

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

**STP NUCLEAR OPERATING
COMPANY**

Employer,

Case 16-RC-220802

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 June 18, 2018, by the Regional Director for Region 16. 29 C.F.R. §§ 102.67(c), 102.49(c). 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. *Id.* A "final disposition" includes a certification of representative. *Id.* In this case, the certification issued on July 5, 2018, so this request is timely.

This request should be granted based upon the following grounds:

- The Regional Director's decisions on substantial fact issues are clearly erroneous compared to the weight of the evidence as it relates to a unit determination involving statutory supervisors under Section 2(11) of the National Labor Relations Act ("NLRA"). 29 U.S.C. § 152(11).
- Substantial questions of law and policy are raised because of an absence of officially reported Board precedent on the supervisory status of the Maintenance Supervisors in nuclear power plants, a highly regulated industry where statutory supervisors are consistently excluded from bargaining units.

I. BACKGROUND AND BASIC OVERVIEW

The International Brotherhood of Electrical Workers, AFL-CIO Local 66 (the “Union”) filed its Petition in the above-captioned RC case on May 24, 2018. **See Case No. 16-RC-220802 Hearing Transcript and Exhibits (hereinafter “Hearing Record”), Board Exhibit (hereinafter “Bd. Exh.”) 1(a).** The Union sought an election in the following unit:

Included: All full time Maintenance Supervisors: Mechanical Supervisors, Electrical Supervisors, I&C Supervisors, Integrated Maintenance Supervisors, Facilities Supervisors at STP NOC (South Texas Project Nuclear Operating Company)

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

Id.

The Employer challenged the petitioned-for union. *See* Bd. Exh. 2. A hearing officer of the Board held a hearing in this matter on June 4 through 6, 2018, to determine the scope of the unit sought by the Union. *See* Hearing Record. STP presented testimony and documentary evidence that established the petitioned-for Maintenance Supervisors (collectively, the “Maintenance Supervisors”) meet the definition of “supervisors” under Section 2(11) of the Act.

Id.

In the June 18, 2018 Decision and Direction of Election, the Regional Director of Region 16 concluded that none of the members of the petitioned-for unit meet the definition of statutory supervisors and ordered an election, which was held on June 26, 2018. **See Decision and Direction of Election (hereinafter “June 18 Decision”) at pp. 1, 24.** The Regional Director’s decision ignored the significant evidentiary record related to the statutory supervisory status of the Maintenance Supervisors such that they are not appropriate members of the existing bargaining unit at STP, and the June 18 Decision should be overturned, preferably without the need for judicial review.

II. ISSUE

- Should the Board overrule the Regional Director’s decision that Maintenance Supervisors meet the statutory definition of supervisors under Section 2(11) of the Act?
- Specifically, do the Maintenance Supervisors engage in at least one of the supervisory indicia under Section 2(11) of the Act?

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. June 18 Decision at p. 2. The Union represents an existing unit of about 507 STP employees at the Wadsworth facility. *Id.* at p. 1. The Maintenance Supervisors consist of 36 employees split into six specific groups as follows:

- 8 Mechanical Maintenance Supervisors;
- 7 Electrical Maintenance Supervisors;
- 10 Integrated Maintenance Team (“IMT”) Supervisors;
- 6 Instrument and Control (“I&C”) Supervisors;
- 4 Facilities Maintenance Supervisors; and
- 1 Metrology Supervisor in the Metrology and Radiology Lab. *Id.* at p. 2.

As discussed below, each Maintenance Supervisor reports to a Manager and each has a crew of employees (such as technicians, electricians, mechanics, etc.) reporting to them.

B. Physical Layout

Most STP employees work out of the Maintenance Operations Facility (the “MOF”) in Unit 1 and 2, where the main reactors are located. **See Hearing Record, Transcript (hereinafter “Tr.”) at p. 15; Hearing Record, Joint Exhibit (hereinafter “Jt. Exh.”) 8.**

The Mechanical Maintenance Supervisor (Brent Taylor) who oversees the Machine Shop has an office in the MOF; but the mechanics he oversees do not have offices. Tr. at p. 232:9-13. Other Maintenance Shop Coordinators and Supervisors also have offices in the MOF. Tr. at pp. 300:16-:25; 301:1-:15.

Electrical Maintenance Supervisors have offices in MOF while the Electricians sit nearby at work desks when not in the field. Tr. at pp. 120:10-122:5, 668:1-20, 670:22-671:1.

All Maintenance Managers have offices on the third floor of the MOF. Tr. at p. 729:4-:6.

The IMT Supervisors also have an office in the MOF and in the IMT outbuilding. Tr. at pp. 556:10-557:24; Jt. Ex. 8. The IMT crew members sit in the IMT outbuilding but do not have offices. Tr. at p. 557:19-23; Jt. Exh. 8.

The Facilities Maintenance Supervisor (Paul Horning) has an office on the fifth floor in the Nuclear Support Center, next to the MOF. Tr. at p. 438:9-21; Jt. Ex. 8. He also spends time at a trailer located between Unit 1 and 2. Tr. at pp. 438:22-439:12; Jt. Exh. 8. Horning’s crew shares a workspace where they have desks and computers. Tr. at pp. 508:19-25-509:1-5.

The Metrology Laboratory is located next to the Nuclear Support Center. Tr. at pp. 15:16-16:3; Jt. Exh. 8. The Metrology and Radiology Laboratory Supervisor (John Griffin) has an office. Tr. at p. 52:2-5. Three of his direct reports frequently interface with vendors and also have offices, but Griffin’s office is larger. Tr. at pp. 52:6-10, 85:15-:20, 86:3-:12. His remaining direct reports have desks in a shared workspace. Tr. at pp. 86:23-25, 87:1.

C. Maintenance Supervisors' Duties

STP maintains internal controls, including policies and procedures, to align the Company's practices with regulatory requirements. For example, the *Conduct of Maintenance* details maintenance policies, including Supervisor responsibilities. *See* Jt. Exh. 6 at pp. 19-20.

1. Scheduling and Other Work Responsibilities

STP utilizes an Authorized Work Schedule (AWS), which schedules specific systems for maintenance each week. Tr. at pp. 563:25-565:1; Jt. Exh. 7. The AWS is a schedule planned with input from the Maintenance Supervisors over the course of fourteen weeks before the implementing week and outlines the work activities and work orders for a given day. *Id.* The degree of leeway Maintenance Supervisors have with respect to scheduling largely depends on the level assigned to various work activities on a scale from A through D, in which levels A and B activities require strict management oversight and tight adherence to a timeline. *See* Jt. Exh. 7, at pp. 25-26. By contrast, “[m]ost work activities will be level ‘C,’” in which Maintenance Supervisors may determine for themselves when during a given week the work should be performed, and level D which is “[m]iscellaneous work . . . activities [that] are not measured for schedule adherence.” *Id.*

Maintenance Supervisors as a whole begin their shift by working with the AWS they helped prepare, and they analyze it to determine whether the scheduled work activities have proper advance certification or need other advanced considerations. *See* Tr. at pp. 565:16-568:4. Through the fourteen-week planning process, a Maintenance Supervisor will typically assign work to those members of their crew most adept at the particular task. *Id.* Supervisors also ensure that “predecessor” work, such as ordering a scaffold to be built, and “successor” work following the main work assignment, are arranged in coordination with other necessary crews. Tr. at pp. 674:11-675:18. Once approved and distributed by the Maintenance Supervisor, the

crew begin performing tasks with the supervisor's oversight. *Id.* Maintenance Supervisors often deviate from the schedule for emergent conditions. *Id.*

