

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Wadsworth, Texas

STP NUCLEAR OPERATING COMPANY

Employer

and

Case 16-RC-214839

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO LOCAL 66**

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner represents an existing unit of about 475 operation, production and maintenance employees, and now seeks a self-determination election, commonly referred to as an *Armour-Globe*¹ election, to ascertain whether unit supervisors and senior reactor operator instructors should be included in that existing unit. The Employer argues unit supervisors are supervisors within the meaning of Section 2(11) of the Act. The sole issue raised by the Employer in its Statement of Position and litigated during the hearing in this matter is whether, as the Employer argues, its 27 unit supervisors are supervisors within the meaning of Section 2(11) of the Act. The Employer maintains that the unit supervisors have the authority to discipline, reward, assign, and responsibly direct the work of other employees using independent judgment.

As set forth below, I find that the Employer failed to meet its burden in establishing that unit supervisors are supervisors as defined in the Act. Because unit supervisors share a community of interest with the employees in the existing bargaining unit and constitute an appropriate voting group for purposes of a self-determination election, I shall order a self-determination election in the petitioned-for unit.

The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act. A Hearing Officer of the Board held a hearing in this matter in Houston, Texas on February 26, 2018, and the parties presented oral arguments at the conclusion of the hearing.

This Decision first will provide an overview of the Employer's operations and the parties' bargaining history. Then, I will set forth the facts, the legal standards, and reasoning, which support my conclusions to be applied in resolving the supervisory issue presented by this case, including whether to direct an *Armour-Globe* election as sought by the petition.

¹ *Armour & Co.*, 40 NLRB 1333 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

I. OVERVIEW OF OPERATIONS

STP Nuclear Operating Company is a nuclear power station that operates nuclear reactors, providing electricity to approximately two million residential customers in Texas from its facility in Wadsworth, Texas. At this facility, two pressurized water nuclear reactors generate over 1300 megawatts of power.

II. BARGAINING HISTORY

The Petitioner currently represents about 475 employees in the following job classifications:

Radiation Protection Technicians, Performance Technicians, Chemistry Technicians, Material Technicians, Metrology Technicians, Maintenance Planners, Operation Support Procedure Writers, Work Week Schedulers, Electricians, Mechanics, I&C Technicians, Material Handlers, Head Material Handlers, Head Operators, Head Radiation Protection Technicians, Head Performance Technicians, Reactor Operators (RO), Work Control Specialists, Work Week Managers, RO/SRO License Operator Trainees, and Senior Reactor Board Operators.

The current collective bargaining agreement is effective from August 1, 2017, through July 31, 2021. The previous collective bargaining agreement was effective by its terms January 27, 2014, through July 31, 2016.

III. FACTS

A. Supervisory Issue

1. Unit Supervisors' Work Responsibilities

Unit supervisors work in one of two control rooms or move about the buildings located adjacent to the control rooms. In the control rooms, unit supervisors work alongside shift managers, who are stipulated to be statutory supervisors, as well as reactor and plant operators, who are members of the existing bargaining unit. Reactor operators work in the control rooms, and plant operators work in the buildings adjacent to the control rooms, completing various individual tasks that keep the equipment running safely. Unit supervisors work directly with two to seven reactor or plant operators, overseeing their work and monitoring computers to ensure safe and efficient operation in accordance with the Employer's operating license, federal regulations, the Employer's policies, and approved procedures. The unit supervisor observes and evaluates instruments and alarms for operating problems, shuts down or stops activities or equipment when necessary, reviews procedures checklists and lineups, performs system and component inspections, and reviews the logbooks and paperwork associated with maintaining the reactors. Unit supervisors monitor the reactors and make sure readings are within specified bands of measurement that have been pre-determined by federal nuclear regulations.

Unit supervisors sit on an elevated platform overseeing the activities of the operators. Unit supervisors, bargaining unit operators, and shift managers attend daily meetings. Shift managers approve the daily work schedules before each shift. Unit supervisors must have the

same kind of license as a reactor operator and must complete one extra week of training than a reactor operator.

2. Assignment of Work

Unit supervisors do not normally assign field employees to particular jobs. Rather, work responsibilities are generally based on procedures that are already in place, and tasks that are set out weeks in advance by an authorized work schedule, of which a unit supervisor has no role in creating. Unit supervisors generally do not direct other employees about when or where they need to complete work, or what their duties are. The position of "work start authority" assigns work for each of the shifts, and sometimes checks in with a unit supervisor to confirm that the work may begin. Unit supervisors generally "rubber stamp" operators completion of some procedures, based on plans that have been already been created by other employees. The authorized work schedule dictates all of the activities that occur, although a unit supervisor may deviate from the schedule if an incident or particular condition justifies doing so by doing the work out of the order that is listed on the schedule. Situations in which deviations from the authorized work schedule are required are controlled by strict protocol. The work schedule is approved for each shift by the shift manager. Shift managers may have input into deviations from the work schedule.

