

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

**STP NUCLEAR OPERATING
COMPANY**

Employer,

Case 16-RC-214839

and

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

Petitioner.

STP NUCLEAR OPERATING COMPANY'S REQUEST FOR REVIEW

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STP NUCLEAR OPERATING COMPANY'S REQUEST FOR REVIEW

Pursuant to Section 102.67(c) and 102.69(c) of the Rules and Regulations of the National Labor Relations Board (the "Board"), STP Nuclear Operating Company ("STP" or "Employer"), files this Request for Review of the Decision and Direction of Election issued on March 7, 2018 by the Regional Director for Region 16 (hereinafter "March 7, 2018 Decision"). As outlined in the Rules and Regulations, if the Regional Director issues a Decision and Direction of Election, a request for review may be filed at any time following the Regional Director's decision until 14 days after a final disposition of the proceeding by the Regional Director. A "final disposition" occurs when the regional director issues a certification of representative, a certification of results, a dismissal, or an order to open and count challenged ballots. NLRB Rules and Regulations 102.69(c). In this case, the certification of representative issued on March 22, 2018, so this request is timely.

This Request should be granted based upon the following grounds:

- Substantial questions of law and policy are raised because of the absence of officially reported Board precedent related to arguments set forth herein concerning supervisory status of the Unit Supervisors in nuclear power plants, a highly regulated industry where Unit Supervisors (or other nuclear power plants' equivalents) are consistently excluded from bargaining units.
- The Regional Director's decisions on substantial factual issues concerning unit determination issues are clearly erroneous and prejudicially affect the rights of the Employer.

I. BACKGROUND AND BASIC OVERVIEW

International Brotherhood of Electrical Workers, AFL-CIO Local 66 filed its Petition in the above captioned matter on February 14, 2018. The Union sought an election in the following unit:

Included: All full time Senior Reactor Operators at STPNOC (South Texas Project Nuclear Operating Company).

Excluded: All other employees, supervisors, and guards as defined in the National Labor Relations Act.

Bd. Ex. 1(a).

The Employer challenged the petitioned-for unit, and a hearing officer of the Board held a hearing in this matter on February 26, 2018 to determine the scope of the unit sought by the Union. (Regional Director Dec. p. 1). STP presented testimony and documentary evidence that established the petitioned for Senior Reactor Operators/Unit Supervisors (hereinafter, “Unit Supervisors”) met the definition of supervisors under Section 2(11) of the Act.

In his March 7, 2018 Decision, the Regional Director concluded that none of the members of the petitioned-for unit met the definition of statutory supervisors and ordered an election, which was held on March 14, 2018. The Regional Director’s decision ignored the significant evidentiary record related to the supervisory status of the entire unit and should be overturned.

II. ISSUE

- A. Whether the Board should overrule the Regional Director’s decision that Unit Supervisors meet the statutory definition of supervisors under Section 2(11) of the Act? Specifically, whether these individuals responsibly direct, assign work to, discipline, and/or reward the other, already-represented employees at the STP operating facility in Wadsworth, Texas?

III. STATEMENT OF THE FACTS

A. Background Facts

STP Nuclear Operating Company is a nuclear power generation company that provides electricity to approximately two million residential customers by operating two nuclear reactors

at a facility in Wadsworth, Texas. (Tr. 21; Bd. Ex. 2). 475 of the employees at its Wadsworth facility are represented in a single unit by the Union. (Tr. 33; Bd. Ex. 2).

STP's operations can be properly divided into three different "silos": (1) Engineering, (2) Operations, and (3) Site. (Co. Ex. 1; Tr. 18). Relevant to this proceeding are the employees in the Site silo, which is headed by the Vice-President of Site, James Connolly. (Co. Ex. 1.) The following is a brief summary of the management structure that the Unit Supervisors fall under at STP in the Site group.

Michael Schaefer is the Plant General Manager and reports to James Connolly. (Co. Ex. 1). Reva Smith, Executive Assistant, William Jefferson, Director of Operations, Chancey Pence, Manager of Chemistry, Clayton Stone, Manager of Health Physics, Rudy Statsny, Manager of Maintenance, and Michael Berrens, Manager of Outage and Work Control, report to Michael Schaefer. (Co. Ex. 1). Relevant to the instant case are the employees who report to William Jefferson, Director of Operations: Robert Lane, Manager of Unit Operations, Chris Younie, Manager of Integrated Work Management Center and Outage, Michael Uribe, Manager of Production Support and Programs, and Ronald Gibbs, Manager of Training and Support. Co. Ex. 1.

Twelve Shift Managers report to Robert Lane. (Co. Ex. 1). Ten of the twelve Shift Managers oversee crews of approximately ten individuals who are responsible for monitoring and operating the nuclear reactor. (Co. Ex. 1; Tr. 40-41). The other two shift managers are responsible for general oversight of all crews to ensure the safety of operations. (Tr. 40-41). Under the Shift Manager for each crew are two Unit Supervisors who are Senior Reactor Operators. (Tr. 40). Approximately two to three Reactor Operators and six to seven Plant Operators report to the Unit Supervisors. (Tr. 40.) The Plant Operators are non-licensed

operators. (Tr. 40.) In each crew, one Unit Supervisor supervises the Reactor Operators while the other supervises the Plant Operators. (Tr. 58).