Maintenance Supervisors review the AWS after eight weeks, and up until implementation week. Tr. at p. 564:15-:17. The Maintenance Supervisors assign the work, "walk it down[,] " "get it ready to work[,] " order parts, and make sure the crew has the right equipment to complete the work. Tr. at p. 564:15-:22. The Maintenance Supervisors also ensure that the crew "has the resources" to complete the work and ensure that any advanced certifications are in place. Tr. at p. 566:8-:12. Work orders receive certain priority designations that indicate when particular assignments should be completed. Tr. at p. 567:7-:10. The Supervisors "balance. . . priorities" based on these designations and ultimately determine when work is assigned and who receives it. Tr. at p. 567:6-:22. When Supervisors receive the scheduled work assignments eight weeks into the planning cycle for a given implementation week, they review them, determine the walkdowns, and ask for equipment clearance orders, procedures they need, and any necessary materials. Tr. at p. 569:1-:7.

Electrical Maintenance Supervisor Jim Bob Presswood testified he ensures that "work is scheduled. . . by its due dates." Tr. at p. 119:3. Seven weeks into the process, he "take[s] over," makes any final adjustments, and ensures he has crew members to support a job. *See* Tr. at p. 119:7-:9. Eight weeks into the process, Presswood would "have people walking down the work packages" to make sure they would be ready to work at the end of the fourteen week process. Tr. at p. 122:21-:24. Throughout this process, Presswood "review[s] it, making sure it is workable" and that any issues are resolved. Tr. at p. 123:20-:22. Supervisors also attend meetings with the Work Week Coordinators in the final seven weeks and work with the Work Week Coordinators to schedule any changes. Tr. at p. 147: 2-:10. After the planning process for the AWS finishes

and implementation week begins, Presswood's crew actually begins working on the scheduled assignments. Tr. at p. 124:3-:7.

Mechanical Maintenance Supervisor Brent Taylor testified that his role in the AWS process is to ensure that his package instructions are clear and concise so that "any roadblocks" are cleared before the schedule is implemented. Tr. at 245: 4-:14. Taylor also testified that he adds assignments to the AWS if it "is going into the permanent plant, and not part of a work package." Tr. at pp. 275:25-276:1-:2.

Maintenance Supervisor Paul Horning makes sure his crew "starts things appropriately" within the AWS process. Tr. at p. 467: 1. The AWS process includes assigning priority levels to the work, which Horning must judge and "make [the] call" on whether his crew will complete a particular assignment first and who receives a particular assignment. Tr. at p. 467:7-:21.

Mechanical Maintenance Supervisor Brent Taylor oversees the machine shop where mechanics fabricate parts to support the plant. Tr. at pp. 228:19-:25. Mike Langston has been a mechanical maintenance supervisor for five years. Tr. at p. 809:9-:13.

Mechanical Maintenance Supervisors ensure the coordination, training, and scheduling of crew members. *See* Jt. Exh. 3, p. 1. Additionally, they ensure compliance with plant policies and procedures and the Nuclear Regulatory Commission and Institute of Nuclear Power Operations guidelines. *Id.* The Mechanical Maintenance Supervisors oversee the mechanics who repair the diesel engines for the plant. Tr. at p. 235:3-:19. Because his mechanics do not work on the same engines every day, Taylor testified that he provides help and guidance. *Id.* Taylor testified that he spends 20 to 25 percent of his time in the field providing guidance to his crew members. *Id.*

Taylor begins his workday by checking equipment and holding a meeting with other Maintenance Supervisors to discuss resources and priority levels of work activities for the day. Tr. at p. 236:14-:25. During this daily meeting, Taylor testified he goes over the status of the units, focus areas, upcoming training, and debriefs on the prior week. Tr. at pp. 238:20-239:25. Depending on the risk involved on a particular job, Taylor also meets with his crew for a brief pre-job meeting. Tr. at pp. 240:15-242:3. After this daily pre-job brief, Taylor answers questions and sends his employees out to the field. Tr. at pp. 242:4-243:11. He then enters workflow management information into the computer. *Id.* Taylor also spends time in the field checking and overseeing jobs of the mechanics he supervises. *Id.*

Taylor supervises six mechanics, one machinist, and one contractor. Tr. at pp. 227:10-228:10. His crew members must obtain signatures before they begin performing work. Tr. at p. 244:05-:13. Both Taylor and Langston assign work according to their crew members' certifications and training. Tr. at pp. 235:20-236:7, 864:10-865:10. Taylor testified that

Because it is unique – the engines that we work on, safety-related and non-safety-related, we have – I have to hand out jobs according to certs. Not all of them have non-safety-related diesel certifications. The majority of them are five-year. We have broken them down into six different cert, seven different cert dates, by qualifications, to work on these engines, and not each of them has the same certification, so I will have to – I have to verify that their certs are accurate and haven't missed any training or anything like that, and then hand the work out accordingly to their certifications.

Tr. at pp. 235:20-236:7. Langston also testified he swaps personnel depending on the specific certifications needed for a particular job. Tr. at p. 814:13-:23. Taylor ensures his crew is “signed on to their clearances” and the crew “is going to work safe.” Tr. at p. 241:4-:5.

Taylor regularly assigns work not scheduled on the AWS when a part needs to be fabricated for a “critical job.” Tr. at pp. 274:17-276:6. Taylor may assign a machinist to make a needed part or tool on a weekly basis if necessary. *Id.*

Eight craftsmen report to Langston. *See* Tr. at pp. 814:1-:3, 823:16-:18. Like Taylor, Langston participates in daily alignment meetings with anyone running a crew where they discuss the Daily Operational Focus (DOF) package, unit statuses, personnel issues, and weekly safety topics. Tr. at pp. 811:23-813:25. Langston also conducts a brief meeting on Monday mornings with his crew where they cover the DOF, safety topics for the week, and training schedules. Tr. at pp. 817:17-818:8. Langston spends 20 to 25 percent of his time in the field observing and overseeing the safety of his crew. Tr. at pp. 855:25-856:18.

Though Langston said that the expectation is to keep the Shop Coordinator informed, he also noted that he can permit overtime. *See* Tr. at pp. 848:23-850:19. Langston explained that each supervisor “conduct[s] business a little bit different” and may choose to involve their managers more than others. *Id.*

Electrical Maintenance Supervisor Jim Bob Presswood served in his position for ten years before his current role as the Shop Scheduler in the Maintenance Department. Tr. at pp. 116:4-:7, 118:10-:22. As the Electrical Maintenance Supervisor, Presswood oversaw the electrical maintenance crew and ensured that crewmembers had requisite certifications to complete the jobs. *Id.* Presswood testified that he occasionally ventured into the field to help his crew resolve problems. Tr. at pp. 125:19-126:3. He supervises two head electricians. Tr. at pp. 117: 4-:6.