Unit supervisors may sometimes delegate work to an operator based on his or her level of experience.

Unit supervisors do not grant or deny requests for work or requests for leave. They do not cancel work or control the work hours of other employees. They do not grant or assign overtime.

3. Responsible Direction

Unit supervisors do not perform audits, reviews, appraisals or evaluations of employees' work. The Employer provided a chart, covering an unknown period of time, showing "Human Error"-created "operations events" on each crew and the dates on which errors that have occurred correlating to the error. The chart is a "pie chart" which allows the reader to ascertain the number of such errors made by a given crew relative to the number of errors made by all crews together. Notes corresponding to the chart state that the incentive compensation program (ICP) bonuses of two unit supervisors were "downgraded due to crew performance." These notes were prepared by Manager of Unit Operations Bobby Lane. Lane did not testify during the hearing. One of the apparently "downgraded" unit supervisors, Jeremy Tillman, testified that he had no knowledge that he was being downgraded or why. The ICP is an industry-wide program that considers individual and collective performance. Employees may also be "adjusted up" for good leadership under this plan, despite negative crew performance.

Unit supervisors help operators stay up to date on their qualifications, i.e., the training and licensing they must maintain, but the shift managers "own the responsibility" for operators who fall behind.

Unit supervisors may remove an employee from a given task, and do so whenever a "human performance event" occurs. A human performance event is an error that is usually self-reported, but may be reported by any employee who witnesses it. Once such an error is reported,

as dictated by written protocol, the unit supervisor must direct the employee to cease acting on that task and assign a senior employee to take over.

4. Discipline

Disciplinary procedures are set out in the Employer's constructive discipline policy. The disciplinary procedures outline the role of a "supervisor" in the disciplinary process. For the purpose of the policy, "supervisors" are defined as follows:

"A member of Company management assigned administrative responsibility for one or more employees. This includes crew leaders *in the bargaining unit*, but not head journeymen." [emphasis supplied]

The guidelines ostensibly give supervisors the authority to issue the first level of discipline, an oral warning, but the guidance is caveated. The authority provision states as follows:

The supervisor has the responsibility and authority to conduct an Oral Reminder. However, the supervisor may review such actions with other supervisory levels or Human Resources, if desired.

The record testimony did not include an instance of a unit supervisor acting on his own to issue an Oral Reminder or any other formal discipline. Rather, supervisors consult the "very thick guidelines" as set forth in materials published by the Management Associated Results Company (MARC) to make recommendations as to the appropriate level of discipline in any particular situation.² This recommendation is made first to the shift manager, then reviewed by the operations manager, and always reviewed by personnel from the Human Resources department.

The disciplinary procedures call for the maintenance of a "contact log" which records both positive and negative comments about the employees' performances. The contact log lists the name of the employee along with the event or comment, and date. Unit supervisors make entries in the contact logs. The contact logs are kept in the shift manager's office.

Negative comments generally begin when a "human error" is reported in a "condition report." All employees have an obligation to report the observed errors of others and to self-report their own errors on a condition report. After a condition report is generated, a "prompt investigation" of the error is conducted. The prompt investigation generally consists of a unit supervisor questioning the erring-employee regarding the event. By using a computer-based form, the supervisor then generates a proposed "lessons learned" statement. The lessons learned are chosen from a drop-down list of options. The unit supervisor then transmits that information to a shift manager, with or without a recommendation of a disciplinary action. A manager classifies the type of error that was made pursuant to Nuclear Regulatory Commission requirements and either alters or adopts the "lessons learned." The shift manager reviews the information, as well as the employee's contact log, and then agrees or disagrees with the disciplinary recommendation. Positive comments are more often contained in the contact log than negative ones. The record reflects that, at times, unit supervisors have entered positive

² The MARC-issued guidelines were referenced, but not introduced at the hearing.

comments in an employee's contact log, but no evidence was presented to establish that unit supervisors ever directly enter negative contact log comments. The information reviewed by the shift manager is then forwarded to the unit operations manager, Bobby Lane, and then to Director of Operations Bill Jefferson. Jefferson then sends the information to Human Resources, where the discipline may be changed if it is not consistent with other disciplinary actions the Employer has taken.

Unit supervisors may be "involved" in oral reminders, but their names are not listed on the forms documenting the action.

Unit supervisors do not independently administer discipline. In one instance, the recommendation of Mark Hamilton, who is sometimes employed as a supervisor but also substitutes as a shift manager, was ultimately followed. However, the Employer failed to offer any evidence about what the employee had done to deserve discipline or whether there was any exercise of discretion involved in making the recommendation. In another instance, a recommendation to issue a verbal warning made by Unit Supervisor Jeremy Tillman was apparently disregarded.

