notice. There is some record testimony that the safety supervisor determines whether an accident is "chargeable" but there is no record testimony on what that determination entails, whether it requires any independent judgment or is restricted by company policy and guidelines, or whether such determination is subject to review by the levels of higher management including the various corporate officers in Kansas City, Missouri. The prior Decision indicates the corporate quality assurance department independently investigates accidents involving damages, indicating some level of review. The record does reflect that when the safety supervisor

determines a chargeable accident is “minor”, she does so based solely on the amount of the damage as set forth in the contract. Damage less than \$2000 is considered minor.

The safety supervisor testified that the counseling notice in Exhibit 11, for speeding, was issued at the direction of the corporate regional safety manager. This disciplinary notice, along with Exhibits 12-17 and 19-24, all involve the same article of the contract, article 8(b) on following local, state, and federal laws, and all involved violations of DOT and/or FMCSA. The Employer notes that the contract does not contain an exact progressive disciplinary litany for this section, but rather states “reprimands to layoffs and discharge in aggravated cases”. The safety supervisor testified that she does not determine the level of discipline for these or any other violations of the contract; rather, the next steps are either already contained on the pre-printed form, or she is inputting a level of discipline pursuant to directions from upper management. There is no specific record evidence of the safety supervisor deciding a level of discipline on her own and outside the restrictions of the contract, company policy, or directions from management. With respect to Exhibits 17 and 20, the Employer notes that they are two different levels of discipline for the same offense of going 22 minutes past the 14-hour rule. The safety supervisor testified that the two should have been the same and that she used the wrong template for the warning in Exhibit 20. Finally, the record does not reflect whether the safety supervisor has access to employees’ files or how she would know whether the employee had previously violated the same rule. Even if the safety supervisor issued all of the discipline on her own authority, issuing discipline within the confines of a collective-bargaining agreement, as well as company policy and management directives, does not require the use of independent judgment, as noted above.

In conjunction with the discipline issued in Exhibit 19 for running a red light, the safety supervisor also prepared a Fine Payment Request form, Exhibit 18. The safety supervisor testified she submits this form to someone in the corporate offices per company policy. The record reflects the safety supervisor also follows company policy in filling out the form, noting if the citation or violation was for a moving violation such as a red light that the driver should pay the fine, and noting if the citation or violation was for going over weight or height restrictions that the Employer should pay. While the Employer characterizes this as a “recommendation” on who should pay the fine, the Employer failed to provide any record evidence of what review, if any, is given to this form by the terminal management and/or corporate management in Kansas City where the form was being sent. Therefore, the evidence is insufficient to establish that the recommendation was independent of management review and thus does not establish the supervisory authority to “recommend.” *Children’s Farm Home*, 324 NLRB 61 (1997). Further, recommending that a driver pay a citation does not involve a recommendation on any of the 2(11) indicia, nor does the fact that the driver pays the fine result in discipline. The driver received discipline for the underlying moving violation of running a red light, per the contract. Assuming filling out this form constituted an effective recommendation on a 2(11) indicia, the Employer has failed to present any specific record evidence of the safety supervisor using independent judgment in making such recommendations, particularly where the determinations of who pays the fines is in accordance with established Employer policies.

The disciplinary notices in Exhibits 12, 13, and 17 indicate they were “rescinded”. While the terminal manager said he did not rescind these warnings, the safety supervisor said she did not rescind them on her own, that she does not have the authority to do so. She testified that with respect to all three disciplines, she wrote rescinded on the discipline at the direction of upper

management, though she could not recall the specific member of management who authorized her to rescind the discipline. The terminal manager could not state whether other members of higher management other than himself might have directed the safety manager to issue the discipline and/or to rescind it. The record fails to reflect whether the facts as stated by the drivers in Exhibits 12, 13, and 17 warranted rescission of the discipline in accordance with standing company policy which would not require the use of independent judgment. Thus, even assuming the safety supervisor did rescind the warnings without being instructed to do so by higher management, there is no specific record evidence of her doing so in the exercise of independent judgment. This lack of specific evidence of the use of independent judgment is construed against the Employer. *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1048 (2003); *Michigan Masonic Home*, 332 NLRB 1409 (2000). Further, where the evidence is conflicting with respect to how the discipline came to be rescinded, it is inconclusive and cannot be relied upon to establish supervisory authority. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

The Employer presented one instance in which the safety supervisor issued a suspension notice. Exhibit 24, dated July 9, 2014, involves the suspension of a driver for failing to log a DOT inspection and for speeding. While the safety supervisor initially testified she issued this on her “own judgment”, she later corrected that statement and said she issued discipline that was required by the contract and not on her own authority or judgment. Further, issuing discipline on her “own judgment”, by itself, without any indication on what the judgment was based on, does not indicate that she exercised independent judgment. There is also no record evidence of who determined what date the driver would take the suspension, or what that determination was based on. The safety supervisor was reporting to the quality supervisor at this time, not the terminal

manager, and the quality supervisor did not testify. The record does not reflect what level of review, if any, the quality supervisor had with respect to this discipline. Further, the quality supervisor as well as other upper management were included in an e-mail sent by the safety supervisor advising them of the date for the suspension and asking if anyone had any questions. The record evidence is insufficient to establish that the safety supervisor determined what the suspension date would be, or that she did so free from review or involvement from higher management, or that picking this date as opposed to another involved the exercise of independent judgment.