Presswood’s primary responsibility was to ensure that his technicians completed work according to the scheduled due dates in the AWS. Tr. at pp. 118:23-119:14. Presswood testified his role changes throughout the AWS process. Tr. at pp. 122:14-124:25. Seven weeks into the process, he makes “final adjustments” and ensures that he has crew members to complete the scheduled work. *Id.* Eight weeks out, he completed “2/6 walkdowns” to confirm that work

packages were ready to work as scheduled. *Id.* Nine weeks out, he reviewed the schedule and resolved any issues brought up during the walkdowns. *Id.* Once this fourteen-week process was performed, Presswood's crew worked the scheduled jobs. *Id.* Ultimately, Presswood made the final adjustments and had responsibility for ensuring that he had the crew to support completion of the scheduled jobs. *Id.* Presswood never sought his manager's approval to borrow a person from another crew or to move a job to another crew based on his evaluation of the ability of his crew to complete a job. Tr. at pp. 119:15-120:3.

Presswood evaluated and assigned jobs to certain technicians based on their certifications. Tr. at pp. 118:18-:22. Presswood testified that

I'd have – all of the particular jobs that I had, and then I would have to determine what certifications are required for each job, and – because all of my guys wouldn't have the same certifications, so I might have to use – I would have to determine which guys I would have perform which job, based on their certifications. Then, once I have determined who is working which jobs, I give the work package to those guys to prepare them for the work.

Tr. at p. 124:15-:25. Presswood assigned work to bargaining unit employees and did not seek permission from his boss to do so. *See* Tr. at p. 151:6-:10. Presswood also testified he has directed unscheduled work during an outage. Tr. at pp. 193:15-194:7.

Presswood testified he oversees and evaluates his crew's work in the field. Tr. at p. 216:4-:23. If Presswood noticed a crew member not following policies or procedures, he would "coach them. Stop, coach, make sure they understood what they were doing wrong and correct them." *See* Tr. at p. 126:7-:15. Presswood did not ask his supervisor or manager before correcting crew members. *See* Tr. at pp. 126:16-127:6.

Roger Wilkinson has been an electrical supervisor since 1992, and nine employees report to him. *See* Tr. at pp. 664:6-:9, 664:23-665:21, 666:17-667:11. His job duties are the same as Presswood's when Presswood served as an electrical maintenance supervisor.

Wilkinson said the following about assigning work:

The craftsmen have to be present. Then I have to determine what certifications are required and then at that point, then I have to know the individuals – if I have more than one individual with the same cert, I have to know who has the experience to be most successful at the job. I make that determination.

Tr. at pp. 672:22-673:3. Further, “I have new guys or new journeymen who are less skilled than some of our more experienced ones. I would factor that into any determination I made, is it an opportunity for them to gain experience or are they experienced enough to handle the job that they’re certified for alone?” Tr. at pp. 673:8-:20. He notes that the AWS does not spell out what certifications are necessary; it requires the supervisors to be familiar with the certification requirements. *See* Tr. at pp. 673:21-674:10.

Integrated Maintenance Team Manager David Thornton has held that role since July 15, 2013, and he is a stipulated statutory supervisor. Tr. at pp. 547:12-550:10; June 18 Decision at p. 4. Thornton reports to Rudy Stastny, and oversees ten IMT supervisors (Todd Upton, Brock Steed, Steve Baylor, James Larson, Rasoul Shouri, Chip Fisher, Don Humes, Chris Richter, Charlie Sauer, and Steve Alley). *Id.*; Jt. Exh. 2 at pp. 6. The IMT repairs equipment throughout the plant, serving as first responders to emergent conditions, and performing “walkdowns” of incoming condition reports for specific types of mechanical problems including pumps, valves, electrical, and mechanical. June 18 Decision at p. 4. IMT Supervisors oversee the work of their crew members and are expected to spend 25 percent of their time with their crew, correcting at-risk behaviors in the field; identifying good performance; identifying gaps in performance; and identifying training needs. Tr. at pp. 558:5-:15.

IMT Supervisors oversee the work of their crew members and assign work to their crews. Tr. at pp. 558:5-:15, 561:23-562:25. Supervisors do not need approval from managers to make day-to-day work assignments or to ensure they have needed resources. Tr. at pp. 566:13-567:1.

For example, a supervisor assigns emergent conditions (i.e., emergency events), briefs the respective crew, who then gather the information necessary to plan for the job. Tr. at p. 562:6-:25. Non-emergent conditions are scheduled through the PWS and AWS. Tr. at pp. 563:25-564:22. To ensure effective Work Management Scheduling, the PWS is authorized and converted to AWS two weeks prior to implementation and the supervisor assigns the work to his crew based on both. *Id.*

Supervisors independently determine what individual crew members are assigned work based on knowledge sharing. *See* Tr. at p. 569:9-:19. For example, a supervisor often determines and assigns more experienced crew members with less experienced crew members using “triangle” criteria: experience, training, and supervision. Tr. at pp. 572:2-:7. The criteria assists supervisors assign work based on skill levels, training, and oversight needed to successfully complete work. *Id.* In fact, Thornton has never overruled any supervisors’ decisions on how they pair their crews on a particular assignment, and he relies on the supervisors’ technical expertise and experience to make these decisions. Tr. at pp. 570:19-571:1. Supervisors also “borrow” (i.e., transfer) crew members from other crews without manager approval. Tr. at pp. 599:7, 600:15.

Facilities Maintenance Supervisor Paul Horning works in the Nuclear Support Center and his employees perform maintenance on various equipment, including doors throughout the plant. Tr. at pp. 441:24-442:16. Horning also manages maintenance on cranes at the plant. Tr. at p. 444:3-:23. Horning is ultimately responsible for his crew’s safety and ensuring his crew follows company policies. Tr. at p. 537:9-:17. Horning supervises three members of the door crew and four contractors. Tr. at p. 441:4-:20.

Horning conducts a pre-job brief on Mondays with his crew where he covers the “rules and responsibilities on the activities taking place in the field, who’s doin’ what, where we’re goin’, what types of permits that we’re goin’ to be workin’ with.” *See* Tr. at pp. 529:15-530:7. Horning is even more involved in these meetings when the job is a difficult one. *Id.*

Horning assigns work to his crew referencing the AWS but he has discretion to deviate from the schedule. *See* Tr. at pp. 466:5-467:21. For instance, Horning testified he could push a task to Monday even if the schedule required completion by Friday. Tr. at p. 468:16-:19. Horning manages his schedule but informs his manager of understaffing. Tr. at p. 446:3-:12.

Horning inspects his crew’s work by performing “walkarounds, walkabouts” and providing coaching. Tr. at pp. 446:13-:17. Horning corrects his crew members’ behavior when necessary. Tr. at pp. 464:14-465:14. Horning exercises even greater oversight of the contractors he oversees. Tr. at p. 514:7-:10.

Metrology and Radiology Laboratory Supervisor John Griffin oversees calibration and repair of all measuring and test equipment, radiological instrumentation, circuit boards, power supplies, and modules for the plant. Tr. at pp. 18:16-19:7. Griffin receives requests from other departments regarding equipment repairs. Tr. at p. 21:5-:13. A software program helps Griffin create an inventory that Griffin uses to manage workflow. Tr. at p. 22:5-:11. Griffin has never conferred with a supervisor to change the status of equipment and his decisions have never been overridden or overruled. Tr. at p. 23:13-:23.

Griffin supervises ten Technicians. Tr. at p. 17:8-:12. Technicians complete their work based on a software program that manages workflow. Tr. at p. 21:5-:13. The software ensures that Technicians know where all of the equipment is located so that they can complete repairs. Tr. at p. 22:5-:19. Griffin manages the software and overrides it when priority requests for

repairs come in and he assigns those to the Technicians. Tr. at pp. 21:5-22:11. Griffin determines work priority based on plant needs and sets the schedule. Tr. at pp. 29:2-30:23.

