

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5

MV TRANSPORTATION, INC.

Employer

and

Case 05-RC-210354

OFFICE & PROFESSIONAL  
EMPLOYEES INTERNATIONAL UNION,  
LOCAL 2, AFL-CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

On November 22, 2017, Office & Professional Employees International Union, Local 2, AFL-CIO (the Petitioner) filed a petition, amended at the hearing, seeking to represent the following employees of MV Transportation, Inc. (the Employer).<sup>1</sup>

All full-time and regular part-time dispatch supervisors employed by the Employer, at its Hyattsville, Maryland facility, but excluding drivers, dispatchers,

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<sup>1</sup> The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

The parties further stipulated, and I find, that the Employer is a corporation with an office and place of business in Hyattsville, Maryland, the only facility involved in this proceeding, and is engaged in the business of providing trip reservations, trip scheduling, and total service dispatch operations for para-transit services to customers including the Washington Metropolitan Area Transit Authority (WMATA). During the 12-month period ending November 30, 2017, and in conducting its operations described above, the Employer performed services valued in excess of \$50,000 in states other than the State of Maryland. The parties stipulated, and I find, that the Employer is an employer engaged in interstate commerce within the meaning of Section 2(2), (6) and (7) of the Act.

temporary agency employees, office clerical employees, professional employees, managerial employees, and supervisors as defined in the Act.<sup>2</sup>

The sole issue presented is whether the dispatch supervisors are “supervisors” within the meaning of Section 2(11) of the Act. According to the Employer, the dispatch supervisors have the authority to discipline or to effectively recommend discipline for dispatchers, and exercise independent judgment in doing so. The Employer also asserts that dispatch supervisors have the authority to assign tasks, and effectively recommend the hiring and discharge of dispatchers. The Petitioner argues that dispatch supervisors are lead employees who have the responsibility to report misconduct, but have no authority to determine if any discipline will result. As such, the Petitioner contends the dispatch supervisors are employees, and that an election should be directed for the petitioned-for unit.

A hearing was held in this matter on December 4 and 5, 2017. At the time of the hearing, there were approximately 14 individuals in the proposed unit. Both parties filed post-hearing briefs, which I have taken into consideration.

Based on the record, including the parties’ positions as stated at the hearing and in their briefs, I conclude that there is insufficient evidence to establish that the dispatch supervisors are “supervisors” within the meaning of Section 2(11) of the Act. Therefore, I am directing a secret-ballot election in the petitioned-for unit, as modified herein.

## I. FACTS

### *A. The Employer’s Operations*

The Employer is a contractor for the Washington Metropolitan Area Transit Authority (WMATA). WMATA provides transportation to passengers who are otherwise unable to use its

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<sup>2</sup> As noted below in the Direction of Election, and consistent with Section 9(b)(3) of the Act, I find that guards must also be excluded from the unit.

general public transit system. WMATA contracts with three transportation providers: National Express, First Transit, and Transdev. Each provider employs its own drivers. Under the Employer's contract with WMATA, the Employer maintains a call center in Hyattsville, Maryland, called the Operations Control Center (OCC), that provides dispatch services for the three providers, and manages a reservation system for the passengers. To access the service, customers call the Employer's reservation line to arrange transportation, and the Employer's dispatchers ensure that one of the provider's drivers reports to the requested location.

The Employer's dispatch department is headed by Nicole Ridgeway-Reid, the Director of Operations Control Center. Reporting directly to Ridgeway-Reid is Senior Dispatch Manager Inmar Lizama, who directly supervises seven dispatch managers. Next in the organizational chain of command are the dispatch supervisors – the petitioned-for unit. The Employer employs approximately 14 dispatch supervisors. Dispatch supervisors are tasked with direct monitoring of about 64 dispatchers who communicate with the transportation providers and their drivers. The dispatchers record data for every trip, including, when it was dispatched, and when drivers report for pick up and drop off of their passengers. In total, the Employer has approximately 250 employees at the OCC.

WMATA's para-transit service is provided every day of the week, with a higher number of trips occurring Monday through Friday. The Employer dispatches approximately 8,500 to 9,200 trips per week. Passengers are given a 30-minute pick-up window. The Employer is held to specific performance benchmarks by WMATA, and may be fined up to \$1,000 per infraction if it fails to comply with WMATA's performance standards. As one specific example, the Employer must maintain a minimum 92 percent on-time performance each day, or face potential

financial penalties. A driver's failure to arrive during the promised pick-up window negatively impacts the Employer's on-time performance.

The dispatchers are represented by Amalgamated Transit Union, Local 1764 (ATU Local 1764), which is not a party to this proceeding. The dispatchers are subject to both the terms of a collective-bargaining agreement between ATU Local 1764 and the Employer, as well as an employee handbook.

Dispatchers work in an open area, in cubicles, and the dispatch supervisors sit in the area directly behind the dispatchers. Dispatchers are divided into groups that correspond with the transportation providers. The Employer refers to the groups as "bases"<sup>3</sup> and each base consists of several dispatchers and at least one dispatch supervisor. The number of dispatchers assigned to each base varies depending on the number of scheduled trips. However, the Employer endeavors to maintain a ratio of four dispatchers to one dispatch supervisor in each base. Dispatch supervisors and dispatch managers have the authority to move dispatchers from one base to another in order to meet the Employer's operational needs.

Some of the dispatch supervisors are not assigned to a particular base, but rather "float" as needed or are assigned other areas of responsibility. For example, Dispatch Supervisors Jon-Paul Mock and Andrera Mahoney primarily work on moving late trips, resolving "escalated" issues, and filling in for other dispatch supervisors who may be absent or on break.<sup>4</sup> Another

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<sup>3</sup> Alternatively, the Employer uses the term "run group."

<sup>4</sup> Both Mock and Mahoney were previously employed as assistant dispatch managers. The circumstances leading to their demotions are not entirely clear, and are not material to my findings in this decision. There is also some evidence that Mock and Mahoney are designated as "senior dispatch supervisors." For purposes of this decision, I need not and do not resolve whether their job classification or putative supervisory authority differs from that of the other dispatch supervisors.

Dispatch Supervisor, Carliece Shorter, in addition to moving late trips, also manages the attendance hotline, which dispatchers are required to use to report when they will be late or absent. Lee Wade works the overnight shift, and is the sole dispatch supervisor from 7:30 p.m. to 4:30 a.m., Sunday through Thursday.

There is always at least one dispatch manager on duty. The evidence shows two periods each week when there are no dispatch supervisors on duty: between 9:00 p.m. Friday and 3:45 a.m. Saturday, and from 1:30 p.m. Saturday to 6:00 a.m. Sunday. Thus, the record indicates there are times when dispatchers are directly overseen by the dispatch managers. Similarly, the evidence shows that any time a dispatch supervisor is working, there is also a dispatch manager on duty.

***B. Dispatch Supervisors' Authority to Discipline***

Section 10.2 of the Employer's collective-bargaining agreement with ATU Local 1764 is titled, "Progressive Discipline" and provides:

Any violation of posted any/or written Company rules, policies and/or procedures may result in disciplinary action. With the exceptions, as listed under "Serious Infractions" below, and the attendance policy as listed, in the Employee Handbook, any posted and/or written Company rules, policies, and/or procedures may result in the following progressive disciplinary action.

First violation: Policy review / documented verbal counseling

Second violation: First Written Warning Notice.

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The record shows Mock and Mahoney were demoted from assistant dispatch manager to dispatch supervisor sometime between July 2013 (testimony of Ridgeway-Reid) and March or April 2016 (testimony of Mock). Without more, I find that April 2016 is the first instance where the testimony of both Ridgeway-Reid and Mock are unequivocally in agreement that Mock and Mahoney were dispatch supervisors. Accordingly, I conclude that there is insufficient evidence that Mock and Mahoney were dispatch supervisors, as opposed to assistant dispatch managers, when they took any putative supervisory actions before April 2016.

