

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

Wadsworth, Texas

**STP NUCLEAR OPERATING COMPANY**

**Employer**

**and**

**Case 16-RC-220802**

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

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

The Petitioner represents an existing unit of about 507 operation, production and maintenance employees, and now seeks a self-determination election, commonly referred to as an *Armour-Globe*<sup>1</sup> election, to include 35 employees, maintenance supervisors, in the existing unit. The Employer asserts there are 36 employees at issue herein who are supervisors within the meaning of Section 2(11) of the Act. The Employer further argues that the 36 employees' inclusion in the unit would be inappropriate because they do not share a community of interest with the other employees in the established bargaining unit. The Petitioner asserts that one of the 36 employees noted by the Employer, a metrology and radiology laboratory supervisor, does not share a community of interest with the other employees in the established bargaining unit.

As set forth below, I find that the Employer failed to meet its burden in establishing that the maintenance supervisors are supervisors as defined in the Act and the Petitioner failed to show that the metrology and radiology laboratory supervisor lacks a community of interest with the established bargaining unit. Because maintenance 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,<sup>2</sup> and the parties presented oral arguments at the conclusion of the hearing.<sup>3</sup>

---

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

<sup>2</sup> At the hearing, the Employer objected to the hearing officer taking judicial notice of the prior proceedings in 16-RC-214839. It is well established that the Board may take official notice of its own proceedings and rely thereon. *Plant City Welding & Tank Co.*, 123 NLRB 1146, 1150 (1959).

<sup>3</sup> In its Statement of Position, the Employer challenged the Board's implementation and validity of its revised representation case procedures in its new April 14, 2015 election rule. See 79 Fed.Reg. 74308, (Dec. 15, 2014). Because I lack rulemaking authority, this Decision does not reach any questions regarding the rule, its validity, or its application to this case.

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 supervisor and community of interest issues presented by this case, including whether to direct an *Armour-Globe* election as sought by the petition.

## **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 represents an existing unit of approximately 507 operation, production and maintenance employees in the following job descriptions:

Radiation Protection Technicians, Performance Technicians, Chemistry Analysis 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, Senior Reactor Board Operators, Unit Supervisors and Senior Reactor Operator (SRO) Instructors, and access and access coordinator employees.

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**

The petitioned-for unit is comprised of maintenance supervisors<sup>4</sup> who work in six different groups within the Employer's maintenance department: 8 mechanical maintenance supervisors, 7 electrical maintenance supervisors, 10 integrated maintenance team (IMT) supervisors, 6 instrument and control (I&C) supervisors, and 4 facilities maintenance supervisors. In addition, the metrology supervisor works in the metrology and radiology labs under the maintenance umbrella.

---

<sup>4</sup> There was insufficient evidence to establish that shop coordinators are statutory supervisors.

## **A. Supervisory Issue**

### **1. Work Responsibilities**

#### **Mechanical Maintenance supervisor**

Brent Taylor has held the position of mechanical maintenance supervisor for three years and currently works on the Maintenance Operations Support Team (MOST). Taylor reports to mechanical maintenance manager Ed Matejcek or David Thornton, who both report to maintenance divisional manager Rudy Stastny. Mechanical maintenance supervisors oversee the machine shop (also known as the mechanics' shop), and fabricate or build parts to support other shops in the plant. They work in the machine shop, which is located on the first floor of the Maintenance Operations Facility (MOF). Mechanical maintenance supervisors oversee mechanics, who are hired with the title of machinist.

Taylor has an office in the MOF; mechanics do not have offices. Taylor holds a brief fifteen minute meeting each day where priority of jobs and any other issues are discussed with the other mechanical supervisors. Taylor then obtains a Daily Operational Focus (DOF) document and thereafter hands out assignments and goes over the work week, safety focus areas, training, and previous week's activities. Taylor enters the status of jobs into the computer, where the work control group may view the jobs.

Mechanics repair diesel engines located near the MOF, at the top of each Electrical Auxiliary Building, and at the Nuclear Training Facility. Mechanical maintenance supervisors spent about 20 to 25 percent of their in the field. While there, they visit all of the referenced diesel locations, which are within a five mile radius of each other, to oversee and assist the mechanics. Approximately 75 to 80 percent of the work completed is routine, pre-scheduled preventive maintenance.

#### **Electrical Maintenance supervisor**

Jim Bob Presswood, electrical maintenance supervisor, reports to electrical maintenance manager Martin Cortez, who reports to Rudy Stastny. Presswood worked as a maintenance electrician until his current role. Two head electricians report to Presswood. Presswood has acted as the shop scheduler for the past four months, but maintains the title of electrical maintenance supervisor.