Griffin conducts daily meetings with two specialists he supervises, who build test fixtures and write procedures and software. Tr. at pp. 25:12-27:25. These specialists are not in the bargaining unit. Tr. at p. 26:2-12. Griffin tasked these specialists with conducting a daily work meeting with the Technicians. *Id.* Griffin reviews a DOF document with the specialists to convey priority issues for the day, which the specialists disseminate to the crew members. Tr. at p. 26:21-:24. Griffin decides whether to re-prioritize a task and his supervisor plays no role in re-prioritizing. Tr. at p. 30:10-:13. He does not need his manager's approval. *Id.*

Griffin testified he has not ever been disciplined or punished for his crew's conduct, but he is accountable to management if a member of his crew has a problem. *See* Tr. at p. 114:6-:12.

2. Disciplinary Actions

All Maintenance Supervisors assess the level of disciplinary action necessary under STP's progressive discipline policy. Tr. at pp. 339:20-343:22. The discipline policy includes six different levels of discipline: Oral Reminder, Written Reminder, Decision Making Leave, Suspension, Final Warning, and Termination. Jt. Exh. 9. STP's "Contact Logs" are used to document discipline, positive performance and counseling. If an employee violates policy or exhibits an undesirable behavior, the Maintenance Supervisor meets with him and investigates the circumstances. Tr. at pp. 342:2-344:17. The Maintenance Supervisor determines whether discipline is required and is "absolutely authorized to conduct an oral level of discipline with no other review." Tr. at p. 342:14-:16; Employer's Exhibit (hereinafter "E. Exh.") 5 at p. 7. Though Maintenance Supervisors are authorized to issue discipline, many meet with their manager or Human Resources simply to "let them know." Tr. at pp. 342:19-343:4.

Human Resources and the Maintenance Supervisor's manager will only review a Maintenance Supervisor's recommendation for discipline to ensure consistency with STP's policies. Tr. at pp. 349:23-350:10. Maintenance Supervisors undergo training to effectively implement policy. *See* Tr. at pp. 354:17-356:8. Specifically, Maintenance Supervisors are taught to act immediately and suspend employees if necessary without seeking any approval. *Id.*

A Maintenance Supervisor documents any "contact" about standards or expectations, discipline, or positive recognition in an Employee Contact Log. Jt. Exhs. 1, 9; Exhs. 6, 9, 13, 15, 19, 20, 21, 22. Although STP's discipline policy does not consider counseling to be discipline, counseling and "positive performance" must be documented in the Employee's Contact Log, and is a stepping stone to further discipline. *See* Jt. Exh. 1, p. 50. Shawn Flaherty, who served as the Manager of Employee and Labor Relations for over eight years, testified that the first step of constructive discipline is counseling, and that supervisors "coach and counsel [an employee with an undesirable behavior] to try to get that behavior changed or ensure that that conduct isn't repeated." Tr. at p. 340:14-:19. If unsuccessful, "the next line logical step [is] to go to another level of the constructive discipline program, be it oral, written or greater." Tr. at p. 341:4-:7.

Supervisors issue discipline to their crew members for misconduct. Tr. at p. 575:7-:10. For example, a supervisor issued an oral reminder to an employee because he failed to complete his training and was unable to enter the work site. Tr. at pp. 575:23-576:7. In another instance, a supervisor issued an oral reminder because a crew member failed to turn in background investigation forms, which are required every five years for non-critical employees. Tr. at p. 579:4-:15. Additionally, a supervisor issued counseling for two crew members because they inadvertently dropped a crescent wrench into a pump and were not using proper Foreign Material Exclusion (FME) practices. Tr. at p. 583:2-:13. Although Thornton thought the crew members

should have been subject to a greater step of discipline instead of counseling, he did not overrule the Maintenance Supervisor's decision. Tr. at p. 58511-:22.

Mechanical Maintenance Supervisor Brent Taylor described one occasion in which he made contact with two employees after they put the wrong oil in a diesel engine. Tr. at pp. 258:10-259:22. Taylor documented the incident and helped his supervisor with writing the Contact Log. Tr. at p. 260:3-:9. Taylor's supervisor also disciplined Taylor for this incident because Taylor ordered the wrong oil. Tr. at p. 261:2-:3. Taylor also testified he regularly participates in coaching his employees. Tr. at pp. 257:20-:22.

Mechanical Maintenance Supervisor Langston testified he may coach and counsel his crew members but his manager wants to be involved if the procedures dictate higher disciplinary action. Tr. at pp. 827:19-828:1. For example, on one occasion, he decided to counsel an employee who was missing during a fit-up inspection. Tr. at p. 887:2-24. Langston's superiors did not provide any response before he went forward with conducting the counseling. *See* Tr. at pp. 889:21-890:25. Langston later signed and delivered the written action after his manager directed it. Tr. at pp. 828:22-829:2, 836:6-:13.

Electrical Maintenance Supervisor Presswood testified he disciplined at least one employee for missing computer-based training. Tr. at p. 163:17-:22. As a result, Presswood issued an oral reminder, which is the first step of disciplinary action in STP's progressive discipline policy. Tr. at p. 164:8-:10. Presswood also testified he filled out "quite a few Contact Logs" as a Maintenance Supervisor. Tr. at p. 165:24.

Facilities Maintenance Supervisor Horning testified about one incident where he was involved in the discipline and eventual termination of a crew member. Tr. at pp. 493:3-:25, 497:8-:16. Horning's crew member continued to arrive late to work, so Horning talked to him.

Tr. at p. 493:5-:14. After an off-site domestic abuse incident, Human Resources became involved and the crew member went through the company's alcohol treatment program. Tr. at pp. 492:16-493:2). On another occasion, the employee arrived 40 minutes late to work, and so Horning sent him home. Tr. at p. 493:22-:25. Though Horning's manager overruled this decision and permitted the crew member to return to work, Horning had authority to deny the crew member's vacation request a month later because of the crew member's poor attendance. Tr. at pp. 494:1-496:4. When the crew member later failed his fitness for duty test, Human Resources handled the crew member's termination. Tr. at pp. 496:18-497:16.

Metrology and Radiology Laboratory Supervisor Griffin attended training on the discipline process. Tr. at p. 66:1-:3. Though Griffin has "never had to administer discipline" of any of his direct reports, he regularly conducts counseling. Tr. at pp. 44:21-45:16, 71:20-21. Griffin described several instances where his direct reports arrived late to work and he reprimanded them without prior discussions with his supervisor. Tr. at p. 45:8-:20. After this, these particular employees did not arrive late ever again. Tr. at p. Tr. 45:15-:16.

Griffin completes evaluations for the two specialists that he supervises. Tr. at p. 58:2-:5. Griffin determines whether the specialists meet criteria to receive a bonus. Tr. at p. 58:16-:17. Griffin set goals each year and discusses with the specialists whether these goals have been achieved during their yearly evaluations. Tr. at p. 59:7-:22. After performing this evaluation, Griffin sends documentation of his rating to his supervisor. Tr. at p. 58:21-:22.

3. Authority to Hire or Recommend Hire

Maintenance Supervisors participate on hiring panels with a non-supervisor and a Human Resources employee. Tr. at pp. 386:15-387:25. Each hiring panel participant completes a form to score the candidates. *Id.*; E. Exhs. 11, 12. The hiring panel must reach a consensus regarding

the candidate to be selected, but the hiring supervisor ultimately makes the selection and decides who is hired. Tr. at pp. 431:19-432:14.