Third Violation: Second Written Warning Notice

Fourth Violation: Suspension or May Result in Discharge from Company

The employee handbook differentiates between “minor” and “major” violations.<sup>5</sup> Minor violations generally involve issues such as violation of work procedures, failing to follow personal appearance standards, and using abusive or profane language. Major violations, as the term suggests, are more serious offenses such as reporting to work under the influence of alcohol or illegal drugs, theft, violating the Employer’s harassment policies, falsifying records, and possessing weapons on the Employer’s premises. For minor violations, the Employer typically follows a four-step progressive disciplinary policy: “verbal” warning; written warning; final warning and/or unpaid suspension; and termination. Major violations result in discipline of a final written warning and/or unpaid suspension, or termination.<sup>6</sup>

Ridgeway-Reid testified that the Employer provides training to new dispatch supervisors on how to issue discipline to the dispatchers under the collective-bargaining agreement and the Employer’s employee handbook.<sup>7</sup> She further testified that dispatch supervisors have the

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<sup>5</sup> The collective-bargaining agreement has a list of “Serious Infractions” that is generally comparable to major violations. (ER Ex. 2: Section 10.4)

<sup>6</sup> The record reveals insufficient evidence that dispatch supervisors are involved in administering discipline for major violations or serious infractions. While there was some testimony that dispatch supervisors have authority to recommend discipline for major violations, Director Ridgeway-Reid testified that since she has been with the Employer, major violations have been handled by the Employer’s human resources department, and that if a dispatch supervisor or manager is involved in discipline for a major violation, it is as a witness. Similarly, Dispatch Supervisor Wade testified that to his knowledge in the five years he has worked for the Employer (with 3 ½ years as a dispatcher), no dispatch supervisor has ever been involved in the termination of a dispatcher. Further, there is no documentary evidence in the record showing where a dispatch supervisor was involved in issuing or recommending discipline for a major violation.

<sup>7</sup> Dispatch Supervisor Lee Wade testified, however, that he did not receive training when he was promoted to dispatch supervisor, and that he has not received training about issuing discipline.

authority to issue discipline and recommend discipline for the dispatchers, and she expects them to do so.

Discipline is recorded on an "Employee Coaching & Counseling" form. The Employer introduced 36 examples of coaching and counseling forms into evidence.<sup>8</sup> In addition to the dispatcher's name and the date, the form prompts the person filling it out to select the applicable level of discipline issued. The form also includes sections titled, "Explanation of Employee Conduct," and "Record of Conversation (Include recommendations to prevent reoccurrence)," which are filled in by the person initiating the discipline. There are signature lines for the dispatcher receiving the discipline, the person administering the discipline, and for a witness.

The coaching and counseling form is described in the record as "like a template" with some of the fields pre-filled. Dispatch Supervisor Shorter explained, "pretty much all you're really changing is maybe a few words and the person's name." The record is not clear on whether dispatch supervisors have access to the coaching and counseling form, or if they need to obtain it from a manager. Of the witnesses who testified on this point, the Employer's Director of Human Resources for the Northeast Region 1, Donna Snowden, did not know if dispatch supervisors have access on their own to the coaching and counseling form; Wade said he does not have the form; Shorter testified that if she does not have the form, she will get it from a manager; and Mock, while describing an example of discipline, testified that he went to Senior Dispatch Manager Lizama to request the coaching and counseling form.

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<sup>8</sup> Employer's Exhibit 6 contains four forms, and Employer's Exhibit 7 contains 36 forms; however, all of the forms in Employer Exhibit 6 are also in Employer Exhibit 7. Employer Exhibit 7 also includes four examples of an Employee Attendance Report, two of which are tied to a coaching and counseling form showing where an employee received attendance points under the Employer's attendance policy. As described in greater detail below, 14 of the 36 forms reflect the employee received a non-disciplinary coaching.

The coaching and counseling form can also be used to document “coachings,” which are not disciplinary. The record suggests that coachings are the product of effects bargaining between the Employer and ATU Local 1764. The record further suggests that coachings allowed the Employer to document for WMATA that performance issues were being addressed, while also allowing it to meet its bargaining obligation with ATU Local 1764.

The Employer’s typical practice is to administer discipline so that there is both a supervisor and a witness present when the dispatcher receives the coaching and counseling form. A witness is not mandatory, though most of the coaching and counseling forms in the record show there was a witness present. The person signing in the “supervisor” space may be either a dispatch supervisor or a dispatch manager. The witness may be a dispatch supervisor, dispatch manager, or a union steward. Ridgeway-Reid testified that dispatch managers and supervisors are advised by the Employer to invoke the “two-person rule” by bringing in another dispatch manager or supervisor whenever discipline is issued to a dispatcher because in many cases an ATU Local 1764 steward will also be present.

The Employer’s human resources department determines the level of discipline an employee will receive. Ridgeway-Reid testified that the dispatch managers and supervisors do not know what level of discipline a dispatcher may be at; this information is kept in a dispatcher’s personnel file under lock and key in the human resources office. Accordingly, the Employer’s human resources department is responsible for telling the dispatcher manager or supervisor what level of discipline should be issued to dispatchers to ensure the Employer complies with the collective-bargaining agreement’s progressive discipline system.

At the hearing, the Employer called Dispatch Supervisors Mock and Shorter, who both testified that they have the authority to discipline, and have disciplined dispatchers they deemed to be in violation of the Employer's rules.

Mock explained that there have been many instances where he issued discipline to dispatchers, though a lot of those instances were when he was still a manager. Since he became a dispatch supervisor, there have been fewer incidents, but he has continued to issue or assist in issuing discipline to dispatchers. Similarly, Mock testified that he has the authority to recommend discipline for dispatchers and has done so. When asked if his recommendations were followed, Mock replied, "Sometimes, not like they should," and added that "it is far in between" for management or supervisors to actually discipline dispatchers, except for instances involving attendance.

Shorter testified that normally when she believes there is a possibility of discipline, she would communicate that to the dispatch manager, and get the manager's input as to whether the manager thought discipline was appropriate for the situation. No party offered testimony from a dispatch manager.

The Petitioner presented dispatch supervisor Wade, the sole dispatch supervisor for the overnight shift. Wade became a dispatch supervisor in August 2016. He testified that he has not disciplined any dispatcher, and he does not believe he has the authority to discipline employees because this authority was not listed in his job description.<sup>9</sup> He also testified that in his

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<sup>9</sup> The only job description in the record was offered by the Petitioner. Wade testified that he got the job description from a bulletin board at the Employer's facility between March and June 2017, and made a photocopy of it. The Employer objected to its admission on the basis that it was not properly authenticated, and because a portion of the document appeared to have been cut off. However, the Employer did not deny that a job description exists for the dispatch supervisor position, or seek to offer its own version of the job description into evidence. Moreover, the

experience as an ATU Local 1764 steward, only dispatch managers issued discipline, with dispatch supervisors serving as witnesses. Wade described his role in the discipline process as reporting any policy violations he may observe to the dispatch manager, who will then decide whether discipline is warranted. He recounted an example in approximately July 2017, where he made a report to a dispatch manager (who is no longer employed at the Employer) that a dispatcher was not following directives to check in on the drivers. The manager told Wade to write up the dispatcher, but Wade did not because this duty was not in his job description. The record does not disclose whether the dispatcher was ultimately disciplined, or if Wade suffered any consequences for failing to follow the manager's directive. When asked about why the other dispatch supervisors might be issuing discipline, Wade responded that his coworkers did it "because [they] wanted to do it. But that's not our position. That's not what we're supposed to do."

*1. Discipline Regarding Attendance*

Dispatchers must adhere to a strict attendance system, which is set forth in the employee handbook. Hourly employees such as the dispatchers are required to call the Employer's attendance hotline if they are running late, or are unable to report to work. Each unexcused

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Employer has not asserted that an authentic copy of any dispatch supervisor job description would include the authority to discipline or to effectively recommend discipline.

The Petitioner argues that the job description does not explicitly reference issuing or recommending discipline, therefore, discipline is not a function of the dispatch supervisor's role. However, the focus of the Board's inquiry into supervisory status is whether the putative supervisor exercises the authority in question. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006). As such, the absence of an explicit reference to disciplinary authority in a job description is not controlling.

absence accrues an attendance point, depending on the amount of notice the dispatcher provides to the Employer. The employee handbook defines excused absences as:

approved requests for Family Medical Leave Act (FMLA), kin care (if required by state law), personal leave, jury and/or witness duty, military, bereavement, pre-arranged vacation days or any other leave protected by law.

Dispatchers accrue one attendance point for unexcused absences if they call the attendance hotline more than one hour before their scheduled shift. The dispatcher accrues 1 ½ points if he or she calls less than one hour before a scheduled shift. Failure to call more than one hour after the start of a scheduled shift is considered a no call-no show, which results in 4 points. Employees are allowed a maximum of seven points within a rolling 12-month period before they receive a written warning, and points can be cleared from the dispatcher's attendance record after 12 months. Dispatchers are terminated when they accrue 10 attendance points. The dispatch supervisors, who are salaried employees, are not subject to the Employer's attendance point system.

Dispatch Supervisor Shorter testified that she is tasked with monitoring the attendance hotline, and keeping track of each dispatcher's accrued attendance points. When a dispatcher reaches seven points in a 12-month period, Shorter is the person who issues the prescribed written warning. This written warning is provided on the same coaching and counseling form the Employer utilizes for other types of discipline.

For violations of the Employer's attendance policy, discipline is automatic, and there is no discretion for what level of discipline is warranted for reaching a specific number of points. If there is a dispute about whether a tardy to absence qualifies as an excused absence, the Employer's human resources department is consulted, for example, to determine what the Employer's past practice has been in similar situations, or for guidance about FMLA.