For ten years prior to his current scheduling role, he ran a crew scheduling electrical maintenance work, performing the same job as the other electrical maintenance supervisors. In that capacity, he was responsible for delegating work from the Authorized Work Schedule (AWS). The AWS sets forth a 14-week process that work control employees distribute to ensure work is timely scheduled and completed. Following the AWS, Presswood ensured that he had enough crew members with the necessary qualifications to complete the work. At the 7-week time (T-7), in the middle of the 14-week schedule, Presswood made final adjustments in the crew to perform the remaining work. During the other weeks, Presswood reviewed the schedule and ensured that all of the equipment needed was available and ready for use. For about 15 to 20 percent of his work time, Presswood was out in the field with electricians observing the work to ensure compliance with procedures and responding to issues or providing assistance.

Presswood worked in the MOF as an electrical supervisor, in the electrical maintenance shop on the bottom floor of the building. Presswood, the other electrical maintenance supervisors, and the administrative assistant have offices in this area. Electricians sit nearby at work benches and desks.

Roger Wilkinson<sup>5</sup> has been an electrical supervisor for about 26 years. He reports to Martin Cortez. Wilkinson works 7:00 a.m. to 5:00 p.m. Monday to Thursday, and has an office on the first floor of the MOF. His job duties are the same as Presswood's when Presswood served as an electrical maintenance supervisor.

### **Integrated Maintenance Team supervisor**

David Thornton has been an integrated maintenance team (IMT) manager for about five years. He is a stipulated statutory supervisor. The IMT repairs equipment throughout the plant, serving as first responders to emergent conditions and performing "walkdowns" of incoming condition reports, e.g., if they receive a complaint that a pump is malfunctioning and they go out and address the problem. There are several different crews on the IMT that specialize in responding to specific types of mechanical problems – e.g., pumps, valves, electrical, and mechanical. The IMT supervisors sit in and have offices in the IMT outbuilding. Crew members are also in the building but do not have offices. IMT supervisors spend about 25 percent of the time in the field observing and correcting work or assisting with training.

### **Instrument and Control (I&C) supervisor**

The I&C group is located on the first floor of the MOF. I&C is an umbrella term for a core shop. I&C routinely interfaces with the mechanical maintenance and electrical maintenance team and responds to emergent conditions and provides preventive maintenance on a variety of equipment – valves, chemistry indicators, recorders, transmitters, switches, and pipe instrumentation.

### **Facilities Maintenance supervisor**

Richard Horning has been a facilities maintenance supervisor (within the mechanical maintenance services department) for ten years. Horning checks in at the Nuclear Support Center (NSC) each day, and then spends time in a trailer not far from the NSC, in the facilities security building, and on crane platforms. Horning provides maintenance on various equipment or material, such as locks and keys on doors throughout the plant – flood, fire, tornado, and HVAC doors located inside the unit buildings and that protect equipment in the reactor building and throughout the plant. Horning also manages maintenance on cranes.

---

<sup>5</sup> At the hearing, the Hearing Officer rejected the Employer's request to enter personal notes of Roger Wilkinson into the record. The Employer pointed out that Wilkinson had a sheet of paper with him at the stand. Wilkinson testified that they were notes he took during the proceeding, and that he did not check them in order to answer questions under oath. Consequently, there was no prejudice to the proceeding and Wilkinson's testimony is afforded appropriate weight.

## **Metrology and Radiology Laboratory supervisor**

Metrology supervisor John Griffin is responsible for overseeing the calibration and repair of all measuring and test equipment, radiological instrumentation, circuit boards, power supplies, and modules for the plant. Griffin receives numerous requests from other departments regarding the calibration and repair of equipment. A custom-written software program manages the workflow by creating an inventory of all the requests. Griffin ensures the accuracy of the statuses in the software's database.

### **2. Assignment of Work**

The maintenance supervisors generally assign field employees to jobs based on tasks that are set out weeks in advance by an Authorized Work Schedule (AWS), for which a maintenance supervisor has no role in creating. Supervisors sometimes delegate work to a field employee based on his or her certifications or level of experience, ensuring that there are enough employees to complete the work and that work is completed in accordance with the priority levels set forth by the AWS. The AWS controls when the work is completed.

Maintenance supervisors generally grant requests for work or requests for leave. They do not cancel work or control the work hours of other employees. They may occasionally approve overtime of one hour or less, but more overtime requires the approval of a manager. They do not compel employees to work overtime.