B. Physical Layout

The crews work inside a section of the plant known as the “protected area.” (Tr. 31). To enter this section of the facility, employees enter a fenced-in area, walk through metal detectors, an explosive detector, and have everything on their person go through an x-ray machine. (Tr. 35). Each crew works in a Control Room in the Electrical Auxiliary Building at the STP facility. (Tr. 58-59). Each Control Room is identical, and is approximately 50 by 60 feet. (Tr. 62). In the Control Room, there are two different control stations—the primary station and the secondary station. (Tr. 60-61). The primary station operates the nuclear reactor itself, while the secondary station controls the turbine generator. (Tr. 60-61). The Reactor Operators work on the floor of the Control Room, monitoring the controls, performing manipulations on the components, and responding to alarms as necessary. (Tr. 62-63). The Plant Operators are the “eyes and ears of the Reactor Operators,” and are not in the Control Room, but are spread throughout different areas of the plant monitoring and manipulating equipment. (Tr. 65). During the shift, one Unit Supervisor sits on an elevated platform above the Reactor Operators overseeing all of the work being performed in the Control Room, while the other supervises the Plant Operators throughout the plant. (Tr. 61). The Shift Manager for each crew has an office in the Control Room where he or she sits and monitors the activities in the Control Room. (Tr. 64, 277).

C. Unit Supervisors’ Duties

All Unit Supervisors hold a senior reactor operator license. (Tr. 261). The federal regulation governing the licensing of senior reactor operators explicitly states that senior reactor operators are individuals who are licensed to “manipulate the controls of a facility and to *direct the licensed activities of licensed operators.*” (Co Ex. 6) (emphasis added). The license holder

goes through an 18-month program and is issued an individual license to be a senior reactor operator by the Nuclear Regulatory Commission. (Tr. 47-48). The difference between a Senior Reactor Operator/Unit Supervisor and a Reactor Operator is that a Reactor Operator is not granted the authority by the Nuclear Regulatory Commission to direct the activities of another licensed operator, whereas a Senior Reactor Operator/Unit Supervisor is. (Co. Ex. 6).

Additionally, there are several current Unit Supervisors who also are qualified and act as Shift Managers on an as needed basis. (Tr. 191, 219). All Unit Supervisors are paid on a different scale from Reactor Operators and unlicensed operators, and they receive significant additional bonuses. (Tr. 102).

The Nuclear Regulatory Commission's regulations require that a NRC licensed Senior Reactor Operator be in each control room at all times when the reactor is operating to direct the activities of the Reactor Operators and that there be an third Senior Reactor Operator on shift at all times. (Co. Ex. 4). The Unit Supervisors are assigned as the Senior Reactor Operators required to be in the control room. (Tr. 261-62).

1. Unit Supervisors Direct and Assign Work

Unit Supervisors commence their shift by reviewing and analyzing the Authorized Work Schedule. (Tr. 134). The Authorized Work Schedule is a schedule that is pre-planned in advance of the day's scheduled work, and outlines the work activities and work orders for a given day. (Tr. 191). As part of the job, the Unit Supervisor will review these pre-planned work activities and work orders to determine whether plant conditions are proper for the performance of the scheduled work. (Tr. 77). Even though work is scheduled in advance, work must be authorized by the Unit Supervisor before it can be performed. (Tr. 140-41). Mark Hamilton, a Unit Supervisor at STP, testified that although the

authorized work schedule has a desire to start time to commence work . . . we can't always meet start times or finish times based on—sometimes other equipment is not returned to service yet, or we have something else go wrong with activities, and/or sometimes the schedule has too much work, say, in the morning time and it's becoming a burden to the Reactor Operators with distractions and/or just coming—the workload is too high so I'll redistribute the work and/or deny work to either postpone it to later in the shift, later that day after lunch or even the following day.

(Tr. 140-41). Before the start of the shift, the Unit Supervisors also go through the schedule, determine what works together and verify that the Reactor Operators scheduled are qualified to perform all of the needed tasks for the day. (Tr. 222). For example, Hamilton testified that

for my Reactor Operators, or the Plant Operators to stand their watch, they have to be qualified. So I don't want to have the case where I have got three Reactor Operators to get relieved, and one of my guys is not qualified to take the watch, so we have to constantly verify our qualifications. . . . And then we will verify that everybody—at least my crew that is supposed to be there that day meets the qualifications.

(Tr. 222). So while the daily schedule is typically regimented, Unit Supervisors frequently deviate from the Authorized Work Schedule if they believe it is required. (Tr. 140-41, 222).