## 2. *Discipline Regarding Breaks*

Dispatchers are allotted one 60-minute meal break and two 10-minute rest breaks during their shifts. The Employer's telephone system, called Avaya, records "aux time," which is described as anytime a dispatcher is not available to answer the phone. Dispatchers use the Avaya system to log their work time, meal times, and breaks. Dispatch supervisors have access to the telephone system, and can see when dispatchers are unavailable, the reason, and the duration. The dispatch supervisors monitor the dispatchers to ensure that they do not exceed their allotted break periods. Mock testified that because of the Avaya system, it is easy to determine when dispatchers have exceeded their allotted break periods.

The Employer's contract with WMATA establishes benchmarks for aux time, and the Employer regularly creates reports that show which dispatchers are in violation of the limits for aux time. According to Ridgeway-Reid, when a dispatcher's aux time crosses over the defined threshold, then discipline is warranted. While discussing an incident where an employee had one hour and ten minutes aux time, Ridgeway-Reid explained that because this incident related to WMATA's performance benchmarks, it would automatically cause some sort of discipline. Although Ridgeway-Reid characterized this situation as "egregious," later in her testimony when discussing a different discipline for a similar aux time violation, she made clear that discipline resulted because the employee crossed the numerical threshold for allowable aux time, and not because of the severity of the violation.

Dispatchers accrue attendance points for returning late from a break. The employee handbook provides:

- Arriving to work up to 15 minutes after your scheduled reporting time either for shift start or returning from rest or meal breaks is one-half (1/2) point.

- Reporting to work more than 15 minutes after a scheduled reporting time either for shift start or returning from rest or meal breaks will be counted as one (1) point.

There are allusions in the record to a March 2016 agreement between the Employer and ATU Local 1764, which provides that dispatchers will not be disciplined for exceeding their break times unless they exceed their allotted times for the entire week.<sup>10</sup>

Both Mock and Shorter testified that they decide whether to issue discipline to a dispatcher after questioning the dispatcher to determine the reason for their tardiness. Mock testified that he allowed the dispatchers a grace period to account for unforeseen delays:

We do question once they do get back on the floor, as they, hey, you know, your break time is 10 minutes. You were gone for 19 minutes. You know, you have some that push back and say they've had an emergency, which it's up to us to determine at that time whether somebody called from their kid's school, something egregious happened. A lot of times, we get honest answers. They'll say like I wasn't paying attention to the time, and it kind of got away from me.

If the dispatcher has a "valid" reason for coming back late, Mock typically discusses the situation with the rest of the "management staff" and get their input about where "we're going from here" but ultimately Mock would decide how to handle the infraction. When asked how he decides whether to issue a disciplinary notice when he observes a violation of break time, Mock responded:

For me personally, like if they're on a 10-minute break and they come back like 11 minutes, then I might tell them watch yourself, you know because I could document this, but it's not super egregious. Anything could happen, whether the elevator was full. .something going over 7, 8 minutes, that's a little much.

However, Mock also testified he could not recall a specific instance where a dispatcher returned one minute late from a break where he could have issued discipline, but did not.

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<sup>10</sup> The agreement itself is not in the record. The agreement is described by Director Ridgeway-Reid and in documents explaining why discipline was rescinded for three employees as part of a grievance settlement.

Mock also testified that he recently issued a verbal warning to a dispatcher who exceeded her 10-minute break by 8 minutes. Mock was alerted to this situation by another Dispatch Supervisor, Bobrine Greene. They determined that the employee had exceeded her break time using the Avaya system. Mock testified that he spoke with Senior Dispatch Manager Lizama about this incident, told him what he had found, and Lizama gave him a coaching and counseling form. According to Mock, Lizama did not tell him what level of discipline to issue. Instead, Mock testified that he consulted the collective-bargaining agreement to determine that a verbal warning was the appropriate level of discipline. Mock did not elaborate about what language in the agreement he relied upon before issuing the coaching and counseling form to the employee, why he did or did not need to contact the human resources department to determine the employee's next level of discipline, and did not state whether he issued half an attendance point to the dispatcher as specified in the handbook. This coaching and counseling form was not introduced into evidence. Additionally, Mock did not elaborate on the details of this incident, such as when it occurred, what excuse (if any) the employee offered, how Mock reached the conclusion that the employee's tardiness was excessive. Similarly, the record does not disclose why Mock issued discipline for an incident witnessed by Dispatch Supervisor Greene, or the details of Mock's conversation with Lizama.<sup>11</sup>

Shorter similarly testified that she does not always discipline dispatchers when she observes a break violation. She intervenes when she notices a repeat violation over what she deems a short period of time. For example, Shorter initiated discipline proceedings after a dispatcher exceeded a 60-minute lunch break by 12 minutes. Shorter explained that she

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<sup>11</sup> Mock testified that other dispatch supervisors do not have to come to him to approve discipline.

questioned the dispatcher about the reason for the long break, and the dispatcher indicated that she had been searching for candy, and had gone to several stores looking for a particular brand. Shorter consulted with the dispatch manager, and the dispatcher was given a coaching and counseling form. The dispatcher also accrued one attendance point for tardiness. Shorter did not detail what was said during her consultation with the dispatch manager, or the decision-making process leading to the discipline determination, other than to say that she decided to issue discipline because the dispatcher had been cautioned about the same infraction a day earlier. The record does not reveal further details about this incident, such as when it occurred, the level of discipline issued, or include a copy of the discipline issued.

Shorter also testified about an incident when she disciplined an employee for being away from his desk for 30 minutes when he was only allotted a 10-minute break. Shorter did not testify about whether she questioned the dispatcher about the reason for his tardiness, what, if any, excuse the employee may have offered, or how the discipline decision was made. In this instance, Shorter testified that she issued the dispatcher a verbal warning in the presence of an unidentified manager. A copy of this discipline is not in the record, and Shorter did not say whether the employee received an attendance point for this incident. The record does not reveal when this incident occurred.

Neither Shorter nor Mock testified about whether or how the Employer's March 2016 agreement with ATU Local 1764 impacted dispatch supervisors' decisions about whether to issue discipline for break violations.

### *3. Discipline for Using Cellular Phones*

The hearing testimony shows that dispatchers work in a safety-sensitive capacity as defined by Department of Transportation regulations, and therefore, are prohibited from having

cellular phones while working on the floor. This policy is also contained in the employee handbook. The evidence in the record shows that when a dispatch supervisor sees a dispatcher with a personal phone at his or her work station, that dispatch supervisor can issue a coaching and counseling form to the dispatcher. Director Ridgeway-Reid testified that the Employer's rule about cell phones is a "hard and fast rule" and she was not sure there would be an instance where an employee caught violating this rule would not receive some level of discipline, though she allowed that there could be a hypothetical situation where an employee might have a compelling reason. There are four examples in the record of coaching and counseling forms for cell phone use; two of them were issued by managers. In one example, Dispatch Supervisor Alfred Ofori issued a verbal counseling in 2013 to a dispatcher after Ofori and another dispatch supervisor saw the employee using his phone. In July 2015, former Manager John Gray witnessed an employee playing a game on her phone at her desk. This employee received a verbal counseling signed by Mock. It is unexplained why Mock delivered this discipline instead of Gray; Mock testified that he does not remember this incident.<sup>12</sup> Dispatch Manager Letitia Young issued a verbal counseling in July 2016 to a dispatcher who was observed checking and responding to text messages while on duty. Shortly before the hearing, Dispatch Supervisor Aiesha Savoy issued a final written warning to a dispatcher for viewing her cell phone on the OCC floor while on duty.

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<sup>12</sup> Mock also testified that he was a manager at the time of this discipline, and that he has not disciplined an employee for violating the cell phone policy since he was demoted to dispatch supervisor.

#### 4. *Discipline For Uniform Violations*

Dispatchers must wear a uniform while on duty, and the dispatch supervisors are expected to ensure that the dispatchers comply with the Employer's dress code requirements.<sup>13</sup> Violations of the uniform policy can result in WMATA levying fines against the Employer.

A complete list of the uniform requirements is not in the record. Witnesses testified about examples of uniform violations, such as wearing the wrong color shoes or wrong color stockings, but the uniform requirements cited in these examples are not listed anywhere in the employee handbook, or in the collective-bargaining agreement. No document in the record requires dispatchers to wear stockings, let alone specifying their correct color. Similarly, the handbook does not prohibit tennis shoes, or require dress shoes or solid black shoes, as Shorter testified.

Rather, the handbook requires:

Employees must come to work in a clean, pressed uniform. Those who report for work inappropriately dressed will be sent home unpaid and directed to return to work in proper attire. For safety reasons, the following appearance standards also apply for all operators and safety sensitive positions.<sup>14</sup>

- Leather, rubber soled shoes must be worn
- Long hair extending past the shoulders must be tied back
- Fingernails cannot exceed 1/2" past the tip of the fingers
- Dangling jewelry, including earrings, is not permitted.