## **Mechanical Maintenance supervisor**

Taylor assigns jobs to mechanics according to the mechanic's certification and training. There are certain jobs that require specific certifications and Taylor ensures that mechanics who have the correct certifications are assigned to the appropriate jobs.

Taylor infrequently grants overtime after checking with the shop coordinator, who is also called a work week coordinator. Overtime guidelines are maintained in the collective bargaining agreement and manager Matejcek also provides approval for overtime which is over an hour or two or for weekend work. About weekly, Taylor may deviate from the authorized work schedule (AWS) to have a non-permanent tool or part fabricated if necessary. Taylor primarily divvies up the work assigned according to the AWS.

## **Electrical Maintenance supervisor**

Presswood assigned electricians to particular jobs based on their certifications. Electrical supervisors may also observe electricians in the field and coach or counsel them if they were performing a procedure incorrectly. Presswood testified that in his current role as scheduler, two bargaining unit employees report to him. Stipulated 2(11) managers assigned one of the unit employees to revise electrical procedures, working independently and checking in with Presswood only as needed. The other unit employee helps Presswood with scheduling. To assign

work, Presswood looks at the schedule from the Authorized Work Scope or Schedule<sup>6</sup> (AWS), which contains a schedule of work orders or preventive maintenance activities. Presswood would then assign the correct personnel with the right certifications for completing the job. Presswood does not regularly make assignments of work in outage situations.

Presswood does not regularly assign overtime, and seeks manager approval for significant overtime for his crew or himself.

### **Facilities Maintenance supervisor**

Horning assigns work according to the AWS, making sure there are enough people to do the jobs for the upcoming weeks. Horning consults with facilities manager Vicki Patton on staffing. Horning does walkabouts conducting “peer checks” in the field, visiting the employees to ensure compliance with “company expectation.” Occasionally, Horning will assign employees to work together according to their experiential strengths – e.g., he will put someone with a stronger mechanical background together with someone with a strong electrical background.

### **Metrology and Radiology Laboratory supervisor**

Several technicians and two specialists report to Griffin. A software system dictates the schedule and workload of the technicians and specialists. As a result of the software, the technicians know which work they must complete and Griffin intervenes only when he gets a priority request from a customer that requires deviation from the schedule created by the software. The software manages the workflow by making everyone aware of the location and status of the thousands of pieces of equipment located in the plant. A material clerk categorizes the equipment that comes into the laboratory and gives it a status, which technicians may view on the list of tasks to be completed. Griffin ensures the accuracy of the statuses.

Griffin conducts daily thirty-minute meetings with the two specialists, who are not bargaining unit or petitioned-for unit employees. Griffin reviews the Daily Operational Focus document, or DOF, which is a document issued by management that includes plant issues and emergent priority issues. The specialists then go over the DOF with the technicians, who are bargaining unit employees. The specialists convey any priority tasks to the technicians.

Griffin grants overtime for pre-outage activities. This overtime is doled out from a pre-determined overtime bank. Based on budgetary limitations, Griffin infrequently grants other instances of overtime.

### 3. Responsible Direction

Maintenance supervisors do not perform audits, reviews, appraisals or evaluations of employees’ work. They are not held accountable for the performance of their crew, whether in positive or negative situations.

---

<sup>6</sup> The Authorized Work Schedule (AWS) was also referred to as the Authorized Work Scope throughout the record. Both terms appear to refer to the same document.

### **Mechanical Maintenance supervisor**

As also discussed below, Taylor had his certification pulled for six hours after his crew used the wrong oil in an engine. The discipline was for *his* independent action of ordering the wrong oil and did not reference the fact that his crew used the wrongly ordered oil.

### **Electrical Maintenance supervisor**

Presswood has never suffered an adverse action, nor has he been punished or disciplined, officially or informally, as a result of the performance of his crew. There was no evidence that Presswood performs evaluations.

In the early 1990s, Wilkinson's crew took the wrong reactor coolant pump out of service, triggering an unexpected alarm in the control room. The crew was given an oral reminder and Wilkinson was given a written reminder for failing to ensure his crew was prepared to perform work on a plant component. Wilkinson testified that if this event had occurred today, he probably would not have been similarly disciplined because the plant has evolved based on different leadership. Wilkinson also testified that in another instance, a crew member was issued an oral reminder for a safety violation related to an equipment clearance order, for which Wilkinson was not disciplined.

### **Metrology and Radiology Laboratory supervisor**

Although Griffin completes performance management reviews for the two specialists, which may impact the specialists' raise percentage and bonus, Griffin must send his recommendations to manager Vicki Patton. Griffin testified that he does not know what happens with the reviews after he sends them to Patton, other than that the forms are reviewed by members of upper management. The form requires Griffin to evaluate whether the specialists met measurable annual goals that are created each year.