Following the review of the schedule, the Unit Supervisor will then convene a meeting of the Reactor Operators in his or her crew and assign tasks for them to perform throughout the shift in accordance with the Authorized Work Schedule. (Tr. 136). When determining which tasks to assign to which Reactor Operators, the Unit Supervisors consider the nature of the tasks and the ability of the Reactor Operators. (Tr. 255-56). Hamilton testified that “every Reactor Operator has certain abilities. Some guys I can pile almost everything on them, and they can handle it successfully. Some guys can only run one task at a time. So part of that is knowing -- is knowing your Reactor Operator . . . their capabilities, and/or their stress levels, and then leveling work based on that.” (Tr. 255-56).

Once the work has been approved and distributed by the Unit Supervisor, the crew then begins performing the assigned tasks in the Control Room with the oversight of the Unit Supervisor. (Tr. 61, 136, 140). Unit Supervisors are required to be in the main control room at all times, which is located in the Electrical Auxiliary Building within the protected area. (GC. Ex. 4; Tr. 59).¹ During the shift, one Reactor Operator, the Primary Operator, is tasked with directly monitoring the reactor at all times, and the other, the Secondary Operator, is responsible for all the other control room monitoring and manipulation of equipment not directly related to the reactor. (Tr. 61, 140). As the tasks are being performed, the primary responsibility of the Unit Supervisor is to direct all activities associated with operating the nuclear power plant. (Tr. 136). He or she oversees all the activities that the Reactor Operators perform during the shift. (Tr. 136). Those activities include manipulations to the reactor itself and the authorization of testing safety-related equipment. (Tr. 136).² Specifically, Hamilton testified that throughout the shift the crew performs reactivity manipulations where “the primary Reactor Operator requests the reactivity³ change in our reactor. I direct the action to take place, and then they perform that, and I provide oversight for that.” (Tr. 136).

Additionally, there are instances when the Unit Supervisor must deviate from the normal operating procedures due to plant conditions. (Tr. 146). When a crew has to deviate from its

¹ In fact, the regulations governing the conduct of Senior Reactor Operators states that their continued presence in the control room is required to ensure “[a]n individual is available *who can provide the oversight function of the supervisor* and improve the probability of correctly detecting abnormal events early enough to mitigate potential adverse consequences.” (Co. Ex. 4) (emphasis added).

² The regulations governing the conduct of Senior Reactor Operators further outlines their duties, providing that “[t]he senior operator in the control room should spend most of the time in that portion of the control room where there is direct and prompt access to information on current unit conditions and where the senior operator can directly supervise and communicate with the operator or operators at the controls.” (Co. Ex. 4).

³ This is misidentified in the transcript as “activity.” (Tr. 136).

normal schedule due to problems at the plant or to prevent impending issues from occurring, this is called an “off-normal” procedure. (Tr. 146-47). For instance, Hamilton testified about an example where he was required to exercise discretion and not follow a scheduled procedure in order to prevent harm to the plant, testifying that “an Op guy took a watch⁴ from the previous shift, and as I stepped into the procedure, the way the procedure would read as written it would undo what we did to help the plant. I mean so it would have been a bad thing to follow the procedure as written And so we did that, and we made the decision that we needed to do a deviation from our off-normal procedure to support the plant's needs.” (Tr. 147). Hamilton also testified that there was another instance where he had to deviate from normal procedures after the plant experienced a “circ water pump and a sheared shaft.” (Tr. 147). Unit Supervisors are required to use their own decision-making and experience to forego scheduled and pre-planned processes to maintain the integrity of the reactors. (Tr. 146-47).

Unit Supervisors also have specific functions in an emergency situation as part of STP's emergency response plan. (Tr. 185-87). When an emergency situation occurs within the crew or in the plant, the Shift Manager's duties are altered and he or she stops his or her oversight of the crew and focuses exclusively on emergency response. (Tr. 186). During this time, the Unit Supervisor takes over the responsibilities of the Shift Manager in the Control Room, and, as Hamilton testified, “owns” the Control Room. (Tr. 187).

2. *Unit Supervisors Discipline and Recommend Discipline for Reactor Operators and Plant Operators*

In addition to directing, overseeing, and assigning the work of the Reactor Operators, Unit Supervisors are also responsible for disciplining and/or recommending discipline when performance issues with Reactor Operators arise in the Control Room or with Plant Operators

⁴ This word is misidentified in the transcript as “wash.” (Tr. 147).