5. Reward

The Employer presented evidence that unit supervisors reward employees by making positive comments on the contact logs and by giving employees "Boss Points." There is no evidence that the positive comments in contact logs have an effect on the discipline, pay or promotions of unit employees. By the terms of the parties' collective bargaining agreement, ICP incentive pay for Unit employees is nondiscretionary and will be awarded to employees based on a combination of achieving objective metric performances, completing required training, and not having excessive absences, being involved in accidents, or being disciplined. Input from unit supervisors does not factor into ICP bonus pay.

Regarding "Boss Points," they are part of the Employer's "Power Points" system.

Although the Power Points system is codified in some form, neither party entered such materials as an exhibit. From the record testimony, it appears that all employees are provided with monthly or yearly allotments of "Peer Points" and that employees with some supervisory role are also allotted a certain amount of "Boss Points" to dole out as they see fit. These points have the same value and may be exchanged at a company store for merchandise or gift cards that may be used at external retailers or restaurants. In external gift-card dollars, each point is worth slightly less than eight tenths of a cent³ or \$0.0077³. Each employee is provided with an estimated \$3,000 Peer Points to provide to his co-workers per month (\$23.10 in gift card dollars). The amount of Boss Points available to supervisors appears to vary by the number of direct reports assigned. In one instance, Mark Hamilton divided 5,000 Boss Points (\$38.50) among three employees.

Unit employees generally earn between \$30 and \$50 per hour.

³ This is derived by dividing 50 by 6500, based on the following testimony by Mark Hamilton: "I mean it takes 6500 points, I believe, to be like \$50, I believe."

6. Other Supervisory Indicia

There is no evidence that unit supervisors have the authority to hire or effectively recommend the hire of other employees; to promote, lay off, transfer, or recall employees; or to grant employees time off or authorize overtime. They do not evaluate employees or adjust their grievances. There is no evidence that unit supervisors hold different degrees or have different academic requirements than other employees. There is no evidence that they wear different clothing or park in different areas at the Employer's facility.

B. Community of Interest

Unit supervisors interact regularly with other bargaining unit employees when they monitor and assist in the safe operations of the reactors. The unit supervisors are functionally integrated with the existing bargaining unit employees as they all share a common goal of maintaining and operating the Employer's equipment safely and effectively. The unit supervisors have comparable work duties and responsibilities, and they share similar skills and qualifications. The unit supervisors work in the same buildings and field space as the existing bargaining unit employees, are subject to the same security procedures, are salaried, and work the same schedules. The unit supervisors and bargaining unit employees also share common supervision insofar as they are overseen by the same shift managers, operations managers, and chief nuclear officer; and they share the same health and retirement benefits.

IV. THE RELEVANT LEGAL STANDARDS AND ANALYSIS

A. *Armour-Globe* Elections

An *Armour-Globe* election permits employees sharing a community of interest with an already represented unit of employees to vote on whether they wish to be added to the existing unit. *NLRB v. Raytheon Co.*, 918 F.2d 249, 251 (1st Cir. 1990); *Armour & Co.*, *supra*; *Globe Machine & Stamping Co.*, *supra*. The Board has held that a self-determination election is the proper method by which an incumbent union may add unrepresented employees to its existing unit if the employees sought to be included share a community of interest with unit employees and "constitute an identifiable, distinct segment so as to constitute an appropriate voting group." *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990).

B. Factors Relevant to Evaluating Supervisory Status Generally

Supervisors are specifically excluded from coverage under the National Labor Relations Act. The burden of establishing supervisory status is on the party asserting that such status exists. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711-713 (2001); *UPS Ground*, 365 NLRB No. 113, slip op. at 1, (July 2017); *Shaw Inc.*, 350 NLRB 354, 355 (2007); *Croft Metals, Inc.*, 348 NLRB 717, 721 (2006). The party seeking to prove supervisory status must establish it by a preponderance of the evidence. *Croft Metals, Inc.*, *supra*; *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006). Section 2(11) of the Act sets forth a three-part test for determining whether an individual is a supervisor. Pursuant to this test, employees are statutory supervisors

if: (1) they hold the authority to engage in any one of the 12 listed supervisory functions;⁴ (2) their exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment; and (3) their authority is held in the interest of the employer. *NLRB v. Kentucky River*, *supra* at 712-713; *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-574 (1994).