## **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 establishes that positive contact logs and coachings or counselings are not considered disciplinary. The record did not include an instance of a maintenance supervisor acting on his own, without the consultation or approval of a manager, to issue an Oral Reminder or any other formal discipline. Some of the supervisors testified as to having completed Management Associated Results Company (MARC) training, but one need not be classified as a supervisor by the Employer to attend this training.<sup>7</sup>

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. Maintenance supervisors may make entries in the contact logs.

Maintenance supervisors do not independently administer discipline. On the rare occasion a maintenance supervisor issued discipline, it was pursuant to a direct order by a manager and independently reviewed by a combination of the manager and/or Human Resources.

#### **Mechanical Maintenance supervisor**

Taylor does not discipline employees, but may make positive observations. When he has seen an error, for example, a mechanic putting the wrong oil in an engine, Taylor called his manager to remedy the situation. On one occasion, Taylor recorded such an occurrence with his manager's assistance, and the manager also made a contact entry about Taylor, whose certification was pulled for six hours for ordering the wrong oil. Notably, after Taylor's certification was pulled for ordering the wrong oil, the contact entry did not mention the mechanics' actions of using the wrong oil in the engine. On another occasion, manager Matejcek directed Taylor to create a contact entry about employees who installed hoses on equipment without the proper equipment clearance order.

#### **Electrical Maintenance supervisor**

About two years ago, Presswood issued an oral reminder to someone who missed his computer-based training. Pursuant to an overall company focus on employees missing training, Presswood was instructed by upper management to issue an oral reminder to anyone who missed or was late for training. Presswood completed the employee contact log and discussed the issue with the employee. A record of this oral reminder was filed with Human Resources.

#### **Metrology and Radiology Laboratory supervisor**

Griffin has attended training for the MARC process, but he was in his current supervisory role when he attended the training. Griffin testified that he has never disciplined an employee, and that positive contact and coaching or counseling is not considered disciplinary.

#### **5. Reward**

The Employer presented evidence that maintenance supervisors reward employees by giving employees "boss points," which is part of the Employer's "power points" system and by

---

<sup>7</sup> The MARC guidelines were not introduced at the hearing.

making positive comments in contact logs. 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, Incentive Compensation Pay (ICP) 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 maintenance supervisors does not factor into ICP bonus pay.

Although the Power Points system is codified in some form, the Employer did not enter such materials as an exhibit. Supervisors receive about 1000 boss points for each direct report, the equivalent of \$10.00, either monthly or quarterly. Additionally, every employee receives 500 peer points, the equivalent of \$5.00; these are distributed monthly. Although there was record testimony that supervisors are authorized to seek a one-time award of a maximum of \$50 in points for an employee, for which they must request the points through an online system, no supervisor testified to having done so.

Boss points and peer points may be exchanged at a company store for merchandise or gift cards that may be used at external retailers or restaurants.

Unit employees generally earn between \$42 and \$45 per hour.

#### **Mechanical Maintenance supervisor**

Taylor gives out boss points. For example, in an outage situation, there were employees from another department who helped his department, so he gave boss points to those employees.

#### **Electrical Maintenance supervisor**

Presswood receives about 1,500 boss points per month and about 500 peer points per month, and distributes the boss points primarily to his crew based on performance.

#### **Metrology and Radiology Laboratory supervisor**

Griffin is given 12,000 boss points per quarter, and that he gives them out to employees by emailing them. Each 100 or 1,000 points is worth one dollar. Griffin also receives 1,000 to 1,500 peer points per quarter, which are given to all employees (both bargaining unit and non-bargaining unit).

#### **6. Authority to hire or recommend hire**

#### **Mechanical Maintenance supervisor**

Taylor has participated in two hiring panels as a mechanical supervisor and other panels with managers when he was not classified as a supervisor. Each person on the panel scored the candidates and the candidates who scored the highest were hired. On one of the hiring panels on which Taylor served while classified as a supervisor, the panel agreed as to which candidates they wanted to submit to manager Matejcek to be hired.

### **Electrical Maintenance supervisor**

Presswood has participated in interview panels with manager Cortez. The panel consisted of an employee from the bargaining unit and an employee from Human Resources, along with the manager. In one instance, the manager could not attend the panels and instructed Presswood to choose the candidates. Presswood then consulted with Cortez and Human Resources to review resumes and select candidates for interviewing. In another circumstance, Presswood participated in the interview panel but Cortez selected the hiree.