working in the plant. When instances that may require discipline occur, Unit Supervisors will conduct an investigation into the misconduct. (Tr. 123, 286). The Unit Supervisor will begin the investigation by interviewing the employees, asking “[w]hat happened? What did you do? [And] [t]he employee tells him what he did.” (Tr. 123). Following the investigation, a Unit Supervisor will summarize the conduct and the results of the investigation on a form, recommend a particular type of discipline, and then forward the form to his supervisor and Human Resources for review. (Tr. 195-96, 286). Human Resources and the Unit Supervisor’s supervisor will review the recommendation by the Unit Supervisor to ensure that STP’s constructive discipline policy is being consistently enforced across the Company. (Tr. 123). While Human Resources and the Unit Supervisor’s supervisor have the ability to deviate from the Unit Supervisor’s recommendation, Hamilton testified that he never had an instance where his recommendation was not followed. (Tr. 214). STP’s constructive discipline policy requires that discipline, counseling and positive performance be documented on an Employee’s Contact Log. (Tr. 137, Co. Ex. 10, 11, 12). Unit Supervisors note issues with a Reactor Operator’s or Plant Operator’s performance in the Contact Log, and will consult prior Contact Log entries when recommending discipline. (Tr. 159). The Contact Log identifies the level of discipline issued to the employee. (Co. Exs. 11, 12). STP’s constructive discipline policy includes the following levels of discipline: Oral Reminder, Written Reminder, Decision Making Leave, Suspension, Final Warning, and termination. (Co. Ex. 10). Furthermore, the Unit Supervisor uses these discipline records as an input into the determination of the amount of the annual bonus incentive received by the Reactor Operators and Plant Operators. (Jt. Ex. 1 at p. 46; Tr. 155-58).

Also, once an individual receives their SRO license and is therefore able to be a Unit Supervisor, he or she will undergo a training designed for supervisors to teach them how to effectively implement the Company's discipline policy. (Tr. 79, 161-62; Co. Ex. 3).

3. *Unit Supervisors Reward Reactor Operators and Plant Operators for Good Performance*

Unit Supervisors also regularly reward Reactor Operators for their performance. STP maintains a program called "Boss Points," wherein supervisors can award their subordinates for exceptional performance. (Tr. 169, 319). Under the Boss Points program, Unit Supervisors are allotted a certain amount of Boss Points based on their number of direct reports, which they can then distribute to their Reactor Operators and Plant Operators. (Tr. 169, 319). The Reactor Operators and Plant Operators can then redeem these Boss Points for clothing, gift cards, or food. (Tr. 170). Unit Supervisors award Boss Points in their sole discretion and can decide which of their employees to give the points to, how many points to give, and what behavior to reward. (Tr. 171). For example, Hamilton testified that he typically awards Reactor Operators who exhibit "questioning attitude, engagement, or maybe going beyond and over the top in the job, or just responding well to a certain situation." (Tr. 169).

IV. ARGUMENT

The Unit Supervisors are supervisors under Section 2(11) of the Act, 29 U.S.C. § 152(11), which requires their exclusion from the petitioned-for unit. Section 2(11) of the Act states:

The term "supervisor" means 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 address 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.

It is well-settled and frequently emphasized that the analysis of supervisory status under Section 2(11) must be read in the disjunctive; possession of any one of the listed indicia is sufficient to confer supervisory status. *See, e.g., Venture Indus., Inc.*, 327 NLRB 918 (1999). Furthermore, it is the *possession* of authority to engage in any of the functions listed in Section 2(11), even if this authority has not yet been exercised, that determines whether an individual is a supervisor. *Wal-Mart Stores*, 340 NLRB 220, 223 (2003); *Fred Meyer Alaska, Inc.*, 334 NLRB 646, 649 Fn.8 (2001); *Pepsi-Cola Co.*, 327 NLRB 1062, 1063 (1991). The burden to establish supervisory authority is on the party asserting it. *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006).

Based on the undisputed evidence presented at the hearing, the Unit Supervisors possess multiple indicia of supervisory authority as defined in the Act. Specifically, they are vested with the authority to assign and responsibly direct the employees on their shifts based on their own judgment as to priority, skill, and workload. (Tr. 136, 140-41, 188, 255-56). In fact, similar control room supervisors at nuclear power facilities around the country are bound by the same regulations and protocols as the individuals at STP and there is no precedent for defining these control room supervisors as covered by the Act. (Co. Ex. 6; Tr. 81). Unit Supervisors also have the authority to recommend discipline be issued to employees and recommend the severity of discipline, as well as reward employees for good job performance. (Tr. 123, 169-71, 195, 214).

In addition to the foregoing criteria, these individuals also possess a number of secondary indicia, bolstering their status as supervisors. (Co Exs. 3, 6, 7, 8; Tr. 64, 78, 93, 102). The Regional Director agreed in his decision that there were several secondary indicia of supervisory status, including the Unit Supervisor's title, their larger incentive based compensation bonus, and the fact that Unit Supervisors sit on elevated platforms above the Reactor Operators. (Regional

Director Dec. p. 13; Tr. 64, 102). However, the Regional Director completely ignored the supervisory training that is required of these individuals, by both STP and independent regulatory agencies. (Co Exs. 3, 6, 7, 8; Tr. 78, 93, Regional Director Dec. p. 3-4, 13-14). These documents highlight that, without question, STP, and the nuclear industry more broadly, consider the work of the Unit Supervisors to be supervisory in nature. (Co Exs. 3, 6, 7, 8). While not conclusive, these secondary indicia—coupled with the ability to assign work, direct work, reward good performance, and discipline poor performance—further demonstrate Unit Supervisors’ status as supervisors under the Act. *See Starwood Hotels & Resorts Worldwide, Inc., d/b/a Sheraton Universal Hotel & Unite Here Local 11*, 350 NLRB 1114, 1115 (2007).