Mechanical Maintenance Supervisor Taylor participates in hiring panels without the presence of a manager. Tr. at pp. 247:13-248:13, 252:20-253:1. Taylor scores and ranks candidates using a standard form. Tr. at p. 248:15-:17. Taylor testified that on the occasions he served on a hiring panel, those candidates he recommended have always been the ones ultimately hired. Tr. at p. 251:16-:25.

Mechanical Maintenance Supervisor Langston participated in three hiring panels. Tr. at p. 837:17-:21. Individuals on each panel formed a consensus on rating each candidate. Tr. at p. 839:3-:12. Though not part of the interview due to self-disqualification, Langston has also recommended a candidate for a job opening. Tr. at p. 841:4-:23.

Electrical Maintenance Supervisor Presswood's supervisor "told [him] that [he] could pick the people out of – the ones – the seven that [they] wanted." Tr. at p. 128:3-:5. Presswood stated he had the "overall decision" and his manager gave him complete discretion to decide all five of the apprentices to be hired. Tr. at pp. 137:19-138:10. After the interviews, Presswood testified that the interview panel discussed their ratings to reach a consensus. Tr. at p. 131:13-:21. No manager ever asked Presswood to change his ratings of a candidate. Tr. at p. 132:4-:13.

Presswood testified that supervisors give input on the candidates considered for promotion as well. Tr. at p. 132:13-:24.

Integrated Maintenance Team Manager Thornton acknowledged his vote on hiring panels does not count as much as technical supervisors who are there to add advice, especially on technical questions. *See* Tr. at p. 588:17-:19. For example, a technical supervisor is more advanced than the manager in an I&C interview and can recognize whether an answer is good or

not, whereas the manager may have deemed an answer sufficient. Tr. at pp. 588:22-589:6. In fact, Thornton has never overruled a Maintenance Supervisor's decision or recommendation on who should get a particular position. Tr. at pp. 589:19-:23.

Facilities Maintenance Supervisor Horning participates in hiring panels. Tr. at p. 451:17-:18. Horning testified that members of the panel score the candidates and discuss that scoring to ensure that each member of the panel scores the candidate within one point of each other. Tr. at pp. 454:4-457:6.

Metrology and Radiology Laboratory Supervisor Griffin hires for vacancies in his department. Tr. at p. 32:6-:16. Griffin decides to post a job opening for his department and places a request with Human Resources. Tr. at p. 32:12-:25. Griffin also screens resumes and selects candidates to be interviewed. Tr. at pp. 33:23-34:17. Griffin specifically looks for candidates with related experiences, military experience in metrology, or two-year degrees. Tr. at p. 37:1-:13. Human Resources schedules the interviews with candidates Griffin selects. *Id.* Griffin then participates in an interview panel, comprised of a Human Resources employee, two employees that Griffin chooses, and Griffin himself. *Id.* Though Griffin uses the standard company questions and a scoring system, he has the ultimate say in selecting a candidate that would be a "better fit for the organization." Tr. at pp. 37:19-38:4. Griffin testified the hiring decision is "ultimately my decision. I've never been told to hire somebody I don't want to hire." Tr. at p. 76:11-:12. Griffin even testified about an instance where he recommended an individual who was ultimately hired over a higher scoring candidate because he believed the individual's background would be a better fit. *See* Tr. at p. 38:6-:18.

4. **Adjusting Grievances**

Maintenance Supervisors are also "the first step of the grievance process." Tr. at p. 396:2-:7. When an employee has a grievance or dispute, the employee takes it to the union

steward, who presents the grievance to the employee's supervisor. Tr. at pp. Tr. 408:8-:22; Jt. Exh. 1, p. 4; E. Exh. 14. Often, these grievances are resolved before they are ever recorded in writing. *Id.* Shawn Flaherty testified that during his tenure as the Manager of Employee and Labor Relations, "many grievances" were resolved, and he would "never even be made aware of simply because it's resolved at the first step in the process." *Id.* However, disputes that cannot be resolved are investigated and documented by the Maintenance Supervisor, who will also attempt to resolve the dispute. Tr. at pp. 397:19-398:11, 405:2-:10.

Mechanical Maintenance Supervisor Taylor testified that he has not participated in the grievance process before. Tr. at p. 269:12-:15. Mechanical Maintenance Supervisor Langston has not handled any grievances as a supervisor either. Tr. at p. 881:23-:25. Langston testified he believes the Union Steward would bring any grievances to him. Tr. at p. 883:1-:2.

Facilities Maintenance Supervisor Horning addresses grievances in his capacity as Facilities Maintenance Supervisor. Tr. at p. 469:3-:22. Horning testified that Union Stewards bring grievances to him, which he will look at and take to his manager to discuss. *Id.* Horning responds to the grievance himself. *Id.* Horning has been involved in one grievance that has been on-going because it involves a "quality-related procedure" and only permits certain individuals to "put their hands on those control keys to change out all of those cores." Tr. at p. 480:4-:22, E. Exh. 14, at p. 13. Though the grievance remains unresolved, Horning consulted with Human Resources and obtained opinions from the Facility Manager and Security Manager to determine if the procedure could be changed so that the grievance could be resolved. Tr. at p. 482:9-:23. In another case, Horning addressed a grievance filed by a facility mechanic who had been bypassed to participate in 30 hours of overtime. *Id.*

Metrology and Radiology Laboratory Supervisor Griffin has not personally handled any grievances, but he has received training on the grievance process and is the second person employees talk to in the grievance process after their union steward. Tr. at p. 51:12-:21.

5. Compensation Rewards

Maintenance Supervisors reward their subordinates for exceptional performance through the “Boss Points” program. Tr. at pp. 371:11-374:9. Maintenance Supervisors receive a certain amount of Boss Points based on their number of direct reports, which they may distribute at their sole discretion. *Id.* Employees may redeem these points for clothing, gift cards, or even trips. *Id.* Maintenance Supervisors may award up to \$50-worth of Boss Points without manager permission. Tr. at pp. 374:21-375:8.

As for their own compensation, Maintenance Supervisors may earn up to 15% of their salary in incentive compensation, while other employees only earn up to 7%. Tr. at pp. 366:24-368:21; Jt. Exh. 1, p. 45. Supervisors also receive 80 additional hours of vacation time to be used in any way they want, as opposed to the 40 received by others. Tr. at pp. 361:19-362:19.

Mechanical Maintenance Supervisor Taylor receives and gives out Boss Points to individuals who do a “good job or had a really good night.” Tr. at pp. 253:20-254:5. Taylor also records when one of his crew members does “something really good.” Tr. at pp. 257:23-:25. Mechanical Maintenance Supervisor Langston also receives the allotted amount of Boss Points and has “control to give them out as [he] see[s] fit.” Tr. at pp. 897:18-898:3.

Electrical Maintenance Supervisor Presswood testified that “everybody who is a supervisor or above” receives “Boss Points,” and he gives his out to employees he selects “based on performance” and when “somebody has gone above and beyond.” Tr. at pp. 138:12-139:12.

Facilities Maintenance Supervisor Horning also receives and gives out “Boss Points” to individuals who assist his team when something “not necessarily on the schedule” arises and his

team requires assistance. Tr. at pp. 458:18-459:11. Horning testified that he “trie[s] to throw some points their way just to say thank you.” Tr. at p. 459:5.