### **Facilities Maintenance supervisor**

Horning has participated in interview panels. The members of the panel score the interview candidates on forms using numbers according to the candidates' responses to interview questions. The panel must reach a consensus to score the candidates within one point of each other. For example, if three panel members give a candidate a score of four for a question, and one member gives that candidate a score of two, the panel members must agree to have the two come up or the fours come down. Horning testified that a manager has overruled a panel's hiring recommendation, selecting the second best-rated candidate over the highest-rated candidate because the second-best rated candidate was, in the manager's view, a "better fit."

### **Metrology and Radiology Laboratory supervisor**

Griffin is involved in the hiring and filling of vacancies within his department. In this process, he follows an established procedure of requesting a posting, which is completed by the Human Resources Department. He then screens resumes received in response to the posting, using both objective criteria of degrees and credentials, and also his experience about what qualities or credentials would be necessary for the job. Griffin sometimes deviates from the established requirements of the job when recommending hire. For example, if a candidate does not have a two year degree, he may still recommend the candidate for hire if the candidate possesses other positive qualities, e.g., if he has metrology or other relevant experience, or if he interviews particularly well. Griffin conducts the interviews along with a panel of three other people – one from Human Resources, one unit employee pursuant to the collective bargaining agreement, and one of the specialists. After interviewing candidates who have been screened by Griffin, the panel reaches a consensus on who should be hired. There has never been a circumstance where the panel has not reached a consensus; usually there is an outstanding candidate who stands above the rest. Griffin then conveys the decision made by the panel to the applicant. Human Resources handles the formal offer and paperwork. According to Griffin, the panel has not been overruled by Human Resources or by a manager, but he stated that Human Resources may be able to do so, e.g., if a candidate failed a background investigation.

### **7. Other Supervisory Indicia**

There is no evidence that maintenance supervisors have the authority to promote, lay off, transfer, or recall employees. They do not evaluate employees or adjust their grievances. Although a union steward will discuss grievances with Horning, Horning then discusses the grievance with his manager. Usually, Horning drafts a response to the grievance after discussion

with his manager or an approval from Human Resources. There is no evidence that supervisors use independent judgment in adjusting grievances.

Regarding secondary indicia of statutory supervisory status, there is no evidence that supervisors hold different degrees or have different academic requirements than other employees. Maintenance supervisors wear blue shirts with tan khakis, and the crews wear differently colored clothing. Managers wear business casual clothing. Supervisors' rate of pay is approximately \$10-12 per hour higher than unit employees, and their bonus eligibility is 15 percent of their base pay versus a unit employees' bonus eligibility of 7.5 percent of base pay.

## **B. Community of Interest Issue**

Electrical and mechanical maintenance supervisors regularly interact with work week coordinators and procedure writers, both unit employee groups. Work week coordinators create the AWS, which maintenance supervisors use daily to schedule tasks and delegate work that needs to be completed. The maintenance supervisors engage daily with the AWS and the accompanying 14-week timeline, along with several groups of unit employees. They are together tasked with the common goal of ensuring safe and effective operation of the facility's two unit reactors. Some maintenance supervisors focus on tasks that are specific to a certain portion of the 14-week timeline, such as 7 weeks before the work is to be completed, but each supervisor is engaged in work that supports the implementation and completion of the timeline. The maintenance supervisors are further engaged in repairing and responding to emergent conditions as requested and submitted by their "customers" – in many cases, unit employees such as reactor operators, work control specialists, unit supervisors, I&C technicians, work week schedulers, and work week managers.

Electrical maintenance supervisors interact with the following unit employees: on a weekly basis with radiation technicians about radiological conditions; with material technicians 2-3 times per week to receive parts they deliver to electricians; with maintenance planners weekly to daily; work week schedulers on a weekly basis regarding the AWS; occasionally with material handlers when parts are necessary; and reactor and plant operators when they have questions about processes and operations.

Both supervisors and unit employees accrue vacation time at the same rate, may use overtime, and have the same life insurance, long term disability, and 401(k) retirement plans.

## **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;<sup>8</sup> (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

---

<sup>8</sup> 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).

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 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.

Finally, “routine direction of the type customarily exercised by experienced employees over those less skilled does not confer supervisory status within the meaning of the Act. Further, responsibility for making work assignments in a routine fashion does not make one a supervisor, nor does the assumption of some supervisory authority for a temporary period create supervisory status.” *Coral Harbor Rehabilitation and Nursing Center*, 366 NLRB No. 75 (2018), citing *West Penn Power Co. v. NLRB*, 337 F.2d 993, 996 (3d Cir. 1964); *Southeastern Cast Stone, Inc.*, 185

NLRB 688, 691-692 (1970); *Mid-State Fruit, Inc.*, 186 NLRB 51 (1970); *Beth Israel Medical Center*, 229 NLRB 295, 295 (1977).