The statutory criteria for supervisory status set forth in Section 2(11) are read in the disjunctive, and possession of any one of the indicia listed is sufficient to make an individual a supervisor. *NLRB v. Kentucky River*, *supra* at 713; *Shaw, Inc.*, *supra* at 355. The Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions; between effective recommendation and forceful suggestions; and between the appearance of supervision and supervision in fact. The exercise of some supervisory authority in a merely routine, clerical, or perfunctory manner does not confer supervisory status on an employee. *Oakwood Healthcare, Inc.*, *supra* at 693; *J.C. Brock Corp.*, 314 NLRB 157, 158 (1994). The authority effectively to recommend an action means that the recommended action is taken without independent investigation by supervisors, not simply that the recommendation is ultimately followed. *The Republican Co.*, 361 NLRB No. 15, slip op. at 5 (2014); *Children's Farm Home*, 324 NLRB 61 (1997). The Board has made clear that the proponent's evidentiary burden is significant and substantial, holding that purely conclusory evidence is not sufficient to establish supervisory status. *Golden Crest Healthcare Center*, 348 NLRB 727, 729 (2006); *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006); *Chevron Shipping Co.*, 317 NLRB 379, 381 fn. 6 (1995).

The Board has an obligation not to construe the statutory language too broadly because the individual found to be a supervisor is denied the employee rights that are protected under the Act. *Avante at Wilson*, *supra* at 1057; *Oakwood Healthcare*, *supra* at 687. Where the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. *The Republican Co.*, *supra*; *Dole Fresh Vegetables, Inc.*, 339 NLRB 785, 792 (2003). In order to meet the burden of proof, a party must show specific details and/or circumstances making clear that the claimed supervisory authority actually exists, and is not mere paper authority. *Avante at Wilson*, *supra* at 1057-1058. The sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. *Shaw, Inc.*, *supra* at 357, fn. 21; *Oakwood Healthcare*, *supra* at 693; *Kanahwa Stone Co.*, 334 NLRB 235, 237 (2001).

In its decisions in *Oakwood Healthcare*, *supra*, *Croft Metals*, *supra*, and *Golden Crest Healthcare Center*, *supra*, the Board clarified the circumstances in which it will find that individuals exercise sufficient discretion in performing two of the functions listed in Section 2(11) – assignment and responsible direction of work – to justify their classification as statutory supervisors. As defined in *Oakwood Healthcare*, *supra* at 689-690, the term “assign” refers to the “act of designating an employee to a place (such as a location, department or wing), appointing an employee to a time (such as a shift or overtime period) or giving significant overall duties, i.e., tasks, to an employee.” Choosing the order in which an employee will perform

⁴ These include the authority to hire, transfer, suspend, layoff, 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. 29 U.S.C. Section 152(11).

discrete tasks within an overall significant assignment of duties will not be considered indicative of exercising the authority to “assign.” *Id.*

In *Oakwood Healthcare*, the Board explained “responsible direction,” as follows: “If a person on the shop floor has ‘men under him,’ and if that person decides ‘what job shall be undertaken next or who shall do it,’ that person is a supervisor, provided that the direction is both ‘responsible’ . . . and carried out with independent judgment.” “Responsible direction,” in contrast to “assignment,” can involve the delegation of discrete tasks as opposed to overall duties. *Oakwood Healthcare, supra* at 690-692. But, an individual will be found to have the authority to responsibly direct other employees only if the individual is *accountable* for the performance of the tasks by the other employee. Accountability means that the employer has delegated to the putative supervisor the authority to direct the work and the authority to take corrective action if necessary, and the putative supervisor faces the prospect of adverse consequences if the employees under his or her command fail to perform their tasks correctly. *Ibid.* See also *Community Education Centers*, 360 NLRB No. 17, slip op. at 1 (2014).

Assignment or responsible direction will produce a finding of supervisory status only if the exercise of independent judgment is also involved. The Board has specifically defined the term independent judgment as requiring that an individual act or effectively recommend action free from the control of others and form an opinion or evaluation by discerning and comparing data, provided that the act is not of a routine or clerical nature. The Board made clear that judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules or a collective-bargaining agreement, or the verbal instruction of higher authority. *Id.* at 692-93; *PPG Aerospace Industries, Inc.*, 353 NLRB 223, 223 (2008). Further, the Board’s interpretation of the term “independent judgment” applies regardless of the supervisory function implicated and without regard for whether the judgment is exercised using professional or technical expertise. *Oakwood Healthcare, supra* at 692.

C. Analysis of Supervisory Authority in the Electric Utility Industry

The law concerning the supervisory status of electric utility dispatchers has long been in flux. For decades, the Board regularly held that employees who monitored the transmission and distribution of electric power, designed some or most of the switching sequences, and directed field employees in carrying out the switching orders were not statutory supervisors and could unionize. Then, in *Big Rivers Electric Corp.*, 266 NLRB 380, 383 n. 2 (1983), the Board overruled those decisions, concluding that such employees responsibly directed other employees and that their assignment of employees to carry out switching directives involved the use of independent judgment. *Big Rivers Electric Corp., supra* at 382.