Metrology and Radiology Laboratory Supervisor Griffin receives Boss Points to distribute each quarter at his sole discretion, awarding employees who have done quality work or to whom he wants to show appreciation. Tr. at p. 47:2-:18.

6. Other Supervisory Indicia

All new Maintenance Supervisors attend two to three weeks of training prior to becoming supervisors. Tr. at p. 330:19. Additionally, Maintenance Supervisors attend continuing training. Tr. at pp. 326:25-327:12. The nuclear industry’s self-regulating body, INPO, requires training on certain subjects. Tr. at p. 328:21-:25. Shawn Flaherty, Manager of External Communications and Governmental Affairs, testified that

the leadership academy helps develop new leaders to develop into their roles as a supervisor. It takes individual contributors and helps bridge that gap from being in a nonsupervisory role into being in a supervisory role. It's a difficult transition, so we've developed a curriculum that -- that helps them prepare for that. All -- all supervisors, and whether promoted up through the organization or hired internally from external sources, have to go through the leadership academy. And that includes managers that we might hire from an external - external to the Company into the Company. They have to go through the leadership academy as well.

Tr. at pp. 326:20-327:6.

Mechanical Maintenance Supervisor Taylor attended a two week long leadership academy for supervisors. Tr. at p. 255:13-:21. Additionally, Taylor’s potential incentive compensation is double that of his crew. Tr. at p. 256:7-:13.

Taylor’s crew members call him to request sick time and Taylor moves crew members around as necessary to accommodate the absence. Tr. at pp. 256:14-257:11. Crew members also request vacation time from Taylor. Tr. at p. 268:6-:9. Though Taylor could deny a vacation request in certain circumstances, he has never denied a request. Tr. at pp. 268:22-269:11.

Langston testified that he monitors his crew members' paid time off hours and even described two instances where he made a formal contact with employees who went over their allotted 40 hours. Tr. at pp. 893:6-895:8.

Taylor approves his crew's time each Monday morning before that time is sent to payroll. Tr. at p. 303:22-:23. Taylor also grants overtime when a job runs late and a few more hours are needed on a job. Tr. at p. 280:8-:11.

Like other supervisors, Taylor wears a blue button-down shirt, tan pants, and leather shoes. Tr. at p. 307:19-:20. Taylor's crew wears different colored pants and shirts according to the bargaining unit guidelines. Tr. at p. 307:23-:25.

Electrical Maintenance Supervisor Presswood attended supervisor meetings once a week, attended trainings held for supervisors, and served as a training instructor. Tr. at pp. 158:3-:9, 161:3-:8, 198:3-:12. Presswood received a salary and other incentive pay and benefits only available to supervisors. Tr. at p. 206:11-:22. Additionally, Presswood's bonus incentive pay potential was double his crew's bonus incentive rate. Tr. at pp. 199:4-:8. Presswood received vacation days based on his years of service to the company but received two additional weeks of paid time off, which is only available to supervisors. Tr. at pp. 207:14-208:10.

Presswood authorized overtime without permission from his supervisor. Tr. at pp. 190:23-191:10, 215:5-:8. Presswood only kept his supervisor informed in situations where overtime occurred on a weekend. Tr. at p. 190:6-:16.

Presswood's crew members called him to request sick time and Presswood rescheduled or reassigned any work without needing his supervisor's approval. Tr. at p. 160:5-:12. Presswood testified that crew members must contact their supervisor to request time off and, as a supervisor, he must determine whether the illness is job-related and document the circumstances.

Tr. at p. 167:6-:19. Crew members also submitted vacation requests to Presswood. Tr. at p. 160:13-:23. He did not need approval to grant vacation requests unless more than the minimum number of crew members would be out. *Id.* Presswood also testified he has denied a vacation request when a crew member requested it during an outage. Tr. at p. 171:13-:17.

As a supervisor, Presswood wore khaki pants and a blue polo. Tr. at p. 212:8. His crew wore black, brown, or khaki pants and a company-supplied t-shirt. Tr. at p. 211:15-:17.

Integrated Maintenance Team Manager Thornton leads maintenance first-line supervisor training, which was formerly an accredited training program with the INPO. Tr. at p. 592:3-:7. The training identifies gaps for performance subjects, including EmpCenter, performance analysis, and training analysis which may be led by subject-matter experts. Tr. at pp. 592:12-:25. Mr. Thornton holds weekly staff meetings for supervisory-level employees. Tr. at p. 594:2-:9. The plant holds bi-weekly Leadership Alignment meetings, which are exclusively for supervisors and managers once a month to discuss the state of the company, led by the CEO or other high-level leaders. Tr. at pp. 594:7-595:10. Supervisors are expected to share the information they receive with their crews. Tr. at p. 594:16-:18.

Supervisors have discretion to keep crew members for overtime needs without approval or permission from the manager. Tr. at pp. 596:21-597:25. For sick or vacation time, crew members contact their supervisors. Tr. at p. 598:17-:23. Supervisors approve the time for their crew, which is later approved by the manager. Tr. at pp. 603:20-604:3.

Supervisors hold themselves out to be supervisors among their crew and crew members understand that. Tr. at p. 604:4-:17.

Facilities Maintenance Supervisor Horning has his own office on the fifth floor. Tr. at p. 503:5-:10. He attended a leadership academy for supervisors and attends quarterly meetings

only meant for supervisory employees. Tr. at p. 463:4-:19. Horning also earns a higher salary than his crew. Tr. at p. 462:11-:18.

Horning does not seek approval from his manager to assign overtime but simply notifies his manager of any overtime performed and when a job is completed. Tr. at p. 449:13-450:21. Horning's crew members call him to request sick time, which he approves. *Id.* He also organizes assistance from other teams without a manager's permission when employees are out. *Id.* His requests for help from another crew never get denied. Tr. at p. 511:4-:12.

As a Maintenance Supervisor, Horning wears a uniform of khaki pants and a blue shirt. Tr. at p. 535:17-:20. His crew members wear gray or black pants and a gray or blue shirt. *Id.*

Metrology and Radiology Laboratory Supervisor Griffin has his own office in the laboratory. Tr. at p. 52:2-:5. He attended a training specific to supervisors, and attends weekly meetings for supervisors. Tr. at pp. 53:11-:13, 56:3-:18. Additionally, Griffin earns a higher salary and can potentially earn up to double the bonus incentive pay of the union employees he supervises. Tr. at pp. 52:17-53:10.

Griffin decides overtime without permission and has never been overruled. Tr. at p. 24:2-:10. Griffin's direct reports call him when they are sick and Griffin may grant sick time without his supervisor's approval. Tr. at pp. 24:13-25:1.

IV. ARGUMENT

The Maintenance Supervisors are supervisors under Section 2(11) of the NLRA, 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.

29 U.S.C. § 152(11).

The Board frequently emphasizes that any 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, 920 (1999). Furthermore, the *possession* of authority to engage in any of the functions listed in Section 2(11) informs the analysis, even if this authority has not yet been exercised. *Wal-Mart Stores*, 340 NLRB 220, 223 (2003); *Fred Meyer Alaska, Inc.*, 334 NLRB 646, 649 n.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, 687 (2006).