In terms of specific uniform requirements, the collective-bargaining agreement describes only that employees are allowed to wear dark blue or black pants.

Dispatch Supervisor Bobrine Greene is the main enforcer of the uniform policy because she begins her shift at 3:00 a.m., and sees most of the dispatchers as they arrive for duty.

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<sup>13</sup> The dispatch supervisors are not required to wear a uniform.

<sup>14</sup> As noted earlier, the testimony discussing instances of discipline for using cellular phones indicates that dispatchers are in a safety-sensitive position. See also, page 9 of the employee handbook (ER Ex.5)

Greene, who did not testify at the hearing, enforces the uniform policy by issuing “write ups” and by sending employees home to change. Ridgeway-Reid testified that employees who correct their uniform violation, and return to work to complete their shifts do not receive discipline because the dispatchers are not paid for the time missed while going home to correct their uniform issues. Ridgeway-Reid did not say whether employees sent home for uniform violations received attendance points, as described in the employee handbook.

Shorter testified that she has not issued discipline for uniform violations, but that she has seen Greene issuing a “write-up” to employees for uniform violations, such as an instance where a dispatcher was wearing the wrong color shoes. Shorter did not elaborate on other details such as when this incident occurred, the decision-making process behind this discipline, or whether the dispatcher was given an opportunity to go home and change. Shorter did say that she believes Greene normally confers with a dispatch manager to get guidance about whether to issue discipline and at what level. Director Ridgeway-Reid testified that she believes Greene has issued coaching and counseling forms for uniform violations, but could not recall any specific instance. There are no coaching and counseling forms in the record showing that a dispatcher was disciplined for violating the Employer’s uniform policy.

Shorter also recalled a uniform violation in which a dispatcher was wearing gray stockings – a violation of the uniform requirement for black stockings.<sup>15</sup> Shorter spoke to the dispatcher, and gave her the option to take off the stockings, or go across the street to buy stockings in the correct color. The dispatcher opted to take off the stockings, and Shorter did not issue a coaching and counseling form, or send the dispatcher home. Shorter noted that she

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<sup>15</sup> This requirement is not in the employee handbook. The origin or the details of the black stocking requirement is not clearly reflected in the record.

discussed this matter with the dispatch manager even though she was not obligated to do so. She did not provide details about the discussion with the manager, or greater specificity about when this incident occurred.

5. *Discipline For Eating on Duty*

Shorter testified that the Employer prohibits eating while employees are at their desks.<sup>16</sup> Shorter testified that about two years ago, she issued discipline to a dispatcher who was observed eating oatmeal at her desk. When asked why the dispatcher was disciplined, Shorter responded, “we were not allowed to eat on the floor, and she was literally eating it as I was walking by.” Shorter recalled that she discussed this incident with Dispatch Manager John Gray before writing up this employee. According to Shorter, Gray asked how long the employee had worked there, and told Shorter to go to human resources to find out, adding that if the employee had been there less than 90 days, “she’s gone.” The record does not disclose the results of Shorter’s inquiry with human resources, or contain a copy of this discipline.

Shorter testified about another instance about two weeks before the hearing, in which she did not issue discipline when she noticed a bag of candy at a dispatcher’s desk. Shorter said she consulted with Senior Dispatch Manager Lizama, and told him that the dispatcher had candy on her desk. Lizama asked Shorter if the dispatcher was eating the candy, and Shorter replied that it looked like the dispatcher might be chewing, but she was not sure. Lizama told Shorter to tell the dispatcher to take the candy off her desk, or she would be written up. Shorter explained that when she asked the dispatcher to remove the candy, she complied. As a result, no coaching and counseling form issued. When asked by the hearing officer about the distinction between the

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<sup>16</sup> A coaching and counseling form from 2013 refers to Policy QP007, which provides, “Snacks and food are not permitted at work stations, nor are they to be consumed outside of the lunch room.” The name and job title of the individual who issued this discipline is not in the record.

oatmeal incident and the candy incident, Shorter responded, “it was my discretion, as well as I discussed it with the manager. It was candy, and as long as she was willing to remove it from her desk, then it was okay.”

*6. Discipline Regarding Dwell Time*

Dispatchers and dispatch supervisors monitor the drivers’ scheduled trips using software called Viewpoint. Through Viewpoint, dispatchers and dispatch supervisors can see things such as whether a trip is running late, or whether a driver has dwell time, which occurs when a driver has been stationary for any particular length of time. Dispatchers are required to keep track of the drivers assigned to them, and to investigate the circumstances when a driver is stationary at a particular location.

Ridgeway-Reid testified that both the driver and the dispatcher are equally responsible for avoiding excess dwell time. The testimony describes that WMATA’s performance standards define a specific amount of permissible dwell time, but the actual number is not clearly stated. For the purpose of this decision, it appears the number is between 5 and 10 minutes. When a driver is stationary for more than a few minutes, the assigned dispatcher is expected to contact the driver to establish the reason for the dwell, and make notes (called tracker or tracking notes) in the Viewpoint system explaining it.

If a dispatch supervisor observes a driver with an excess dwell, and sees that a dispatcher has not entered notes to explain the dwell, or otherwise demonstrated that the dispatcher noticed and investigated the dwell, the dispatcher is subject to discipline. The instances of discipline in the record for dwell time show that dispatchers failed to contact drivers to inquire about excessive dwell, and/or failed to make any notes showing efforts to determine the cause of the

dwell. For example, Shorter issued discipline to a dispatcher in May 2017 for allowing a driver to dwell for 22 minutes and without making any tracker notes. Shorter explained the dispatcher is supposed to be checking in and making notes “maybe 2 minutes, 3 minutes in, and there’s no notes for 22 minutes. So that means [the dispatcher’s] never looked at it or touched it.”<sup>17</sup>

When dwell time does occur, the dispatcher and/or the dispatch supervisor is expected to determine whether dwell was justified. The record does not contain a written or comprehensive definition of a justified dwell. If the dwell is not justified, the dispatcher or the dispatch supervisor is required to complete a dispatch observation report, which is reviewed by a dispatch manager, and then conveyed to the transportation provider that employs the driver. The transportation provider will use the dispatch observation report in determining whether to discipline the driver for the dwell. If the Employer fails to submit a dispatch observation report when circumstances would otherwise require one, it may be fined by WMATA.

### ***C. Dispatch Supervisors’ Authority to Assign***

Using the Viewpoint software, the dispatch managers and some of the dispatch supervisors have the authority to move trips from one driver to another to minimize service delays and disruption. Dispatchers do not have this authority. The Employer’s computer system uses a color-coded system to show the on-time performance of the drivers. Green indicates on-time performance is between 100% and 95%; yellow shows 94.99% to 92% (meeting WMATA’s performance standard); red reflects on-time performance below 92%. Once a trip is one minute late, it will show up on a “late board.”

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<sup>17</sup> As noted earlier, there are 14 additional instances of coaching and counseling forms related to dwell, but they are marked as coachings, which are non-disciplinary. Accordingly, I find they are not probative for determining whether dispatch supervisors have authority to discipline.

The Employer uses a computer system or software called Trapeze to move trips.<sup>18</sup> Trapeze displays a list of available drivers and the anticipated effect on each driver's manifest if a trip is reassigned to that driver. Specifically, Trapeze will show whether moving a trip will cause other trips to be late or if it will cause other violations of WMATA's performance standards. After Trapeze identifies the anticipated consequences of moving a trip, the dispatch supervisor or manager will select the best (i.e. least disruptive) option.

The evidence shows that moving trips is primarily a job performed by the dispatch managers, and that Dispatch Supervisors Mock, Mahoney, Shorter, and possibly Wade are the only dispatch supervisors who move trips. The record is silent about whether or how moving trips between drivers affects dispatchers' duties.

In addition to moving trips, dispatch supervisors have the authority to move dispatchers and dispatcher-trainees from one base to another. Director Ridgeway-Reid explained that every day, the Employer publishes a list of the dispatchers' assignments, which is similar to a seating chart. Mock and Wade testified that they move dispatchers from one base to another when dispatchers are absent. Wade also cited attendance as a reason, but also said dispatchers could be moved if there was a problem between two dispatchers. Ridgeway-Reid testified that dispatch supervisors can move dispatchers between bases when other dispatchers are absent or on vacation, though she said the Employer tries to keep dispatchers assigned to the base where they normally work. The witnesses did not elaborate on the details of the decision-making process, including the factors considered, and the involvement of any managerial personnel, when determining which dispatcher will move to another base.

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<sup>18</sup> The relationship, if any, between Viewpoint and Trapeze is not clear.