In *Mississippi Power & Light Co.*, 328 NLRB 965 (1999), the Board returned to its decades-long position when it reversed *Big Rivers*, finding that the Board there failed to give appropriate weight to the “quasiprofessional, quasi-overseer” nature of electric utility dispatchers and placed too great an emphasis on the inherent complexity of the dispatchers’ duties and on the potential adverse consequences to the well-being and safety of the public and employees that might result from the dispatchers’ misjudgments. *Mississippi Power, supra* at 969-970. Applying the rationale of the charge nurse supervisory cases, the Board concluded that the

exercise of critical judgment by dispatchers based on their experience, expertise, know-how, or formal training and education did not amount to the exercise of supervisory judgment.

A few years after its decision in *Mississippi Power & Light*, the Board, in *Oakwood Healthcare, supra* at 686, clarified the meaning of the terms “assign,” “responsibly to direct,” and “independent judgment” under Section 2(11) of the Act.⁵ Thus, the Board’s ruling in *Oakwood Healthcare* further defined its interpretation of supervisory judgment previously set forth in *Mississippi Power* to include those judgments exercised as a result of professional expertise, so long as it was exercised in relation to one of the 12 indicia of supervisory authority.

The Board first applied *Oakwood Healthcare* to the utility industry when it revisited the supervisory status of electrical dispatchers in *Entergy Mississippi, Inc.*, 357 NLRB 2150 (2011). There, the Board held that a group of 25 dispatchers were not statutory supervisors because they did not assign work or responsibly direct employees. The Board reasoned that although the dispatchers had the authority to direct field employees in the step-by-step instructions of a switching order, and were held accountable for their own failures and errors, they were not accountable for the actions of the field employees they directed. As set forth in *Oakwood Healthcare*, such direction was only responsible if the dispatcher was held accountable for the performance of the field employee. *Oakwood Healthcare, supra* at 692. Further, the Board found that the dispatchers did not have supervisory authority to assign field employees under the *Oakwood Healthcare* standard because the assignment of those employees to trouble locations did not entail the exercise of independent judgment. As to the requirement that they direct the employees to a location or “place,” the Board noted that the location of the outage dictated where the employee would be assigned, and the field employees assigned to that particular area would handle the outage. With respect to whether they directed employees at a particular “time,” the Board found that although the dispatchers had the authority to assign overtime to field employees during outages, they could not *require* the employees to work the outage overtime assigned to them. *Golden Crest Healthcare, supra* at 729.

More recently, in *NLRB v. NSTAR Electric Company*, 798 F.3d 1 (1st Cir. 2015), the Court of Appeals, reviewing an order of the Board denying a request for review of an acting regional director’s decision and direction of election, found there was substantial evidence to support the conclusion that 13 transmission systems supervisors and three senior transmission outage coordinators were not statutory supervisors. Applying *Oakwood Healthcare, supra*, the court agreed that although these classifications of employees occasionally reassigned field employees to alternate locations during planned outage work and to trouble locations during unplanned outages, such assignments did not require independent judgment as they were controlled by detailed instructions and established call-out procedures. *Id.* at 13-14. Additionally, the court agreed that the transmission systems supervisors and senior transmission outage coordinators did not assign work within the meaning of Section 2(11) based on their dispatching of field employees to work that might require overtime because although they might authorize overtime work for field employees after discussion with the employees’ supervisors, the field supervisors possessed the full authority to assign and approve overtime for the field employees. *Id.* at 15.

⁵ See also *Croft Metals, Inc.*, 348 NLRB 717 (2006); *Golden Crest Healthcare Center*, 348 NLRB 727 (2006).

D. The Supervisory Status of Unit supervisors

As noted above, the party asserting supervisory status, the Employer, has the burden to produce sufficient evidence to show that unit supervisors exercise at least one of the supervisory indicia set forth in Section 2(11) of the Act, and that they do so utilizing independent judgment. The Employer contends that the unit supervisors discipline employees, assign work, responsibly direct employees, and reward employees, but the record evidence does not support these contentions.

As the Board stated in *Mississippi Power*, this judgment, which may be based upon their experience, expertise, training, or education, is not supervisory judgment unless it is exercised in relation to one of the 12 indicia of supervisory authority. *Oakwood Healthcare*, supra, *Mississippi Power*, supra, *Providence Hospital*, supra.

1. Assignment of Work

As described above, in *Oakwood Healthcare*, supra at 689, the Board stated that the term “assign” refers to “the act of designating an employee to a place (such as a location, department or wing), appointing an employee to a time (such as a shift or overtime period) or giving significant overall duties, i.e., tasks, to an employee.” Accordingly, designating an employee to a particular shift or assigning certain significant tasks would qualify as assignment. Unit supervisors do not designate or deploy employees to specific areas or provide them with the list of tasks they are to complete. Although unit supervisors may sometimes delegate work based on the experience level of an employee, they do not use independent judgment in doing so, but rather follow pre-planned procedures. Mere ad hoc instructions to perform discrete tasks does not qualify as assignment in the statutory sense. See *Cook Inlet Tug & Barge*, 362 NLRB No. 111 (2015), citing *Brusco Tug & Barge*, 359 NLRB No. 43, slip op. at 6 (2012), *Oakwood Healthcare*, 348 NLRB at 689, and *Frenchtown Acquisition v. NLRB*, 683 F.3d 298, 311-312 (6th Cir. 2012). Unit supervisors may sometimes vary the order of tasks completed, but merely choosing the order in which to perform tasks does not constitute assignment. *Oakwood Healthcare*, supra at 689.