A. The Regional Director ignored the clear weight of evidence showing that Unit Supervisors assign work.

The record evidence, which was ignored by the Regional Director (Regional Director Dec. p. 3, 10-11), demonstrates that the Unit Supervisors assign work to Reactor Operators and Plant Operators on their shifts using independent judgment. The Board addressed the statutory term “assigned,” in Section 2(11) of the Act in *Oakwood HealthCare, Inc.*, 348 NLRB 686 (2006). The Board concluded 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.” *Id.* at 689. Thus, “the decision or effective recommendation to affect place, time or overall tasks—can be a supervisory function.” *Id.* at 689. In this case, the evidence overwhelmingly supports the conclusion that Unit Supervisors assign work, and thus are statutory supervisors under the Act. (Tr. 136, 140-41, 255-56).

Unit Supervisors give significant, not just routine, tasks to employees on a daily basis. (Tr. 136, 140-41, 255-56). The assignment of work by the Unit Supervisor to the Reactor

Operators starts at the beginning of the work day. (Tr. 136). Before the Reactor Operators begin their shift, the Unit Supervisor will “assign Task Owners for different jobs” and determine whether Reactor Operators are bringing equipment back to service, whether the crew will perform surveillances on equipment, and whether to remove equipment from service to the Plant Operations. (Tr. 136). Additionally, during the shift, the Unit Supervisor will “hand off work” to Reactor Operators and oversee their duties. (Tr. 136). The Unit Supervisor also directs Reactor Operators to perform reactivity manipulations and oversees the Reactor Operators as they perform the manipulations. (Tr. 136). Unit Supervisors also have the ability to determine the timing of work performed by Reactor Operators. (Tr. 140-41). For example, if the Unit Supervisor determines that the workload for the crew is too high, the proper equipment is not available to perform certain tasks, or something has gone wrong with activities the crew is performing, the Unit Supervisor may, at his or her discretion, redistribute the work within the crew, deny the work completely, or reschedule the work to be performed at a later time or day. (Tr. 140-41).

Unit Supervisors also engage in assignment of work when deciding which tasks to assign to Reactor Operators. (Tr. 140, 255-56). Hamilton testified that Unit Supervisors exercise independent judgment when determining which Reactor Operators to assign to certain tasks by analyzing the nature of the tasks, how much work the Reactor Operator is already responsible for, and the Reactor Operator’s individual capabilities. (Tr. 255-56). Specifically, Hamilton testified that

every Reactor Operator has certain abilities. Some guys I can pile almost everything on them, and they can handle it successfully. Some guys can only run one task at a time. So part of that is knowing . . . their capabilities, and/or their stress levels, and then levelizing work based on that. Now, if I understand a certain individual can only do one job at a

time . . . I am not going to pile as much on to him, as I would another Reactor Operator, even though he is the extra Reactor Operator.

(Tr. 255-56). Unit Supervisors exercise this discretion in assigning tasks in order to levelize work, reduce the stress levels of their direct reports, and to ensure the crew is successful and does not make mistakes. (Tr. 255-56). Hamilton further testified that there have been instances where he has noticed Reactor Operators becoming overwhelmed with certain tasks, and he has to evaluate whether to redistribute tasks or swap Reactor Operators in order to equalize the workload and relieve the overwhelmed individual. (Tr. 140). Hamilton's unrebutted testimony definitively establishes Unit Supervisors not only assign certain tasks to employees, but use discretion in such assignments by evaluating the nature of the assignments, the Reactor Operator's current workload, and the overall ability of a Reactor Operator. Accordingly, the Regional Director erred in concluding the Unit Supervisors do not assign work under Section 2(11) of the Act.⁵

B. The Regional Director ignored the clear weight of evidence showing that Unit Supervisors responsibly direct work.

The Regional Director also ignored significant evidence of specific situations where the Unit Supervisors used independent judgment to responsibly direct other employees. (Regional Director Dec. p. 3-4, 11-12). "Responsibly direct" may involve "what job shall be undertaken next or who shall do it," but the person directing and performing the oversight of the employee must be accountable for the performance of the task. *Oakwood HealthCare*, 348 NLRB at 694. The Board observed, "to exercise independent judgment the individual must act, or effectively

⁵ Likewise, the Regional Director's finding that "[a]lthough 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," and that unit supervisors do not "select which employees will be assigned to a particular task" (Regional Director Dec. p. 10) has no factual basis and directly contradicts Hamilton's testimony regarding Unit Supervisor's duties.

recommend action, free of control of others and form an opinion or valuation by discerning and comparing data.” *Id.*; *See Reeves Bros.*, 277 NLRB 1568, 1579 (1986) (finding leads are Section 2(11) supervisors when they “direct the work of their crews using considerable independent judgment”); *see also Shaw, Inc.*, 350 NLRB 354, 355 (2007) (putative supervisor must do more than serve as a conduit for relaying management’s instructions); *RCC Fabricators*, 352 NLRB 701, 733-34 (2008), *abrogated by New Process Steel, L.P. v. NLRB*, 130 S. Ct. 2635 (2010) (explaining that the “power to assign significant overall tasks independent of the consensus style of management” is evidence of Section 2(11) status”).