***D. Dispatch Supervisors' Authority to Recommend Retention of Dispatcher-Trainees***

During the hearing, Ridgeway-Reid testified that upper management relies on input from dispatch supervisors to determine whether to retain dispatchers after their 90-day probationary period. Ridgeway-Reid explained that the Employer places quite a bit of reliance on information received from the dispatch supervisors because they are ones who have first-hand knowledge about a dispatcher's work performance. Although she relies heavily on reports she receives from the dispatch supervisors, Ridgeway-Reid allowed that she performed her own monitoring of probationary dispatchers.

Ridgeway-Reid described a situation where Dispatch Supervisor Ronette Weaver used "choice words" to describe how a probationary dispatcher was not performing his duties effectively, and this employee was discharged before the conclusion of his probationary period. Ridgeway-Reid could not identify this probationary dispatcher, and did not provide specific details about when this conversation with Weaver occurred, whether Weaver specifically recommended the employee should be discharged, or whether Ridgeway-Reid performed any independent investigation into the employee's performance.

Ridgeway-Reid recounted another incident in which a probationary dispatcher was moved into a lateral position in the reservations department because a dispatch supervisor provided feedback that the trainee was a good worker, but was not suited for the fast pace of the dispatcher position. Given the positive feedback about the trainee's work ethic, Reid asked dispatch supervisors for input about whether the trainee should be moved to reservations. The dispatch supervisors agreed with the idea of a lateral move, and the trainee was retained. There

was no evidence that the dispatch supervisor made a recommendation that this probationary dispatcher should be discharged.

Mock testified that he has the authority to make recommendations about whether a particular trainee should continue as a dispatcher after the probationary period, but he has not done so. Mock did not explain the basis for his belief that he has authority to make such recommendations. Mock testified that since he was demoted to dispatch supervisor, he does not assess the performance of probationary employees, but he has been asked by higher management for his observations about how they are doing. Mock says he will be asked whether new dispatchers are “catching on” and if they are able to keep their composure and multi-task. Mock testified that he has never been asked if an employee should be retained after their 90-day probationary period.

Dispatch Supervisor Wade testified that he has never been asked if a trainee should remain past the probationary period, or asked to provide comments about the performance of a probationary employee. On occasion, Wade explained that he has volunteered “positive feedback” about particular dispatcher trainees. However, Wade did not say whether this positive feedback included any recommendations about whether a dispatcher should be retained.

There is no documentary evidence in the record showing a dispatch supervisor making recommendations about the retention of any probationary dispatcher.

## **II. LEGAL ANALYSIS AND APPLICATION**

As set forth below, I conclude that the Employer has not met its burden of establishing that dispatch supervisors are “supervisors” within the meaning of Section 2(11) of the Act. Section 2(3) of the Act excludes from the definition of “employee” “any individual employed as a supervisor.” Section 2(11) of the Act defines a “supervisor” as:

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

Section 2(11)'s definition is read in the disjunctive, and thus, the Board will find that the authority to engage in any of the enumerated supervisory functions is sufficient to confer supervisory status on an individual, as long as its exercise is carried out in the interest of the employer, and requires the use of independent judgment. *Sheraton Universal Hotel*, 350 NLRB 1114, 1115 (2007); *Oakwood Healthcare, Inc.* 348 NLRB 686, 687 (2006). Supervisory status may likewise be established if the individual in question has authority to effectively recommend one of the supervisory functions. See, e.g. *Children's Farm Home*, 324 NLRB 61, 65 (1997). The Board has held that an effective recommendation requires the absence of an independent investigation by superiors and not simply that the recommendation be followed. *Id.* It is not required that the individual actually exercise any of the powers enumerated in Section 2(11), the existence of the power is sufficient to establish supervisory status. *Mountaineer Park Inc.*, 343 NLRB 1473, 1471 (2004), citing *Arlington Masonry Supply, Inc.*, 339 NLRB 817, 818 (2003). Nonetheless, the evidence must still demonstrate that the supervisory authority actually existed. *Avante at Wilson*, 348 NLRB 1056, 1057 (2006).

The burden of proving supervisory authority lies with the party asserting it. *NLRB v. Kentucky River Community Care, Inc.* 532 U.S. 706, 706 (2001); *Sheraton Universal Hotel*, 350 NLRB at 1115. Supervisory status must be established by a preponderance of the evidence. *Dean and DeLuca New York, Inc.*, 338 NLRB 1046, 1047 (2003). Lack of evidence is construed against the party asserting supervisory status. *Dean and DeLuca New York*, 338 NLRB at 1048;

*Elmhurst Extended Care Facilities, Inc.*, 329 NLRB 535, 536 fn.8 (1999). The Board has repeatedly instructed that supervisory status should not be construed too broadly, as persons deemed to be supervisors may be denied rights that the Act is intended to protect. *Talmdage Park Inc.*, 351 NLRB 1241, 1243 (2007); *Oakwood Healthcare*, 348 NLRB at 688; *Avante at Wilson* 348 NLRB at 1058; *Azusa Ranch Market*, 321 NLRB 811, 812 (1996). Thus, mere inferences or conclusionary statements without specific, detailed evidence are insufficient to establish supervisory authority. *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004); *Sears, Roebuck & Co.*, 304 NLRB 193, 194 (1991). Where evidence is in conflict or otherwise inconclusive for any of the Section 2(11) indicia, the Board will decline to find supervisory status for that indicium. *Dole Fresh Vegetables, Inc.*, 339 NLRB 785, 793 (2003); *Ohio Masonic Home*, 295 NLRB 390, 393 (1989). Accordingly, job titles, job descriptions, or similar documents are not given controlling weight and will be rejected as mere paper, absent independent evidence of the possession of the described authority. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006), citing *Training School at Vineland*, 332 NLRB 1412, 1416 (2000).

***A. Dispatch Supervisors' Authority to Discipline and Effectively Recommend Discipline.***

In *Lucky Cab Co.*, 360 NLRB 271, 272 (2014), the Board cited *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002) holding that:

[R]eporting on incidents of employee misconduct is not supervisory if the reports do not always lead to discipline, and do not contain disciplinary recommendations. To confer 2(11) status, the exercise of disciplinary authority must lead to personnel action, without the independent investigation or review of other management personnel.

See also, *Sheraton Universal Hotel*, 350 NLRB 1114, 1116 (2007).

Warnings that simply bring substandard performance to the employer's attention without recommendations for future discipline serve nothing more than a reporting function, and are not evidence of supervisory authority. *Loyalhann Health Care Associates*, 332 NLRB 933, 934 (2000) (alleged supervisor's statement of facts, without a recommendation of discipline, in which higher authority determined level of discipline, if any, was warranted is not enough to establish supervisory authority.) A warning may qualify as disciplinary within Section 2(11) if it "automatically" or "routinely" leads to job-affecting discipline by operation of a defined progressive disciplinary system. *Republican Co.*, 361 NLRB 93, 99 (2014), citing *Oak Park Nursing Care Center*, 351 NLRB 27, 30 (2007) and *Ohio Masonic Home*, 295 NLRB at 393-394. See also, *Promedica Health Systems*, 343 NLRB 1351 (2004), enfd. in relevant part 206 Fed. Appx. 405 (6th Cir. 2006), cert denied 127 S.Ct. 2033 (2007)(counseling forms are a form of discipline because they lay a foundation under a progressive disciplinary system for future discipline.) A progressive discipline system is not established where employees receive multiple verbal warnings without any escalation, while other employees are subject to discipline such as suspension without prior warning. *Republican Co.* 361 NLRB at 99-100, fn 8.

As a whole, I find the record is sufficient to establish that dispatch supervisors can issue discipline or effectively recommend discipline as part of a progressive disciplinary system. However, I also find that there is insufficient evidence that they exercise independent judgment when doing so.

Both the employee handbook and the Employer's collective-bargaining agreement with ATU Local 1764 describe a progressive disciplinary system.<sup>19</sup> Although discipline for major

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<sup>19</sup> The handbook, however, also states that "[a]lthough the employment relationship may be terminated at will by the employee or the Company, without following any formal system of

violations may result in immediate discharge or suspension, the evidence shows that the Employer generally follows a four-step disciplinary process for most minor violations. The Employer's coaching and counseling form, which is used to record discipline, incorporates this four-step progressive discipline process. However, of the 36 examples of coaching and counseling forms in evidence, I find that only 13 forms reflect instances where a dispatch supervisor disciplined or effectively recommended discipline for a dispatcher. As noted earlier, 14 of the forms reflect the dispatcher received a coaching, which the Employer's witnesses admit is non-disciplinary. Even in the absence of this admission, there is no evidence that a coaching results in any consequences or lays a foundation for future discipline. *Republican Co.*, 361 NLRB at 99 (verbal reprimands without consequences do not bespeak supervisory status, citing *Ohio Masonic Home*, 295 NLRB at 394).<sup>20</sup> Of the remaining 22 coaching and counseling forms, six were issued by individuals who were managers at the time. (ER Ex. 7: pp. 6, 14, 34, 39-40, and 42)<sup>21</sup> For three additional coaching and counseling forms, the person issuing the form is not identified in the record. (ER Ex. 7: pp. 20, 26, and 31) Of the remaining 13 coaching and counseling forms, seven are for attendance violations (ER Ex. 7: pp. 1-5; 19; and 33); two are for cell phone use (ER Ex. 7: pp. 22 and 25), and one each for: an overstayed break (ER Ex. 7:

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discipline or warnings, the Company may, in its discretion use progressive discipline." I attribute this language to the fact that the handbook also applies to the Employer's non-represented employees.