Unit supervisors do not schedule the shifts or hours of others, nor do they select which employees will be assigned to a particular task or direct them to a specific location.

Unit supervisors do not cancel scheduled work hours or are in any way involved in assigning overtime. Cf. *Entergy Mississippi*, supra, where even the authority to allocate overtime to field employees during outages, without more, does not equate to the assignment of work as it is not a requirement that particular employees work the overtime assigned to them. There is no evidence that unit supervisors may even authorize overtime when necessary. See *NLRB v. NSTAR Electric Co.*, supra at 15 (substantial evidence supported acting regional director’s conclusion that transmission systems supervisors and senior transmission outage coordinators did not assign within the meaning of Section 2(11), where they did not assign field employees to regular shifts or reporting times, and although they might authorize overtime work

for field employees after consulting with those employees' supervisors, the field supervisors possessed the full authority to assign and approve overtime for the field employees).

Consequently, there is insufficient evidence to establish that coordinators assign work within the meaning of Section 2(11) of the Act.

2. Responsible Direction

"Direction" encompasses both monitoring employee performance to make certain that tasks are performed correctly, and making discrete assignments of specific jobs. *Golden Crest Healthcare Center, supra* at 730. Making discrete assignments has been defined as deciding what job will be performed next or who shall do it, provided that such direction is both responsible and carried out with independent judgment. *Oakwood Healthcare, supra* at 694. The evidence must establish that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. Here, then, the Employer must show that unit supervisors exercise independent judgment in deciding whether field employees' performance meets appropriate standards; that they can take corrective action in response to deficient performance; and that they are held accountable for employees' performance and can suffer adverse consequences if those employees perform poorly. *Community Education Centers, supra*, 360 NLRB No. 17, slip op. at 1 (2014). The Employer has not made that showing.

Ample evidence showed that the role of the unit supervisor is procedure driven, and there are numerous procedures for carrying out the work. There are instructions and procedures for all the work completed, and delegation of work is carried out pursuant to those instructions. Unit supervisors have the ability to tell an employee to stop working on a specific task when an error called a "human performance event" is made. Usually, the error is self-reported. Because the direction to cease work occurs every time such an error is made, and the directions for doing so are set out in a written protocol, unit supervisors do not exercise independent judgment in redirecting the employee's work.

Although unit supervisors monitor and assist operators in keeping up with the qualifications necessary to maintain their jobs, i.e., completing a certain amount of training within a three-year time period, there was no evidence that unit supervisors are held accountable for an operator who falls behind. Instead, shift managers are ultimately responsible for the completion of operators' qualifications.

Although unit supervisors transmit condition reports about errors, the Employer failed to establish that unit supervisors evaluate whether a specific employee or crew's performance met the Employer's standards, or that they have the independent authority to take any corrective action if they find deficient performance. Rather, the report is reviewed and "lessons learned" are generated from pre-determined categories, and the unit supervisor transmits the report to a manager. The report is categorized by a manager according to federal regulations. The Employer failed to demonstrate that unit supervisors are held accountable for the errors in condition reports. Although there was evidence that a unit supervisor may be "downgraded" under the incentive compensation plan due to crew performance based on data contained in a pie chart that

is generated at least in part by data gleaned from condition reports, there is no evidence regarding what percentage the incentive compensation plan has on overall wages. There was insufficient evidence showing the extent to which unit supervisors were impacted by crew performance, how often “downgrades” occur, or whether unit employees are also impacted by crew performance. In addition, the ICP notes showed that, despite negative crew performance, a unit supervisor may also be “adjusted up.”

Therefore, I find that the Employer has failed to establish that Unit supervisors responsibly direct the job performance of any employees. *Oakwood Healthcare, supra* at 695; *Golden Crest Healthcare Center, supra* at 731-732.

3. Discipline

The Employer has not carried its burden in demonstrating that the petitioned-for employees have in any manner disciplined employees. This lack of evidence is construed against the Employer, as the party asserting supervisory status. *Elmhurst Extended Care Facilities, Inc.*, 329 NLRB 535, 536, fn. 8 (1999).