There is compelling evidence that Unit Supervisors work to responsibly direct the other employees, as defined under *Oakwood Healthcare*. (Tr. 63-64, 136, 140-41, 188, 255-56, 271, 275-76, 304). It is undisputed that Unit Supervisors independently prioritize the work and assign employees to various jobs as needed and to minimize risks. (Tr. 136, 304). Hamilton testified that if a Unit Supervisor believes that the work scheduled to be done may jeopardize plant safety, overwhelm the crew or a Reactor Operator, or conflict with work already in progress, he may refuse to allow it to proceed or reschedule it for a later time or date. (Tr. 140-41).⁶ The record evidence also shows that as issues arise within the facility or if the reactor needs to be quickly shut down in the event of an emergency, the Unit Supervisor directs the actions of the Reactor Operators using the Unit Supervisor’s own judgment, experience, and training. (Tr. 188). This supervisory role is consistent with the regulations governing the conduct of Unit Supervisors, which provide that their presence in the Control Room is required to ensure that “[a]n individual

⁶ Tillman, a witness for the Union, corroborated this testimony of Hamilton, stating “I do evaluate plant conditions and make sure that when they are performing work on the Authorized Work Schedule it is not going cause an issue with the plant, and that there is no—the jobs don’t conflict with each other and put us in—like say, a technical specification action that we don’t want to be in or weren’t anticipating being in. So, in those situations if that kind of thing happens, it would be my responsibility to—to stop that work from happening.” (Tr. 275-76).

is available who can provide the oversight function of the supervisor and improve the probability of correctly detecting abnormal events early enough to mitigate potential adverse consequences” and that Unit Supervisors “directly supervise and communicate with the operator or operators at the controls.” (Co. Ex. 4).

While the tasks of the Reactor Operator may be highly formalized, the Unit Supervisor maintains significant discretion in determining the work to be done by Reactor Operators in any given situation. (Tr. 255-56, 271).⁷ As noted above, when directing the work or assigning a specific task, a Unit Supervisor uses his or her discretion to evaluate the nature of the task, the Reactor Operator’s workload, and the Reactor Operator’s capabilities. (Tr. 255-56). Unit Supervisors also have the ability to “veto” the decisions of Reactor Operators when overseeing their work.⁸ (Tr. 271).

Further, the Regional Director failed to examine significant evidence that Unit Supervisors in the unit perform the roles of Shift Managers—who the parties stipulated are statutory supervisors under the Act (Tr. 43)—on a regular basis and may be called on to act as Shift Managers in the event of an emergency. (Tr. 186). In an emergency situation, a Shift Manager initially takes over the emergency response and “[t]he Unit Supervisor is running the

⁷ The Regional Director also failed to credit the testimony of Jefferson, who testified that “[t]he Unit Supervisor is the point person that provides approval of work at the power plant. So frequently work groups will come in the Control Room, have a conversation with the Unit Supervisor as to whether they can perform their job or not. And the Unit Supervisor makes that decision as to whether they can perform their job or not based on plant conditions and based on other activities that are going on at the time.” (Tr. 63-64).

⁸ While Tillman testified that he could not recall of an instance where he had to veto a decision of a Reactor Operator (Tr. 271), as discussed previously, the relevant question for determining supervisory status is not whether Unit Supervisors, in fact, have exercised a specific supervisory function. The Board has consistently held that it is the *possession* of authority to engage in any of the functions listed in Section 2(11), even if this authority has not yet been exercised, that determines whether an individual is a supervisor. *Wal-Mart Stores*, 340 NLRB 220, 223 (2003).

crew and working through the . . . emergency operating procedures” and “owns” the control room. (Tr. 187-88). Hamilton further testified that he has the ability to direct the shutting down of the plant in the event emergency circumstances require. (Tr. 188). The record evidence also identified instances where Unit Supervisors are trained and undergo training to perform as shift managers and fill in as shift managers when the regularly scheduled shift managers are absent from the Control Room. (Tr. 191, 219). The Board has long held that where an employee completely takes over the supervisory duties of another, he or she is regarded as a supervisor under the Act. *See Birmingham Fabricating Co.*, 140 NLRB 640 (1963). Accordingly, the Regional Director erred in concluding the Unit Supervisors do not responsibly direct work under Section 2(11) of the Act.

C. The Regional Director ignored the clear weight of evidence showing that Unit Supervisors discipline their direct reports.