<sup>20</sup> Regarding these 14 coachings, and assuming for the sake of argument they were disciplinary, at least some of them were issued by managers, or it is unclear if the person issuing the coaching was a dispatch supervisor or manager at the time.

<sup>21</sup> The hearing testimony shows that the role of the witness on a coaching and counseling depends on the circumstances. The witness may be present merely to attest that the coaching and counseling form was received and signed. Further, the witness may not be a supervisor at all, and could be a union steward. Based on these facts, I find there is insufficient evidence to establish that the individual who signs a coaching and counseling form as a witness is the individual who is issued or recommended the discipline.

p.15); errors recording trips (ER Ex. 7: p.18); aux time (ER Ex. 7: p.21); and excessive dwell time (ER Ex. 7: p.43).

For present purposes, the seven instances of coaching and counseling forms for attendance violations are sufficient to show that a dispatch supervisor issued this discipline free from the involvement of higher officials, and the discipline laid a foundation for future discipline under the Employer's progressive discipline policy. For the remaining six coaching and counseling forms, I can assume without deciding that they were similarly issued by dispatch supervisors without the involvement of higher officials, though I note that there was a substantial amount of testimony indicating that dispatch supervisors would generally consult with a dispatch manager prior to issuing a coaching and counseling form, and in fact, the record suggests this consultation may have been required because dispatch supervisors had to obtain the coaching and counseling form from the dispatch managers.

Despite this conclusion, I find that there is insufficient evidence to establish that dispatch supervisors issue (or effectively recommend) discipline using independent judgment. To exercise independent judgment, an individual must at a minimum act, or effectively recommend action, free of control of others and form an opinion or evaluation by discerning and comparing data. *Oakwood Healthcare, Inc.* 348 NLRB at 693. The Board has long drawn a distinction between "straw bosses, lead men, and set-up men" who regurgitate instructions from a superior, and true supervisors under the Act. *Id.* citing *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 280-81 (1974). "Judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company rules or policies, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement." *Oakwood Healthcare, Inc.* 348 NLRB at 693. The evidence shows that in the instances where discipline is issued or recommended by

dispatch supervisors, it is dictated or controlled by detailed requirements set forth in the Employer's handbook or the collective-bargaining agreement.

*1. Discipline for Attendance*

The Employer has not met its burden of showing that dispatch supervisors exercise independent judgment when issuing discipline for attendance policy violations. The Employer has detailed rules about how dispatchers accrue points for absences, which do not leave any discretion about whether to issue attendance points, or to alter their consequences. Moreover, the Employer has not demonstrated that dispatch supervisors exercise independent judgment in determining whether a dispatcher has violated the attendance policy. Rather, I find that only ordinary or routine decision-making is required to decide whether an employee is absent or late. *G4S Regulated Security Solutions*, 362 NLRB No. 134, slip op. at 2 (2015) (“ .these are routine matters that do not involve the exercise of discretion: the [employee] either was or was not absent or late for work. Little or no independent judgment is needed to make that determination.”) Where a situation requires someone to make a judgment about whether an absence is excused, the decision is made by the Employer's human resources department, not the dispatch supervisors. Further, there is no evidence that in these disputed situations, the dispatch supervisors make recommendations to the human resources department about whether the absence should be excused.

*2. Discipline for Break Policy*

The Employer contends that dispatch supervisors exercise Section 2(11) disciplinary authority by issuing discipline to employees who violate the Employer's break policy. As noted above, there is only one instance where a dispatch supervisor issued a coaching and counseling form to an employee for violating the break policy. I conclude that this example does not

establish that dispatch supervisors issue discipline for break violations. In this instance, the Employer rescinded this discipline because the employee did not violate the break policy, as that policy is interpreted and enforced under the March 2016 agreement between the Employer and ATU Local 1764. Although Director Ridgeway-Reid testified that “just because it was reversed doesn’t mean that it wasn’t valid,” I find the evidence shows it was reversed because it did not comply with the March 2016 agreement, which in turn, defines and controls when a dispatcher can receive discipline for break violations. Even I find that this situation qualifies as discipline, this example shows that the situations for when discipline can be issued for break violations is controlled by the provisions of a collectively-bargained agreement between the Employer and ATU Local 1764. The remaining portions of the Employer’s break policy are as equally objective and require only ordinary clerical judgment to determine whether an employee has exceeded his or her allotted break period.

I find that the remaining testimony about discipline for break violations is non-specific and insufficient to meet the Employer’s evidentiary burden. Dispatch Supervisor Mock testified that he determined whether to write up a dispatcher based on the number of minutes exceeded, as well as the reason for the infraction. Though Mock testified that he chose not to enforce the break rule if he deemed the dispatcher’s breach to be a minor occurrence, or when he deemed the infraction to be excusable, he did not provide details about a specific incident when this occurred. *Cook Inlet Tug & Barge, Inc.*, 362 NLRB No. 111, slip op. at 2 (2015) (Board finds employer did not establish supervisory authority where evidence presented was hypothetical and lacking in specificity.)

Mock testified about a specific instance where he issued a verbal warning to a dispatcher for taking an 18-minute break when she was only allotted 10 minutes. I find, however, that this

example does not establish dispatch supervisors have authority to discipline. As an initial matter, there is no documentary evidence, such as a coaching and counseling form, to support Mock's testimony. More significantly, the substance of Mock's testimony does not support a finding of Section 2(11) authority. Specifically, Mock testified that he and Dispatch Supervisor Greene determined through the Avaya system that that the dispatcher exceeded her break period, which according to his testimony is "easy to determine." Thereafter, he reported what he and Greene found to Senior Dispatch Manager Lizama. Mock did not testify that he made a recommendation to Lizama about whether the dispatcher should be disciplined, or that Lizama said anything in response to Mock's report. The record shows that after listening to Mock's report, Lizama handed Mock a coaching and counseling form. Without further detail, this example is equally consistent with a finding that Mock reported facts to Lizama, and Lizama made a determination that the dispatcher should be disciplined, as it is with a finding that Mock recommended discipline and Lizama agreed. Under the first scenario, Mock has not exercised Section 2(11) authority, and there is insufficient evidence to show the second scenario is more likely than the first. *Williamette Industries*, 336 NLRB 743, 744 (2001) (reporting employee substandard performance to upper management without recommendations for future discipline does not show supervisory authority.)

Further, the evidence about this incident does not establish that Mock or Greene exercised independent judgment. Nothing beyond routine or ordinary judgment was required to determine from the Avaya system that the employee exceeded her allotted break period; it is a clerical determination that an 18-minute absence exceeds an allotted 10-minute break. There is also no evidence about any decision-making process Mock or Greene may have used to determine that this employee's 8-minute absence was unexcused. Although Mock testified that

he determined the level of discipline for this incident, the record does not explain how he made this judgment, or how it can be harmonized with other testimony that the level of discipline is decided by the human resources department.

Similarly, I find the examples described by Dispatch Supervisor Shorter are insufficient to establish supervisory authority. Like Mock, Shorter testified about several examples in which she decided to issue discipline to employees for overstaying their breaks, but there are no coaching and counseling forms for these instances. Again like Mock, Shorter's testimony does not provide specific detail about when these incidents occurred, the contents of her conversations with higher management, or how she decided to issue discipline in these cases.

### *3. Discipline for Using Cellular Phones*

There are two instances of coaching and counseling forms issued by dispatch supervisors that show dispatchers were disciplined for using cellular telephones while on duty. Neither of the dispatch supervisors who issued these disciplines testified about the underlying circumstances of these disciplines, though both of the coaching and counseling forms show that the supervisor personally witnessed the dispatcher using a phone while on duty.

I conclude the evidence about these disciplines does not establish that dispatch supervisors discipline employees using independent judgment. The Employer's policies designate dispatchers as safety-sensitive positions, and prohibit employees in those positions from having cellular telephones while working. Thus, when a dispatch supervisor sees: (1) a dispatcher; (2) with a cellular phone; and (3) while working, it requires only ordinary judgment for that dispatch supervisor conclude that the dispatcher has violated the Employer's cell phone policy. This conclusion is further supported by Director Ridgeway-Reid's characterization of the cell phone policy as a "hard and fast rule," and her belief that some form of discipline was a

virtual certainty. Accordingly, I find that when a dispatch supervisor encounters a dispatcher using a cellular phone while working, the decision to discipline that dispatcher is controlled by detailed Employer policies and does not involve the use of independent judgment.