While the assistant manager stated at one point that the safety supervisor would not have to follow the contract and could issue lesser discipline in extenuating circumstances as well as more severe discipline, there is not a single record example of the safety supervisor exercising such discretion. Further, terminal manager and assistant terminal manager ultimately testified that the safety supervisor has to abide by the collective-bargaining agreement as well as company policies in issuing discipline, as would any other supervisor at the facility. The safety supervisor herself testified she has never issued discipline that did not conform to the instructions of higher management, the contract, or company policy. Disciplinary authority restricted to the confines of the collective-bargaining agreement as well as company directives does not reflect the use of independent judgment when issuing discipline. *Oakwood Healthcare*, 348 NLRB at 731; see also *Alternate Concepts, Inc.*, 358 NLRB No. 38 (2012), slip op at 7-8; *The Wackenhut Corp.*, 345 NLRB 850, 854 (2005). Similarly, ensuring compliance with DOT regulations and FMCSA regulations does not reflect the use of independent judgment that would make her a supervisor. See *Unifirst Corp.*, 335 NLRB 706, 713 (2001) (individual who enforced DOT regulations and sent an employee home after he went over DOT's service hour limit, was merely engaged in the

routine administration of established DOT regulations which did not require the use of independent judgment.)

The Employer contends that the safety supervisor has the authority to effectively recommend discharge. The Employer presented an e-mail in Exhibit 56 as the only record evidence of the safety supervisor exercising such authority. The e-mail was sent by the safety supervisor to the terminal manager, the assistant terminal manager, and the quality supervisor. In the e-mail, the safety supervisor notes there was an accident involving two vehicles in the plant yard and she attached the accident reports for the two drivers. She also passed the contact information for both of the drivers involved to the management listed on the e-mail. The Employer's terminal manager testified that this e-mail was a "recommendation" that one particular driver was at fault and based on this "recommendation", the driver was terminated.

The terminal manager acknowledged that the e-mail itself does not actually contain any recommendation; rather it contains facts regarding the accident for management's review. The record does not reflect who made the decision to terminate the driver, or what was involved in that determination, or that it was based solely on this e-mail "recommendation" from the safety supervisor without any independent review by upper management. The terminal manager also testified that he does not always follow the accident recommendations of the safety supervisor and specifically questioned her with respect to the determination of who was at fault in this accident. There is no evidence the safety supervisor was told she had the authority to discipline or the authority to recommend discipline. In these circumstances, the record fails to reflect that the safety supervisor effectively recommends terminations without independent review by upper management, or that she does so exercising independent judgment. Finally, even assuming this e-mail constituted an effective recommendation on a discharge, it is only one such

recommendation with no additional record examples of such authority on the record. As previously noted, the Board will not find individuals to be supervisors based on authority they have not been notified they had, particularly where, as here, the exercise of such authority is sporadic and infrequent. *Golden Crest Healthcare Center*, supra at 730 fn. 9.

## 2. Recommending on Hiring

The Employer contends the safety supervisor has the authority to effectively recommend hire because she submitted an application for her son. The record, however, does not reflect who made the ultimate decision on whether or not to hire her son, and on what that decision was based. Therefore, the record fails to reflect that the safety supervisor's submission of an application or any comments she made with respect to her son, was the sole factor relied on in making the hiring decision without any interview or other involvement by higher management. Thus, the evidence fails to reflect the safety supervisor has the authority to effectively recommend hiring.

## 3. Secondary Indicia

The Employer contends the safety supervisor, like other supervisors, has the key code to access the terminal building, and attends supervisory meetings. These secondary indicia alone do not confer supervisory status on the safety supervisor. *International Transportation Service, Inc.*, 344 NLRB 279, 285 (2005), enf. denied on other grounds, 449 F.3d 160 (2006); *Ken-Crest Services*, 335 NLRB 777, 779 (2001); *Carlisle Engineered Products*, 330 NLRB 1359, 1361 (2000). Similarly, the fact that the safety supervisor went to training on computer systems for tracking DOT and other violations, and then trained others on this system including other managers, and that she went to another location to assist with monitoring DOT violations, is also secondary indicia which does not confer supervisory status on the safety supervisor.