### 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.<sup>9</sup> 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

---

<sup>9</sup> See also *Croft Metals, Inc.*, 348 NLRB 717 (2006); *Golden Crest Healthcare Center*, 348 NLRB 727 (2006).

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 (1<sup>st</sup> 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.

#### **D. The Supervisory Status of maintenance supervisors**

As noted above, the party asserting supervisory status, the Employer, has the burden to produce sufficient evidence to show that maintenance 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 maintenance supervisors discipline employees, assign work, responsibly direct employees, hire or recommend hire of employees, and reward employees; the Petitioner contends the same regarding the metrology supervisor. The record 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. Maintenance supervisors do not designate or deploy employees to specific areas or provide them with the list of tasks they are to complete. Although maintenance supervisors may sometimes delegate work

based on the experience level or certifications 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 do 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 (6<sup>th</sup> Cir. 2012). Maintenance supervisors assign tasks in accordance with the AWS.

Maintenance supervisors do not schedule the shifts or hours of others. 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). Although maintenance supervisors may dictate the order in which tasks are completed according to priority level, the priority level is usually prescribed by the AWS. Even if it is not, infrequent assignments regarding the order tasks are to be completed do not confer supervisory status. See *Oakwood Healthcare*, *supra*.

Maintenance supervisors do not cancel scheduled work hours. Supervisors may sporadically and infrequently grant up to one to two hours of overtime, but significant overtime must be approved by a manager. Further, overtime procedures are set forth in the collective bargaining agreement. There is no evidence supervisors may require an employee to work overtime, even in an emergency or outage situation. 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. 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 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.

The evidence showed that the role of the 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.

Maintenance supervisors assign tasks in accordance with the AWS. Certain tasks may require a specific certification level, but a supervisor assigns the task based not on independent judgment but on objective, pre-established criteria. For example, if an electrician needs a five-year certification to complete a complex task, the supervisor will ensure that the electrician holds that five-year certification. The supervisor need not have any knowledge of the electrician's particular experience or skill level with regard to the task.

The Employer failed to establish that supervisors are either held accountable for the poor performance of their crew, or rewarded for the positive performance of their crew. The two instances noted by the Employer where a supervisor was purportedly held accountable for a crew member's mistake do not establish responsible direction. In one case, the supervisor's certification was pulled for six hours after his crew used the wrong oil in a piece of equipment. The crew was issued a contact log entry for their actions in using the wrong oil. The supervisor, however, ordered the wrong oil that the crew used. The record established that the supervisor's certification was pulled not because the crew used the wrong oil, but because *he* ordered the wrong oil. Consequently, this example fails to establish accountability. In the second case, about thirty years ago, a supervisor recalled that he was issued a written reminder and his crew an oral reminder for his crew's error in operating a pump. The supervisor testified that if the same situation had occurred today, such a disciplinary action would not have been taken against him, because of the evolution of the disciplinary culture at the plant since that time.

The Employer failed to establish that 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. There was no evidence that crew performance had any impact, positive or negative, on the evaluations or pay of supervisors. Although supervisors may make positive or neutral comments in an employee's contact log, there was no evidence regarding if or how those log entries impact any aspect of the supervisor or the employee's terms or conditions of employment.

Therefore, I find that the Employer has failed to establish that 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 descriptions of petitioned-for supervisors purporting to show duties of monitoring various activities, it is well established that 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 insufficient evidence that any supervisor had the authority to independently issue discipline. Rather, the record testimony established that supervisors enter positive or neutral comments in an employee's contact log. Ample evidence established that such log entries are not disciplinary in nature. There was no evidence that these log entries were then used as a basis for discipline. There was insufficient evidence that supervisors recommend discipline. Although some supervisors' names appear on disciplinary records, there was no testimony about who drafted the records or how they were used to impact the employee. Further, there was no evidence showing that the records were independently drafted, or that the discipline was issued without independent investigation by a manager or by Human Resources. There was no evidence establishing that supervisors investigate errors or how they do so.

#### 4. Reward

Pursuant to the Employer's "Power Point" system, which consists of "Boss Points" and "Peer Points," IMT manager David Thornton testified that supervisors are given 1000 boss points per employee, per month or per quarter, and 500 peer points at a value of \$5.00 per month. The points are distributed in a supervisor's or employee's bank electronically. They are each doled out by the holder to other employees, either crew members or supervisors. Thus, in terms of the Employer's "Power Point" system, the only difference between supervisors and undisputed statutory employees is that supervisors have more "Power Points" to give out than other employees.