#### 4. *Uniform Policy*

The Employer presented testimonial evidence to demonstrate that dispatch supervisors can send dispatchers home if they are found to be in violation of the uniform policy. It asserts that this authority supports its claim that dispatchers have the Section 2(11) authority to discipline. The Petitioner, relying on *Green Acres County Care Center*, 327 NLRB 257 (1998), argues that the exercise of sending employees home to get into conformance with the uniform requirements, after being directed by a manager, is not a supervisory function.

I find there is insufficient evidence that dispatch supervisors discipline or effectively recommend discipline for uniform violations. First, the Employer presented no coaching and counseling forms showing discipline for uniform violations. Second, the primary enforcer of the uniform policy, Dispatch Supervisor Greene, did not testify. Finally, in the examples cited in the record, none identified a specific employee who was disciplined, or the level of discipline received.

Similarly, I note that the hearing testimony refers to incidents where employees were sent home to correct uniform deficiencies, but the specific details are missing. Further, I do not find that a dispatch supervisor sending an employee home is disciplinary. There is no evidence that being sent home automatically or routinely impacts an employee's job, or lays a foundation for future discipline. To the contrary, Director Ridgeway-Reid testified that employees who are sent home to correct uniform violations and return to complete their shifts are *not* disciplined.

Moreover, a dispatch supervisor must only exercise ordinary and routine judgment to determine whether a dispatcher is in compliance with the Employer's uniform requirements, at least to the extent those requirements are described in the record. In the examples provided, dispatch supervisors only had to determine whether an employee's shoes or stockings were or were not black. Further, the evidence shows that Greene's (and any other supervisor's) decision to send non-complying employees home is pre-determined by the Employer's uniform policy, which unequivocally commands, "those who report to work inappropriately dressed will be sent home unpaid and directed to return to work in proper attire." Lastly, because Greene did not testify, there is no other evidence in the record that explains her decision-making processes, including the details of her typical consultations with management, and any direction she may receive from those who are undisputed supervisors.

#### 5. *Eating Policy*

As with the uniform policy, there are no coaching and counseling forms in the record showing that a dispatch supervisor disciplined an employee for eating while on duty. The Employer introduced one coaching and counseling form showing discipline for eating, but the record does not identify the name or job title of the person who issued it, or the decision-making process that led to this discipline.

Also like the uniform policy, violations of the eating policy are self-evident and do not require a dispatch supervisor to exercise independent judgment. Thus, when Shorter testified that she disciplined an employee for eating oatmeal at her desk, this example shows only a rote application of the Employer's rule. In her other example, where a dispatcher had candy on her desk, but Shorter was uncertain she had seen the employee eating it, that employee was not disciplined because she was not eating, and thus, not violating the no-eating policy.

Furthermore, in both of these examples, Shorter testified that she consulted with upper management before issuing, or as in the second case, refraining from issuing, discipline. *Loyalhann Health Associates*, 332 NLRB 933, 934 (2000) (alleged supervisor's statement of facts to a higher authority, without a recommendation of discipline is not sufficient to establish supervisory authority.); *Williamette Industries*, 336 NLRB at 744.

Therefore, and assuming that the "write up" Shorter issued for the oatmeal was discipline and not a coaching, I find that there is insufficient evidence that this discipline involved the use of independent judgment that was free of the control of others or detailed Employer policies.

#### 6. *Other Discipline*

The remaining evidence of discipline consists of three coaching and counseling forms: one for dwell time, one for aux time; and one for incorrect data entry. All three of these instances suffer from the same deficiencies. There is little, if any, evidence about how the dispatch supervisors determined to issue these disciplines, who, if anyone, in upper management was consulted and what was said, and to what degree did decisions by upper management or the Employer's policies influence or control the decisions to issue these disciplines. Also, in the case of the dwell time discipline, the record does not explain why this example from May 2017 resulted in a verbal counseling, while others resulted in non-disciplinary coachings.

For the dwell time discipline, the evidence shows that it did not involve the use of independent judgment. Dispatch Supervisor Shorter testified that there is a specific amount of allowable dwell time, which was exceeded in this instance. Further, the Employer's policy required the dispatcher to make tracker notes about the dwell, but no notes were present. Finally, Shorter testified that she reported this incident to an unnamed manager, and then received assistance from Reservations Manager LaTanya Hightower. Based on these facts, I find the

record is insufficient to conclude that Shorter's decision to issue this discipline was free from control of higher management officials or the requirements of Employer policies, and thus, did not involve the use of independent judgment.

The coaching and counseling form for failing to make required data entries does not establish Section 2(11) authority. At the outset, the form is incomplete; the specific details of the violations that led to this discipline and which were purportedly attached to the coaching and counseling form are missing. The face of the document shows only that on three occasions, the dispatcher "failed to follow policy with regards to proper cancellation codes and notes." In Shorter's testimony about the underlying circumstances leading to this discipline, she explained that the dispatcher failed to record events accurately. Specifically, the dispatcher did not record a no-show as a no-show, or failed to distinguish between a "user-error cancellation" as a "same-day cancellation." However, Shorter did not explain the specifics of what the Employer's policy required, how she determined whether this policy was violated, how she determined that discipline was appropriate for this policy violation, and whether and to what extent these determinations were controlled by decisions from higher management or the Employer's policies.

Finally, for the aux time discipline, the evidence shows that this discipline was controlled by the Employer's policies. The dispatch supervisor who issued this coaching and counseling form did not testify. However, Director Ridgeway-Reid explained that there is a specific amount of aux time a dispatcher is allowed to have, and this dispatcher exceeded that amount. Ridgeway-Reid also agreed that discipline would be the normally-expected result for this policy violation. I find this discipline does not demonstrate dispatch supervisors discipline employees using independent judgment.

***B. Dispatch Supervisors Lack Section 2(11) Authority To Assign or to Responsibly Direct Employees.***

The Board defines the Section 2(11) authority to assign as “the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties to an employee, using independent judgment. *Oakwood Healthcare, Inc.*, 348 NLRB at 689. Assignment authority does not confer supervisory status if there is “only one obvious and self-evident choice.” *Id* at 693. Vague and hypothetical testimony that does not establish that the assignment was more than routine is insufficient to demonstrate independent judgment. *Lynwood Manor*, 350 NLRB 489, 489 (2007). In *Express Messenger Systems Inc.*, the Board affirmed the administrative law judge’s determination that a putative supervisor did not exhibit sufficient independent judgment in dispatching biker messengers to pick up and deliver packages. 301 NLRB 651, 654 (1991). There, the dispatchers followed a set pattern such as directing the first messenger who reported to work to make the first pickup, and queuing the messengers into a sequence as they completed their assignments.

Here, the Employer asserts that dispatch supervisors have the authority to assign and exercise independent judgment in doing so. It claims that dispatch supervisors exercise the Section 2(11) authority to assign by moving dispatcher-trainees to open spots, moving dispatchers who are having difficulties to easier assignments, and alter assignments to account for absent employees. Mock testified that he considers employee skill level, and difficulty of the job assignment in deciding where to assign trainees. Therefore, the Employer argues that Mock exercises independent judgment by assigning dispatchers to different bases.

To the contrary, I find there is insufficient evidence that a dispatch supervisor's decision to move a dispatcher or a dispatcher-trainee to open spots, or from one base to another is an "assignment" or that it requires the use of independent judgment. The record does not disclose any differences in the duties of the dispatchers, or how moving a dispatcher between bases affects their job duties. Thus, it is unclear how moving dispatchers between bases is a change to their significant overall duties or tasks. There is no evidence that moving a dispatcher between bases causes a change to the dispatchers' work shifts, or to a different place (such as a location, department, or wing.) All of the bases are in the same open area of the OCC, and all are within the Employer's dispatch department. Moreover, there is little evidence about the duration of these assignments. Presumably, when dispatch supervisors designate an employee to cover for an absent dispatcher, the assignment is temporary and lasts no longer than the absence. This presumption, along with the testimony of Director Ridgeway-Reid that the Employer generally tries to keep dispatchers assigned to where they normally work, suggest that when dispatchers are moved between bases, the move is usually temporary. As explained in *Croft Metals*, 348 NLRB 717, 722 (2006), these types of temporary and occasional switching of tasks does not implicate the authority to "assign" within the meaning of Section 2(11).