There is also compelling evidence that the Unit Supervisors discipline and/or effectively recommend the discipline of Reactor Operators and Plant Operators. (Tr. 123, 195-96, 214). The Board has indicated that the “power to point out and correct deficiencies in the job performance of other employees does not establish the authority to discipline.” *In Re Franklin Hosp. Med. Ctr.*, 337 NLRB 826, 830 (2002). Rather, supervisory status requires actual reports that contain disciplinary recommendations, as opposed to mere reports of employee misconduct that does not lead to discipline. *Id.* The Board has also held that “[t]o confer 2(11) status, the exercise of disciplinary authority must lead to personnel action, without the independent investigation or review of other management personnel. *Beverly Health & Rehabilitation Servs.*, 335 NLRB 635 (2001) (holding that putative supervisor did not exercise disciplinary authority when evidence established instances where putative supervisor’s supervisor conducted her own separate investigation into misconduct, and overruled the putative supervisor’s recommendation). The

Board has found supervisory authority to effectively recommend discipline exists where the employer followed an employee's recommendations 75 percent of the time. *Venture Indus.*, 327 NLRB at 919.

STP presented ample evidence to establish that Unit Supervisors engage in the discipline of employees within the meaning of the Act. (Tr. 123, 195-96, 214). In fact, the Regional Director explicitly acknowledged that “[u]nit supervisors may . . . recommend discipline after the review of a condition report,” but discounted this supervisory authority on the grounds that the recommendation “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.” (Regional Director Dec. p. 12).⁹ In discounting this supervisory authority exercised by Unit Supervisors, the Regional Director ignored testimony establishing that the review of the discipline was for the purposes of ensuring continuity of discipline across the organization and not for the purposes of second guessing a Unit Supervisor's recommendation for discipline. (Tr. 214). In fact, Hamilton testified that he had never had an instance where his supervisors or Human Resources did not follow his discipline recommendation.¹⁰ (Tr. 214). Moreover, the evidence established that when a Unit Supervisor recommends discipline of an employee to his supervisor, he or she does not do so with an expectation that the supervisor will reverse the recommendation. (Tr. 214). Rather, the

⁹ By this logic employed by the Regional Director, the only position that would engage in the discipline of employees or have the ability to recommend such discipline would be the Human Resources Department, as it effectively has the final say of what discipline will be issued to an employee. This logic by the Regional Director is contrary to Board precedent and ignores the hierarchical structure of large organizations, like STP. *See Venture Indus.*, 327 NLRB at 919.

¹⁰ The Board has found supervisory authority to discipline where the employer followed an employee's recommendations 75 percent of the time. *Venture Indus.*, 327 NLRB at 919. Here, Hamilton's un rebutted testimony establishes that STP followed his recommendations 100 percent of the time. (Tr. 214). Accordingly, the Regional Director's finding that Unit Supervisors do not effectively recommend discipline for employees is contrary to the record and well-established Board precedent.

purpose of reporting the discipline to the supervisor is to keep the Shift Managers apprised of the discipline issues occurring in their crew. (Tr. 214).

Further evidencing a Unit Supervisor's supervisory authority to discipline and effectively recommend discipline are the reliance by a Unit Supervisor's supervisors and Human Resources on the investigation conducted by the Unit Supervisor. (Tr. 123, 195-96). When discussing investigations into potential misconduct, Jefferson testified that

the Unit Supervisor does the investigation. The Unit Supervisor interviews the employees, in this particular case employee, and says: What happened? What did you do? The employee tells him what he did. The Unit Supervisor reports that up to his Shift Manager. And the Shift Manager reports it to Bobby. The Unit Supervisor proposes a level of discipline. We give that level of discipline to our Human Resources Department to assure that we're being consistent across the site.

(Tr. 123). Hamilton also testified that after an event requiring discipline occurs, he will investigate the misconduct, summarize the conduct on a form, recommend a particular type of discipline, and then forward the form to his supervisor and Human Resources for review. (Tr. 195-96).¹¹ Here, contrary to the case in *Beverly Health*, Hamilton's supervisors and Human Resources are not reinvestigating the misconduct he has already investigated and overruling his recommendations. (Tr. 123,195-96). Rather, supervisors and Human Resources merely review the investigative notes and disciplinary recommendation of Unit Supervisors to ensure discipline is being enforced consistently across the organization. (Tr. 123). Accordingly, the Regional Director erred in concluding the Unit Supervisors do not discipline and/or effectively recommend the discipline of Reactor Operators and Production Operators under Section 2(11) of the Act.

¹¹ Hamilton's testimony is consistent with the testimony of Tillman in this regard. (Tr. 286). Specifically, Tillman testified that "I will typically be the one to fill out the form" and "sit down and talk to the employee about their discipline or whatever they are receiving." (Tr. 286).