Although the Employer presented evidence of its constructive discipline policy in tandem with the job description of a unit supervisor purporting to show its duties of monitoring various activities, 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); See also *Chevron Shipping Co.*, 317 NLRB 379, 381 fn. 6 (1995) (conclusory statements without specific explanation are not enough). Moreover, even by its own terms, the Employer’s disciplinary policy contemplates bargaining unit/non-statutory supervisors to serve in the limited role “supervisor” for the sake of the disciplinary process.

The Board cautions against finding supervisory authority based only on infrequent instances of its existence. *Family Healthcare, Inc.*, 354 NLRB 254 (2009) (overruled on other grounds); *Golden Crest Healthcare, supra* at 730, fn.9. To separate straw bosses from true supervisors, the Act prescribes that the exercise of supervisory indicia be in the interest of the employer and requires the use of independent judgment. Accordingly, “the exercise of some supervisory authority in a merely routine, clerical, perfunctory or sporadic manner does not confer supervisory status on an employee.” *Somerset Welding & Steel, Inc.*, 291 NLRB 913 (1988), quoting *Feralloy West Co.*, 277 NLRB 1083, 1084 (1985). There was limited testimony showing that unit supervisors may enter negative comments, along with positive or neutral ones, in an employee’s contact log. A shift manager may then use these comments as a basis for discipline. Unit supervisors may also recommend discipline after the review of a condition report. However, they have no authority to independently administer the discipline, as it must be reviewed by at least three levels of managers, and may be rejected by any of these levels or by the Human Resources department. There was no evidence of how frequently unit supervisors recommend discipline, and to the contrary, one of the two unit supervisors who testified said discipline had never been administered pursuant to his recommendation. Further, the record

showed that questions asked by a unit supervisor pursuant to a condition report inquiry are standard, and that the “lessons learned” are generated from a drop-down menu.

4. Reward

Pursuant to the Employer’s “Power Point” system, which consists of “Boss Points” and “Peer Points,” the record establishes that at one point, a unit supervisor divided the equivalent of thirty-eight dollars in “Boss Points” between three employees. Little else can be said with certainty about “Boss Points” other than the fact that unit supervisors are allocated *some* amount of “Boss Points” to dole out. The witnesses were uncertain about the facts behind “Boss Points” and the Employer failed to introduce documents that could have established the contours of this system. For example, at one point, unit supervisor Mark Hamilton testified that he can give boss points every month, but he later testified that he does not know how often “Boss Points” are “replenished,” in part because both “Boss Points” and “Peer Points” are provided to unit supervisors. Hamilton testified that he could not recall how many “Boss Points” he gave out, and provided only one example where he doled out 5,000 boss points (about \$38.50) between three employees when he realized he had the points remaining in his bank.

“Peer Points” appear to function exactly as “Boss Points.” Each employee is allotted 3,000 “Peer Points” each month and can dole them out as he sees fit. Thus, in terms of the Employer’s “Power Point” system, the only difference between unit supervisors and undisputed statutory employees is that unit supervisors have more “Power Points” to give out than other employees.

Where there is no evidence that “Boss Points” are more than sporadically given to employees, where they are indistinguishable from “Peer Points” given between employees, and where they are more of a novelty than a factor in employee compensation, I cannot find that the issuance of “Boss Points” confers supervisory status on the unit supervisors. *See Veolia Trans.*, 363 NLRB No. 188, slip op. at 9-10 (May 12, 2016) (no indication recording favorable observation resulted in positive consequence for employee, and even assuming distribution of \$25 gift cards could constitute reward, evidence did not establish this was more than sporadic or involved independent judgment); *Veolia Trans. Svcs.*, 363 NLRB No. 98, slip op. at 11 (Jan. 20, 2016) (assuming one-time \$100 award is sufficient to establish authority to reward, supervisory status not shown due to lack of evidence regarding the reward system).

5. Other Indicia of Supervisory Status

As discussed above, there was no evidence that coordinators had any authority to complete any of the other 12 supervisory functions. There is no evidence that unit supervisors have the authority to hire or effectively recommend the hire of other employees; to promote, lay off, transfer, or recall employees; or to grant employees time off or authorize overtime. They do not evaluate employees or adjust their grievances.

Unit supervisors do not hold different degrees or have different academic requirements than other employees. There is no evidence that they wear different clothing or park in different areas. The only secondary indicia that weigh in favor of supervisory status include their title, their larger ICP-based bonuses, and the fact that they sit on elevated platforms. The limited

secondary indicia favoring supervisory status are insufficient to remove unit supervisors from the protection of the Act. *Veolia Transp. Svcs.*, 363 NLRB No. 188, slip op. at 12 (May 12, 2016).

In sum, the Employer has not met the burden requisite to exclude the petitioned-for employees from the protection of the Act.