The other witnesses were uncertain as to the value or amount of the boss points given, however one supervisor definitively testified that the boss points were given to him quarterly. Consequently, it is likely that they are issued quarterly.

Based on this evidence, supervisors have the ability to award a total of \$40 worth of boss points per employee per year. There was some testimony that supervisors have the ability to request boss points in excess of \$50, but no testimony that this occurs with regularity, the process for doing so, what justification is required, and how frequently such requests are approved. Similarly, the record did not establish whether employees could request an excess amount of peer points to distribute to others if they saw fit. The points can be redeemed for purchases at the

company's recreation store or online for other retail items. The Employer failed to introduce any evidence establishing other parameters of the program.

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 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). The amount of boss points above peer points that a supervisor may give to an employee, a maximum of \$40 per year, does not constitute an amount sufficient to constitute a reward that confers supervisory status absent more detailed evidence.

#### 5. Authority to Hire or Recommend Hire

There is insufficient evidence that maintenance supervisors have the authority to hire or recommend the hire of employees. A putative supervisor does not, without additional evidence, effectively recommend hiring where acknowledged supervisors also interview candidates. *Peacock Productions of NBC Universal Media*, 364 NLRB No. 104, slip op. at 4-5 (Aug. 7, 2016); *Republican Co.*, 361 NLRB No. 15, slip op. at 5-6 (2014); *J.C. Penney Corp.*, 347 NLRB 127, 129 (2006); *Boston Med. Ctr. Corp.*, 330 NLRB 152, 201 (1999); *Ryder Truck Rental, Inc.*, 326 NLRB 1386, 1387 n. 9 (1998). *See also North Gen. Hospital*, 314 NLRB 14, 16 (1994) ("[m]ere participation in the hiring process, absent the authority to effectively recommend hire, is insufficient to establish Section 2(11) supervisory authority"). Even if there is testimony that the putative supervisors' recommendations are given "significant" weight, absent clear authority to recommend hire. *Ryder Truck Rental, Inc.*, 326 NLRB 1386, 1388 (1998).

Although most of the maintenance supervisors have served on interview panels, even regularly, their participating in the hiring process is not sufficient to confer supervisory status. The record testimony established that supervisors' may screen resumes and make recommendations for hire by using a form to rate the candidate. However, supervisors always participate in this process on a panel with two to three other employees. Pursuant to the collective bargaining agreement, one of the employees is usually a unit employee. Typically, a manager also sits on the panel. There is no evidence that any of the employees' recommendations or ratings hold greater weight than any other. To the contrary, in one case, a supervisor testified that a manager exercised his authority to overrule the panel's recommendations and ratings to select a candidate that the manager found to be a better fit.

Although the Employer asserts that metrology and radiology laboratory supervisor John Griffin had the ability to make the final hiring decision and even extend the final offer for hire, the evidence showed that Griffin participated in the interview panels in the same fashion as other

maintenance supervisors and did not solely recommend the hire of any candidate. Contrary to the Employer's assertion, the record established that the panel regularly reached a consensus on who to extend offers to hires to, and that in the event of a panel disagreement, the panel participants were required to come to a consensus on rating the candidate within one point of each other. There was no evidence that Griffin's recommendations or conclusions about the candidates were given greater weight than the other panel participants. There was no evidence establishing that Griffin overruled panel recommendations, or deviated from the established panel procedure. There was no evidence that Griffin had the authority to hire a candidate without going through the panel procedure.

Consequently, there is insufficient evidence to establish that any of the maintenance supervisors had the authority to hire or recommend hire.

#### 6. Other Indicia of Supervisory Status

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

The only secondary indicia that weigh in favor of supervisory status include their title, their larger ICP-based bonuses and marginally higher salary rate, and the fact that they wear differently colored clothing than other employees. The limited secondary indicia favoring supervisory status are insufficient to remove 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.

#### C. **Community of Interest Analysis**

"The cornerstone of the Board's policies on appropriateness of bargaining units is the community-of-interest doctrine which operates to group together only employees who have substantial mutual interests in wages, hours, and other conditions of employment." *Met Elec. Testing Co., Inc.*, 331 NLRB 872, 876 (2000). In determining whether a community of interest exists, the Board examines factors such as mutuality of interests in wages, hours, and other working conditions, commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. *Grace Industries, LLC*, 358 NLRB 502, 505 (2012).