## **D. Payroll Supervisor**

### 1. Discipline

The Employer contends the payroll supervisor has the authority to discipline employees. The Employer presented two disciplinary action notices filled out by the payroll supervisor – one, an intent to discharge notice from January 2007; and the other, a warning notice from 2009. The payroll supervisor did not testify. Neither the terminal manager nor the assistant terminal manager employed at the time the intent to discharge warning was issued in 2007 testified. The intent to discharge was for taking a truck home without authorization. The contract article cited in the discipline states that the unauthorized use of motor vehicles is “subject to discharge.” The record does not reflect what this contractual language means, or what the words “intent to discharge” mean. The record does not reflect how this intent to discharge notice came to be written, whether it was reviewed by any upper management including officials at the corporate level, whether it was prompted by any upper management, and whether the level of corrective action reflected the input of higher management, and therefore it has little probative value. *Trinity Continuing Care Services*, 359 NLRB No. 162 (2013), slip op at 5. The same is true of the warning notice from 2009. The record does not reflect the circumstances behind the issuance of this warning. There is no specific record evidence of the payroll supervisor issuing this discipline on her own authority, or doing so exercising independent judgment. The Board will not infer supervisory authority from the bare disciplinary notices themselves. *Id.* The terminal manager again testified that the payroll supervisor could decide not to issue discipline as set forth in the contract, but the Employer did not present a single instance of her doing so. As noted above in the discussion of loading/yard supervisor Hardrick’s alleged authority to discharge, there is no record evidence that the payroll

supervisor was told she had the authority to terminate employees on her own, and she only issued the one intent to discharge and that was 7 years ago. The Board will not find individuals to be supervisors based on authority they have not been notified they had, particularly where the exercise of such authority is sporadic and infrequent. *Golden Crest Healthcare Center*, supra at 730 fn. 9.

## 2. Confidential Status

The Employer also contends that this same payroll supervisor whose duties are discussed in the prior Decision, is a confidential employee. The Employer has the burden of proving the payroll supervisor is a confidential employee as the party asserting she has this status. *Crest Mark Packing Co.*, 283 NLRB 999 (1987). Both parties' witnesses testified that the payroll supervisor's duties have not changed since the issuance of this prior Decision. There is still no evidence that the payroll supervisor participated in contract negotiations, or formulates any Employer policies. As stated in the prior Decision, where there is no contention or evidence that the payroll supervisor retains or has access to personnel or confidential information, or that she formulates, determines, or otherwise effectuates Employer's policies on labor relations, she is not a confidential employee. *Hampton Roads Maritime Assn.*, 178 NLRB 263 (1969).

## **IV. APPROPRIATE RESIDUAL UNIT**

I find that the Employer has failed to meet its burden of establishing that the individuals in the disputed classifications are statutory supervisors within the meaning of Section 2(11) of the Act. The parties agreed that the clerical employee is not a statutory supervisor. The recent request for her to have full-time status describes her duties as handling claims, safety assistance, time and attendance data entries, payroll, and phone assistance. The Employer agreed at hearing that the employees in the petitioned-for unit do constitute an appropriate residual unit in that

constitute all currently unrepresented employees at the Employer's facility. The Employer does not contend that the petitioned-for unit of unrepresented employees lack of community of interest. Groups of employees omitted from established bargaining units constitute appropriate residual units if they include all the unrepresented employees of the type requested in the petition. *G. L. Milliken Plastering*, 340 NLRB 1169 (2003). The Employer does not contend that this residual unit does not include all the non-supervisory unrepresented employees of the type requested in the petition. In light of the foregoing, I find that the unrepresented individuals in classifications of dispatch supervisors, yard supervisors, loading/yard supervisor, safety supervisor, payroll supervisor, and clerical constitute an appropriate residual unit.

## **V. CONCLUSIONS AND FINDINGS**

Based upon 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 the hearing are free from prejudicial error and are 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 in this case.
3. The Petitioner 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 dispatch supervisors<sup>4</sup>, yard supervisors, loading/yard supervisor, safety supervisors, payroll supervisors, and clerical employed by the Employer at its Wentzville, Missouri facility, EXCLUDING professional employees, guards and supervisors as defined in the Act, and all other employees currently represented by the Petitioner.

## **VI. 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 will vote whether or not they wish to be represented for purposes of collective bargaining by Automobile Transport Chauffeurs, Demonstrators, Helpers, Teamsters Local 604. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office 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 before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. 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

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<sup>4</sup> As noted in the Decision, the position of load makeup/dispatch supervisor was vacant at the time of the hearing. If the position is filled by the time of the election, I will permit the incumbent to vote subject to the challenge ballot procedures.

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 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). 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 Regional Office, 1222 Spruce Street, Room 8.302, St. Louis, MO 63103, on or before **August 15, 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 through the Agency's website,

www.nlr.gov<sup>5</sup>, by mail, or by facsimile transmission at (314) 539-7794. The burden of establishing timely filing and receipt of the list will continue to be placed on the sending party.

Since 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 or electronic mail, in which case no copies need be submitted. If you have 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 a minimum of 3 working 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 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.

### **VII. 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, D.C. 20570-0001.

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<sup>5</sup> To file the eligibility list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

This request must be received by the Board in Washington by August 22, 2014. The request may be filed electronically through E-Gov on the Agency's website, [www.nlr.gov](http://www.nlr.gov)<sup>6</sup>

Dated August 8, 2014 at St. Louis, Missouri

/S/  
Daniel L. Hubbel, Regional Director  
National Labor Relations Board  
Region 14  
1222 Spruce Street, Room 8.302  
St. Louis, MO 63103-2829

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<sup>6</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the E-Gov tab. Then click on the E-Filing link on the menu, and follow the detailed instructions. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, [www.nlr.gov](http://www.nlr.gov).