D. The Regional Director ignored the clear weight of evidence showing that Unit Supervisors reward their direct reports.

There is also compelling evidence that the Unit Supervisors reward employees for good performance, qualifying them as supervisors under Section 2(11). (Tr. 169-72, 210, 319). The record evidence establishes that Unit Supervisors reward employees through a program called “Boss Points.”¹² (Tr. 169, 319). As part of the Boss Points program, Unit Supervisors are allocated a certain amount Boss Points that they may award to employees for positive performance. (Tr. 169, 319). Employees accumulate Boss Points and can exchange the points to purchase items such as clothing, food, or gift cards. (Tr. 171). Unit Supervisors are allocated a certain amount of Boss Points based on their number of direct reports, and maintain total discretion as to which employees to award Boss Points, what behavior to reward, and the number of Boss Points to reward. (Tr. 170-71, 319).¹³ For example, Hamilton testified that he typically rewards employees for exhibiting behaviors like “team work . . . a questioning attitude, engagement . . . going beyond and over the top in the job, or just responding well to a certain situation.” (Tr. 169).¹⁴

Moreover, the cases cited by the Regional Director for the proposition that Boss Points are “more of a novelty than a factor in employee compensation” are readily distinguishable from

¹² The Regional Director’s attempt to conflate Boss Points and Peer Points and characterize them as “indistinguishable” (Regional Director Dec. p. 13) is wholly unsupported by the record. Both witnesses for the Company and for the Union testified that only supervisors are allocated Boss Points to award subordinates for good performance, whereas all employees are allocated a certain amount of Peer Points that they can award to their peers. (Tr. 172, 210, 319).

¹³ Tillman, a Unit Supervisor and witness for the Union at the hearing, testified that “you get boss points only if you have direct reports assigned to you” and that the number of Boss Points a Unit Supervisor is allotted is dependent on the number of direct reports assigned to a supervisor. (Tr. 319).

¹⁴ Further evidencing that Boss Points are intended to award, and are directly tied to, employees’ performance, Hamilton cited a specific instance where, when awarding Boss Points to some of his Reactor Operators, he gave more points to one Reactor Operator because “he’s a very strong Reactor Operator, [and] he always excels.” (Tr. 171).

the instant case. (Regional Director Dec. p. 13). For example, in *Veolia Transportation*, the employer unsuccessfully argued that putative supervisors “rewarded” employees within the meaning of the Act because the employer engaged in an event called a “safety blitz,” wherein the employer distributed three \$25 gift cards to the putative supervisors, who would then approach employees on a predetermined route and ask if they could correctly recite the “safety message of the day” in order to receive one of the three gift cards. *Veolia Transp. Servs., Inc.*, 363 NLRB No. 188 (May 12, 2016). Boss Points are markedly different from these alleged “rewards” at issue in the cases cited for support the Regional Director. (Tr. 169-71). First, Unit Supervisors are given Boss Points to award to employees for positive performance and behaviors, as compared to the gift cards in *Veolia Transportation*, which were solely awarded based on whether a randomly selected employee could recite a predetermined phrase. (Tr. 169). Also, Boss Points, unlike the gift cards in *Veolia Transportation*, are awarded by Unit Supervisors in their sole discretion. (Tr. 171); *Veolia Transp.*, 363 NLRB No. 188. Finally, the Boss Points program is an ongoing incentive program to reward employees for good performance (Tr. 169-71), whereas the rewards programs in the cases cited by the Regional Director were sporadic raffles or sweepstakes, completely unrelated to rewarding employees for good performance. Accordingly, the Regional Director erred in concluding the Unit Supervisors do not reward Reactor Operators and Plant Operators under Section 2(11) of the Act.

V. CONCLUSION

Contrary to the Regional Director’s finding, STP proved beyond a preponderance of the evidence that Unit Supervisors, in fact, direct and assign work and tasks to employees for the benefit of the company and the safety of the people at large. STP further established that Unit Supervisors regularly discipline and recommend discipline for other STP employees, as well as reward employees for good performance. These supervisory duties are consistent with the federal

regulations governing the conduct of Unit Supervisors, which expressly require that Unit Supervisors perform supervisory functions and oversight as Reactor Operators manipulate the nuclear reactor. As outlined above, the Regional Director's finding that Unit Supervisors were not supervisors under the Act is contrary to well-established Board precedent. The Regional Director further failed to consider and give proper weight to key and unrebutted testimony evidencing the Unit Supervisors' supervisory status under the Act. Finally, the Regional Director failed to recognize the unique nature of the position at issue and the environment in which Unit Supervisors work, which necessarily—and by law—requires strict adherence to processes, but also requires the exercise of independent judgment and discretion when the processes do not go according to plan or must be abandoned to ensure the safety of the reactor, employees, and the public. Accordingly, the Regional Director's decision should be overturned and the election results voided based on the supervisory status of the petitioned-for employees.

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CERTIFICATE OF SERVICE

I certify that on the 22nd day of March, 2018, I caused the foregoing to be electronically filed with the National Labor Relations Board at <http://nlrb.gov> and a copy of same to be served on the following parties of record via e-mail:

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