A. Maintenance Supervisors Assign and Responsibly Direct Work.

The Regional Director ignored the clear weight of evidence showing that Maintenance Supervisors assign and responsibly direct work using independent judgment. When analyzing the authority to assign work, “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.” *Oakwood Health Care, Inc.*, 348 NLRB at 689. Thus, “the decision or effective recommendation to affect place, time or overall tasks—can be a supervisory function.” *Id.* While the mere equalization of workloads does not amount to assignment within the meaning of Section 2(11) because it is routine and does not require independent judgment, assignment that requires a consideration of the nature of the tasks and capabilities of an employee requires the exercise of independent judgment. *RCC Fabricators, Inc.*, 352 NLRB 701, 736 (2008); *see also Lakewood Health Ctr.*, 365 NLRB No. 10, slip op. at 10-11 (2016) (Member Miscimarra, dissenting opinion) (stating that the Board should incorporate “commonsense principles” and consider the “practical realities of the

workplace” in determining supervisory status). In this case, the evidence overwhelmingly shows that Maintenance Supervisors independently assign work as statutory supervisors under the Act.

When analyzing an individual’s ability to responsibly direct work, the Board has found that “[t]o be responsible is to be answerable for the discharge of a duty or obligation. The focus is on whether the alleged supervisor is held fully accountable and responsible for the performance and work product of the employees he directs.” *Oakwood Healthcare, Inc.*, 348 NLRB at 691 (internal quotations and citations omitted). The Board has further elaborated regarding whether an individual responsibly directs the work of others, stating:

to establish accountability for the purposes of responsible direction, it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. It must also be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps.

Id. at 692. In this case, the evidence overwhelming establishes that the Maintenance Supervisors at issue responsibly direct work, and therefore are statutory supervisors.

1. Assigning Work.

The Board confers supervisory status where the assignment of tasks required analysis of available employees’ skills. *See RCC Fabricators, Inc.*, 352 NLRB at 736; *Int’l Union of Operating Engineers*, 283 NLRB 734, 742 (1987); *Northshore Sheet Metal, Inc.*, No. 19-CA-083657, 2013 WL 3865066, at *15 (N.L.R.B. Div. of Judges July 25, 2013). For example, in *International Union of Operating Engineers*, the Board held that a master mechanic employed in the construction of a nuclear power facility was a supervisor because he assigned work based on his sole evaluation of his direct reports’ abilities. 283 NLRB at 742. The mechanic received a list of equipment to be used each day from his supervisor, who did not know the employees’ qualifications. *Id.* at 741-42. The mechanic alone then decided which employee to operate the equipment based on his independent evaluation of each employee’s qualifications and

capabilities. *Id.* at 737. An administrative law judge similarly found that a shop foreman at an architectural sheet metal manufacturer was a supervisor where he assigned “significant overall duties.” *Northshore Sheet Metal, Inc.*, 2013 WL 3865066, at *15. The judge emphasized that the foreman assigned work based on priorities, inspected his machine operators’ work and occasionally instructed them to repair faulty products, and coordinated assignments between the shop and the field based on workflow. *Id.* Likewise, in *RCC Fabricators*, the Board found that individuals were supervisors because the assignment of tasks required analysis of the available employees’ skills and took into account the “employees’ abilities to operate equipment such as cranes, read blueprints, and perform dangerous tasks safely.” 352 NLRB at 736.

However, employees who merely hand out pre-scheduled assignments and only adjust assignments to accommodate scheduling are not supervisors. *See Coral Harbor Rehab. and Nursing Ctr.*, 366 NLRB No. 75 at 85 (2018); *Entergy Miss., Inc.*, 357 NLRB 2150, 2150 (2011). For instance, in *Entergy Mississippi, Inc.*, dispatchers at an electric utility company were not statutory supervisors because they merely altered the flow of electricity according to switching orders they received in advance and assigned those pre-determined orders to field employees. 357 NLRB at 2150. The Board reasoned that the dispatchers did not exercise independent judgment in assigning work because *the employer assigned employees to particular field locations* and the employer provided no evidence of “actual incidents where dispatchers denied field employees’ requests to be excused from overtime assignments.” *Id.* at 2156-57. Further, merely “choosing the order in which the employee will perform discrete tasks” within an assignment did not amount to the assignment of “significant overall duties.” *Id.* at 2157. Similarly, the Board affirmed the administrative law judge’s finding that licensed practical nurses were not statutory supervisors where “[a]t most,” they added or subtracted assignments

from a chart to ensure an “even distribution of workers” to patients. *Coral Harbor Rehab. and Nursing Ctr.*, 366 NLRB at 85. Further, the nurses “never testified” that they were responsible for the daily assignments of the employees under their direction or provided them with “overall assignments that are outside of their routine activities.” *Id.* at 86.

In the present case, the Maintenance Supervisors assign work and pair crew members based on their sole evaluation of their direct reports’ skills, training, and oversight needs. The Mechanical Maintenance Supervisor and the Electrical Maintenance Supervisors conducted independent evaluations of their employees’ qualifications and assigned jobs according to their crew members’ certifications and training. *See RCC Fabricators, Inc.*, 352 NLRB at 736; *Int’l Union of Operating Engineers*, 283 NLRB at 737. The Electrical Maintenance Supervisor even testified that he “factor[ed] into any determination [he] made” whether a crew member had more or less experience. Tr. 673; *see also RCC Fabricators, Inc.*, 352 NLRB at 736; *Int’l Union of Operating Engineers*, 283 NLRB at 737. In fact, the Mechanical Maintenance Supervisor must “sign on to [his direct reports’] clearances” before any member of the crew may even begin working. *See* Tr. 241; *see also Int’l Union of Operating Engineers*, 283 NLRB at 737. The IMT Manager even relies on his supervisor’s expertise to make decisions regarding work assignments. *See Oakwood Health Care, Inc.*, 348 NLRB at 689. The IMT Manager also testified that supervisors do not need approval to make day-to-day work assignments. *See Oakwood Health Care, Inc.*, 348 NLRB at 689. Further, the Maintenance Supervisors regularly inspect their direct reports’ work and occasionally even instruct them regarding proper procedures and techniques. *See Northshore Sheet Metal, Inc.*, 2013 WL 3865066 at 15.

The Maintenance Supervisors also regularly assign unscheduled work and override the AWS without seeking permission from a superior. *See Int’l Union of Operating Engineers*, 283

NLRB at 742. And much like the foreman in *Northsheet Metal*, the Maintenance Supervisors coordinated assignments based on workflow and modified the AWS and work assignments based on their independent evaluation. 2013 WL 3865066 at 15. In stark contrast to the dispatchers in *Entergy Mississippi*, the Maintenance Supervisors exercised significant discretion in distributing assignments and overriding the AWS because they did much more than simply “choos[e] the order in which the employee will perform discrete tasks.” *Cf.* 357 NLRB at 2156-57. Instead, the Maintenance Supervisors had final authority to make any adjustments necessary to the AWS and regularly assigned unscheduled work, which were made without the input or approval of a superior. *Cf. Coral Harbor Rehab. And Nursing Ctr.*, 366 NLRB at 86. To ignore the overwhelming evidence that these Maintenance Supervisors assign work based on their own independent evaluation of employees’ skills and capabilities would be to ignore the “practical realities of the workplace” in which these Maintenance Supervisors must comply with industry policies and procedures to assure the safety of their crews and the public at large. *See Lakewood Health Ctr.*, 365 NLRB at 10-11 (2016) (Member Miscrimarra, dissenting opinion).