I find that maintenance supervisors share a sufficient community of interest with the employees in the existing bargaining unit. Maintenance supervisors regularly interact with bargaining unit employees, share similar working hours and conditions, common supervision, and are functionally integrated.

Mechanics, electricians, and other technicians – bargaining unit employees – "report" to maintenance supervisors, and thereby interact daily. Supervisors spend anywhere from 15-25

percent of their working time in the field with bargaining unit employees, performing walkdowns and providing assistance where necessary. Supervisors and facilities maintenance unit employees are commonly supervised by facilities and maintenance manager Vicki Patton and maintenance divisional manager Rudy Stastny.

Beyond the facilities maintenance unit employees, the existing unit is large and diverse, including production employees, technicians, mechanics, planners, procedure writers, schedulers, and work week coordinators. The existing unit includes employees who work in the MOF and NSC, two primary areas where maintenance supervisors work.

Maintenance supervisors have substantial mutual interests in hours and other conditions of employment as employees in the existing bargaining unit. Maintenance supervisors work the same shift hours as some bargaining unit employees, and where they do not, they arrive and depart approximately one hour earlier than unit employees. They have some of the same benefits and work in the same areas of the plant – the MOF, the NSC, and in the field.

Maintenance supervisors' work is similar to bargaining unit planners, procedure writers, schedulers, and work week coordinators who also spend much of their time performing computer-based work from behind a desk. Similarly, petitioned-for supervisors spend much of their time implementing and reviewing the AWS, which is created by bargaining unit employees.

Ample evidence showed that the nuclear industry is highly regulated. Maintenance 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). Maintenance supervisors' work is specifically tailored toward the prevention and maintenance of the myriad parts and equipment needed to run the facility's two reactors, which are operated by unit employees. Unit employees are the "customers" of the maintenance supervisors, necessarily submitting daily requests for repair and maintenance of equipment to which maintenance supervisors and their crews respond. There is substantial functional integration and frequency of contact with bargaining unit employees. Some maintenance supervisors work in the nuclear support center, where some bargaining unit employees work and which is accessed regularly by bargaining unit employees. Electrical maintenance supervisors interact with the following unit employees: on a weekly basis with radiation technicians about radiological conditions; with material technicians two to three times per week to receive parts they deliver to the electricians; with maintenance planners weekly to daily; work week schedulers on a weekly basis regarding the AWS; occasionally with material handlers when parts are necessary; and reactor and plant operators when they have questions about processes and operations.

Although the degree of interaction is weakest with regard to metrology and radiology lab supervisor Griffin, Griffin is functionally integrated with bargaining unit employees. He oversees metrology technicians, who are unit employees. Although he works in the metrology lab, which is not located in the MOF, his work is comprised of responding to numerous requests from "customers" in departments throughout the plant. Bargaining unit employees work on the measurement equipment that he is responsible for calibrating, and he testified that he regularly interacts with most departments in the plant.

In deciding whether the metrology and radiology supervisor should be included in the existing unit, I must also consider the Board's policy of avoiding the creation of residual units and residual employees when possible. *Huckleberry Youth Programs*, 326 NLRB 1272, 1273 (1998). The record here establishes that the metrology and radiology supervisor shares a sufficient community of interest with those employees in the petitioned-for unit and, absent inclusion in such a unit, may well be left as a small residual unit. In such a circumstance, it would be inappropriate to omit the metrology and radiology supervisor from the petitioned-for unit.

#### **D. 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.

As discussed above, I find that petitioned-for maintenance supervisors share a community of interest with 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.

I further find that maintenance 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 maintenance 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 maintenance supervisors and coordinators, mechanical supervisors, electrical supervisors, I&C supervisors, integrated maintenance supervisors, facilities supervisors, and metrology and radiology laboratory supervisors employed in the Maintenance Operating Facility (MOF) and its surrounding shops, Nuclear Support Center (NSC), 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, AFL-CIO** 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, Senior Reactor Board Operators, Unit

Supervisors and Senior Reactor Operator (SRO) Instructors, and access and access coordinator employees.

#### **A. Election Details**

The election will be held on Tuesday, June 26, 2018, from 4:00 p.m. to 8:00 p.m. in the Nuclear Training Center Auditorium at the Employer's facility located at 12090 FM 521, Wadsworth, Texas 77483.

#### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending June 10, 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.

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

#### **C. Voter List**

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal 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 June 20, 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](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties 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](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

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

#### **D. Posting 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](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request

for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. 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 18<sup>th</sup> day of June, 2018.



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