Furthermore, the record is devoid of the factors, if any, that are taken into account by the dispatch supervisors in these circumstances. According to Mock, when assigning dispatch-trainees, he tries to assign them to the easiest bases, but if dispatchers are absent, then a dispatch-trainee will be assigned to fill in for the dispatcher. Neither Mock, nor any other witness, explained what is considered an "easy" base or the reasons why. Similarly, he did not explain how he or other dispatch supervisors determine that a dispatcher should be moved to an easier assignment because of difficulties, or describe any specific examples of when this occurred. Nor

is there any testimony about whether dispatch supervisors consider the relative skills, abilities, experience, or similar factors of the dispatchers when deciding to move them to or between bases or how any of these criteria factor into the decision. Without these specifics, there is insufficient evidence showing that dispatch supervisors “form an opinion or evaluation by discerning and comparing data.” *Oakwood Healthcare, Inc.*, 348 NLRB at 693. Likewise, the testimony does not discuss factors such as how many employees are moved, the number of open spots or the number of absent dispatchers, or how many “easy” bases are available (or if a base that is easy one day will remain easy the next, given the daily variation in the Employer’s workload.) Accordingly, the state of the evidence is such that the degree of judgment required to make these “assignments” cannot be determined. *Oakwood Healthcare, Inc.*, 348 NLRB at 693. (“If there is only one obvious and self-evident choice..., or if the assignment is made solely on the basis of equalizing workloads, then the assignment is routine or clerical in nature and does not implicate independent judgment. ”)

The Employer also argues that dispatch supervisors exercise the authority to assign employees when they reassign trips to drivers in order to maintain the on-time performance standards. Both Mock and Shorter testified that moving a trip from one driver to another is a situational decision. Mock testified that computer software provides predictions about what a moved trip might do to a driver’s manifest. He also testified that the specific circumstances of the situation might present him with between 1 and 12 potential options for reassigning the trip. However, he did not provide specific instances of when he moved trips, and the rationale for the decision he made. Instead, both Mock and Shorter only provided generalized statements and hypotheticals, which are insufficient to establish supervisory authority. Further, it is unclear to what degree the decision to move a trip is made using any independent judgment by the dispatch

supervisor, or by the computer software. Significantly, and assuming that moving trips requires exercising independent judgment, the record is silent about whether or how a dispatch supervisor's decision to move a trip between the transportation providers' drivers amounts to an "assignment" affecting a dispatcher. In this regard, the record does not disclose how moving trips between drivers changes where or when a dispatcher works, or otherwise changes any of the dispatcher's significant overall duties.<sup>22</sup>

In its post-hearing brief, the Employer asserts that dispatch supervisors have the authority to responsibly direct dispatchers. To find that a putative supervisor exercises responsible direction, the Board requires evidence that the person directing and performing the oversight of the employee was accountable for the performance of the task by the other, and subject to adverse consequences if the tasks are not performed properly. *Oakwood Healthcare*, 348 NLRB at 691-692. The Employer argues that because the dispatch supervisors have authority to take corrective action against dispatchers, any direction provided by the dispatch supervisors is "responsible." However, the Employer omits from its argument the additional requirement of adverse consequences; the critical question is not whether the alleged supervisor has authority to take corrective action, but whether there is a prospect for adverse consequences if the putative supervisor *fails* to take this corrective action. *Alstyle Apparel*, 351 NLRB 1287, 1287 (2007).

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<sup>22</sup> To any extent the Employer is arguing that the dispatch supervisors' decisions to move trips are an "assignment" vis-à-vis the drivers, I find this argument unpersuasive. To establish Section 2(11) status, the putative supervisor must exercise one of the supervisory functions over employees of the employer, not employees of another employer. *Franklin Hospital Medical Center*, 337 NLRB 826, 827 (2002); *Crenulated Company*, 308 NLRB 1216, 1216 (1992). For the same reason, I find that the dispatch supervisors' involvement with creating Dispatch Observation Reports, which may be used by the transportation providers as a basis to discipline drivers, does not establish Section 2(11) authority.

Here, I find this argument can be disposed of summarily. The Employer's post-hearing brief does not cite to any evidence in the record showing where a dispatch supervisor was held accountable for the performance failure of a dispatcher. Likewise, in my own review of the record, I saw no evidence to support the Employer's argument. Thus, I conclude there is insufficient evidence that dispatch supervisors responsibly direct employees within the meaning of Section 2(11) of the Act.

***C. Dispatch Supervisors Lack Section 2(11) Authority to Effectively Recommend Against the Retention of Dispatcher-Trainees***

Finally, the Employer asserts that dispatch supervisors have authority to effectively recommend against the retention of dispatcher-trainees during their probationary period. As noted earlier, the Board defines the authority to effectively recommend an action to mean that the recommended action is taken without independent investigation by higher management. *DirectTV*, 357 NLRB 1747, 1750 (2011). It is not sufficient to show that the recommendation by the alleged supervisor is ultimately followed. *Id.*, citing *Children's Farm Home*, 324 NLRB 61, 61 (1997). The recommendation must also be rooted in independent judgment.

Director Ridgeway-Reid testified that she relied heavily on "feedback" from dispatch supervisors in determining whether to keep a dispatcher-trainee after the trainee's 90-day probationary period. However, the Employer did not provide evidence that dispatch supervisors actually make *recommendations* about whether a dispatch-trainee should be retained, let alone that these recommendations are followed without independent investigation by higher management.

There are no documents showing any recommendations from a dispatch supervisor about whether a probationary dispatcher should be retained. Further, the testimony from both Dispatch

Supervisors Mock and Wade show that neither has ever made a recommendation to management about whether a probationary dispatcher should be hired or discharged. It is axiomatic that without evidence showing that dispatch supervisors make recommendations about whether the Employer should retain dispatcher-trainees, there is no basis for further finding they make *effective* recommendations. *Willamette Industries*, 336 NLRB at 743.

In *Sheraton Universal Hotel*, 350 NLRB at 1118, the Board noted that testimony from a high-level manager was emphatic about the influence of the alleged supervisor in decisions not to hire an employee. *Id.* He testified that the alleged supervisor's recommendations were "very very key" and that a recommendation not to hire a particular candidate "would be fatal." The testimony of Ridgeway-Reid is not nearly as definitive, and she admitted to performing her own evaluation of dispatcher-trainees' job performances. Coupled with the denials from Mock and Wade about having made such recommendations, and the absence of any documentary support, I find there is insufficient evidence that dispatch supervisors have authority to effectively recommend that dispatcher-trainees not be retained at the end of their probationary periods.<sup>23</sup>

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<sup>23</sup> The Employer at times argued that dispatch supervisors recommend dispatchers for hire. I find that the evidence does not support the Employer's argument. Director Ridgeway-Reid testified that the Employer used to have a two-tiered interview process, with supervisors performing the first interview. However, she explained that the Employer has since moved away from that process because it hired a dedicated manager for human resources. The HR manager, according to Ridgeway-Reid, "pretty much" handles all the interviews and applicant screening. Dispatch Supervisor Wade testified that he has not been involved in interviewing applicants for the dispatcher position. Even if dispatch supervisors continued to participate in the interview process, that participation by itself is not sufficient to establish supervisory authority. *Ryder Truck Rental*, 326 NLRB 1386, 1387 fn.9 (1998); *Waverly-Cedar Falls Health Care*, 297 NLRB 390, 392 (1989). Further, there is no evidence in the record showing an instance where a dispatch supervisor made a recommendation for hire, that the recommendation was followed, or the circumstances by which that recommendation came about. *A fortiori*, there is no evidence showing the weight, if any, a dispatch supervisor's hiring recommendation carried. *The Door*, 297 NLRB 601, 602 (1990). In sum, I conclude there is insufficient evidence that dispatch supervisors effectively recommend employees for hire.

### III. 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 hereby affirmed.
2. The Employer is an employer engaged in interstate commerce within the meaning of Section 2(2), (6) (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. There is insufficient evidence to establish that the Employer's dispatch supervisors are "supervisors" within the meaning of Section 2(11) of the Act.
5. A question affecting commerce exists concerning the representation of the petitioned-for individuals within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective-bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time dispatch supervisors employed by the Employer at its Hyattsville, Maryland facility, but excluding drivers, dispatchers, temporary agency employees, office clerical employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

### IV. 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 Office & Professional Employees International Union, Local 2, AFL-CIO.

***A. Election Details***

The date, time, and place of the election will be specified in a Notice of Election that will issue shortly after this decision.

***B. Voting Eligibility***

Eligible to vote 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.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in an economic strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

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

***C. Voter List***

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names,

work locations, shifts, job classifications, and contact information (including home addresses, available personal e-mail addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Friday, August 10, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The Regional office will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-April-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-April-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties name in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not

object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

***D. Posting Notices of Election***

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election that will issue shortly following this decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the non-distribution of notices if it is responsible for the non-distribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

**RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this decision until 14 days after

a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: August 8, 2018

(SEAL)



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