E. Appropriate Voting Group

When determining an appropriate unit, the Board delineates the grouping of employees within which freedom of choice may be given collective expression. At the same time it creates the context within which the process of collective bargaining must function. Therefore, each unit determination must foster efficient and stable collective bargaining. *Gustave Fisher, Inc.*, 256 NLRB 1069 (1981). On the other hand, the Board has also made clear that the unit sought for collective bargaining need only be an appropriate unit. Thus, the unit sought need not be the ultimate, or the only, or even the most appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723, at 723 (1996). As a result, in deciding the appropriate unit, the Board first considers whether the unit sought in a petition is appropriate. *Id.* When deciding whether the unit sought in a petition is appropriate, the Board focuses on whether the employees share a “community of interest.” *NLRB v. Action Automotive*, 469 U.S. 490, 494 (1985). In turn, when deciding whether a group of employees shares a community of interest, the Board considers whether the employees sought are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *United Operations, Inc.*, 338 NLRB 123 (2002). Particularly important in considering whether the unit sought is appropriate are the organization of the plant and the utilization of skills. *Gustave Fisher, Inc.*, supra at fn. 5. With regard to organization of the plant, the Board has made clear that it will not approve of fractured units – that is, combinations of employees that are too narrow in scope or that have no rational basis. *Seaboard Marine*, 327 NLRB 556 (1999). However, all relevant factors must be weighed in determining community of interest.

Although the Employer has not argued to the contrary, I find that the unit supervisors share a community of interest with the operation, production and maintenance employees in the established bargaining unit and constitute a distinct segment of the Employer’s employees which is an appropriate voting group. Unit supervisors interact regularly with other bargaining unit employees when they monitor and assist in the safe operations of the reactors. The unit supervisors are functionally integrated with the existing bargaining unit employees as they all share a common goal of maintaining and operating the Employer’s equipment safely and effectively. See *Transerv Systems*, 311 NLRB 766 (1993).

The unit supervisors have comparable work duties and responsibilities, and they share similar skills and qualifications. The unit supervisors work in the same buildings and field space as the existing bargaining unit employees, are subject to the same security procedures, are salaried, and work the same schedules. The unit supervisors and bargaining unit employees also

share common supervision insofar as they are overseen by the same shift managers, operations managers, and chief nuclear officer; and they share the same health and retirement benefits.

Based on the above, including the common supervision, regular contact, and shared purpose, I find that unit supervisors share a community of interest with the employees in the existing bargaining unit. *United Operations, supra*. I further find that the unit supervisors constitute an "identifiable, distinct segment so as to constitute an appropriate voting group," which shares a community of interest with the employees in the existing bargaining unit. Accordingly, an *Armour-Globe* election is appropriate. *Warner-Lambert Co., supra; International Bedding, supra*. Based on the foregoing, I shall order an *Armour-Globe* election to determine whether unit supervisors wish to be included in the existing bargaining unit.

V. CONCLUSIONS AND FINDINGS

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

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization which claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time Unit Supervisors and Senior Reactor Operator (SRO) Instructors, who possess an SRO license, employed in the Operations Department to include the Control Room, Nuclear Support Maintenance Operating Facility (MOF), Nuclear Training Facility (NTF) and Maintenance Operations Support Trailer (MOST), at the Employer's Wadsworth, Texas facility.

EXCLUDED: All other employees, office clerical employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to

be represented for purposes of collective bargaining by **International Brotherhood of Electrical Workers, Local 66** as part of the existing unit of employees in the following departments represented by International Brotherhood of Electrical Workers, Local 66: Radiation Protection Technicians, Performance Technicians, Chemistry Technicians, Material Technicians, Metrology Technicians, Maintenance Planners, Operation Support Procedure Writers, Work Week Schedulers, Electricians, Mechanics, I&C Technicians, Material Handlers, Head Material Handlers, Head Operators, Head Radiation Protection Technicians, Head Performance Technicians; Reactor Operators (RO), Work Control Specialists, Work Week Managers, RO/SRO License Operator Trainees, and Senior Reactor Board Operators.

A. Election Details

The election will be held on March 14, 2018, from 5:00 a.m. to 9:00 a.m. and 5:00 p.m. to 7:00 p.m. at the Employer's Joint Information Center located on Highway 60 in Bay City, Texas.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending March 4, 2018, 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 such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Also, eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

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(l) 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 email 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 March 9, 2018. The list must be accompanied by a certificate of service showing service on all parties. **The Region 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.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named 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. 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 of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying 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 nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

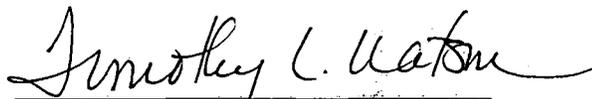
RIGHT TO REQUEST REVIEW

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, 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 20570-0001. 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 the 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 at Fort Worth, Texas, this 7th day of March, 2018.



Timothy L. Watson
Regional Director
Region 16
National Labor Relations Board
819 Taylor Street, Room 8A24
Fort Worth, Texas 76102