2. Responsibly Directing Work.

Individuals who are held responsible for the performance of their direct reports are supervisors. *See Loyalhanna Health Care Assocs.*, 352 NLRB 863, 869 (2008). For example, in *Loyalhanna*, the Board upheld an administrative law judge’s finding that nursing home managers were supervisors where they “*may* have suffered adverse personnel action” if, for example, a direct report failed to raise a patient’s bedrails. 352 NLRB at 869 (emphasis added).

In contrast, an employee does not responsibly direct where the employee is only accountable for his or her own performance. *See Entergy Miss., Inc.*, 357 NLRB at 2154; *Oakwood HealthCare*, 348 NLRB at 695. For instance, dispatchers performing switching operations for an electric utility company were not supervisors where they simply assigned

“step-by-step instructions” to employees and they did not suffer “any material consequences” as a result of their performance in directing field employees. *Entergy Miss., Inc.*, 357 NLRB at 2154. The Board reasoned that evidence of a dispatcher “failing to write proper switching orders” or failing to follow proper procedures only showed that the dispatchers were “accountable for their own work.” *Id.* Similarly, in *Oakwood HealthCare*, evidence of charge nurses delegating work was insufficient to establish accountability for the nurses’ direct reports. 348 NLRB at 695. The Board reasoned that the employer presented no evidence nurses were “subject to discipline or lower evaluations” if their direct reports failed to adequately perform. *Id.* The evidence only showed the nurses were “accountable for their own performance.” *Id.*

The Maintenance Supervisors in the present case *may* have suffered adverse consequences as a result of their direct reports’ conduct. *See Loyalhanna Health Care Assocs.*, 352 NLRB at 869. The Maintenance Supervisors testified that they were ultimately responsible for their crew’s safety and ensuring that their crew followed company policy. *See id.* Though few of the Maintenance Supervisors testified that they have actually been disciplined for their crew’s performance, the standard is simply whether they could be. *See Loyalhanna Health Care Assocs.*, 352 NLRB at 869. And here, the Maintenance Supervisors testified that they were responsible for their crew and could be disciplined for their crew’s performance. *See Loyalhanna Health Care Assocs.*, 352 NLRB at 869; Tr. 114; Tr. 241; Tr. 537. *Cf. Entergy Miss., Inc.*, 357 NLRB at 2154; *Oakwood HealthCare*, 348 NLRB at 695. These Maintenance Supervisors face the prospect of adverse consequences if their crew fails to comply with company standards and policies. Accordingly, the Maintenance Supervisors responsibly direct work. *See Oakwood Healthcare, Inc.*, 348 NLRB at 691.

B. Maintenance Supervisors Discipline Their Direct Reports.

The Board confers supervisory status based on the authority to discipline where “the exercise of disciplinary authority must lead to personnel action without the independent investigation or review of other management personnel.” *Lucky Cab Co.*, 360 NLRB No. 43, slip op. at 2 (2014) (quoting *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002)); *see also* *Venture Indus., Inc.*, 327 NLRB 918, 919 (1999) (finding supervisory authority to effectively recommend discipline exists where the employer followed the employee’s recommendations 75 percent of the time). Supervisory status requires employees to make actual reports containing disciplinary recommendations. *In re Franklin Hosp. Med. Ctr.*, 337 NLRB 826, 830 (2002). Where an employee serves “nothing more than a reporting function,” and simply brings warnings of “substandard performance to the employer’s attention without recommendations for future discipline,” the Board will not confer supervisory authority. *Veolia Transp. Servs., Inc.*, 363 NLRB No. 188, slip op. at 25 (May 12, 2016) (citing *Williamette Indus., Inc.*, 336 NLRB 743, 744 (2011); *Loyalhanna Health Care Assocs.*, 332 NLRB 933, 934 (2000)). Specifically, within the confines of a progressive discipline system, a “warning may qualify as disciplinary within the meaning of Section 2(11) if it automatically or routinely leads to job-affecting discipline, by operation of a defined progressive disciplinary system.” *Id.* at 8 (internal quotations omitted) (citing *The Republican Co.*, 361 NLRB No. 15, slip op. at 7 (2014)). The Maintenance Supervisors in the present case exercise authority to discipline and effectively recommend discipline within the meaning of the Act.

Employees effectively recommend discipline where upper management consistently follows the employees’ recommendations without conducting any independent investigation. *See Mountaineer Park, Inc.*, 343 NLRB 1473, 1474-75 (2004); *Venture Indus., Inc.*, 327 NLRB at 919. For example, in *Venture Industries*, the Board found that the putative supervisors were

supervisors under the Act since they issued discipline pursuant to the employer's progressive discipline policy. *Id.* Specifically, the Board found that the evidence presented showed that:

It was undisputed that the line and department supervisors have the authority to issue oral or written reprimands to employees concerning production and attendance. When a supervisor decides to issue a reprimand, he discusses it with the employee, has the employee sign it, and then sends it to the human resources department to be placed in the employee's personnel file. It is also undisputed that the Employer has a progressive disciplinary system, and that, pursuant to that system, the department and line supervisors have the authority to recommend that an employee be suspended.

Id. Moreover, the Board found that, although the putative supervisors did not have final authority over whether to issue the discipline, the fact that their recommendation was followed 75 percent of the time established supervisory status. *Id.* Notably, the Board still found supervisory status even though the putative supervisor's manager conducted follow-up investigations approximately 40 percent of the time. *Id.* Similarly, in *Mountaineer Park*, the Board held that employees classified as assistant supervisors were statutory supervisors because they were authorized by their employer to recommend disciplinary action. 343 NLRB at 1474-75. Although the disciplinary actions were reviewed by managers, the managers had a policy of "signing off" on recommendations without conducting any independent investigation. *Id.*

Employees also effectively discipline or recommend discipline where they lay a foundation for discipline within an employer's progressive discipline policy. *See Berthold Nursing Care Ctr., Inc.*, 351 NLRB 27, 28 (2007); *AlliedBarton Sec. Servs. LLC*, 2015 NLRB Reg. Dir. Dec. LEXIS 8, at *1 (2015). For instance, in *Berthold Nursing Care Center*, licensed practical nurses were statutory supervisors because they "lay a foundation, under the progressive disciplinary system, for future discipline against an employee." 351 NLRB at 28-29. When a nurse discovered a problem with a patient's care, the nurse filled out and submitted counseling forms recommending discipline without obtaining approval from a superior. *Id.* at 27-28. The

Board concluded that the nurses exercised independent judgment in imposing and recommending discipline because the record contained examples where the nurse's following of the progressive discipline policy led to the termination of one employee and a warning of possible termination for another employee. *Id.* at 28-29. Similarly, the Regional Director found that a shift supervisor had authority to discipline because he laid a foundation of future discipline and issued discipline entirely on his own. *AlliedBarton Sec. Servs. LLC*, 2018 Reg. Dir. Dec. LEXIS 8, at *29-30. Significantly, the shift supervisor did not obtain input from a superior and management never conducted an independent investigation or changed the level of discipline imposed. *Id.* Despite the employer's progressive discipline policy and the shift supervisor's use of a discipline matrix and disciplinary form, the shift supervisor still chose whether to impose formal discipline or to address the problem outside the discipline process. *Id.* at *24.

In contrast, the Board will not confer supervisory status where the employee merely provides a narrative account of an incident and a superior determines the discipline to be imposed. *See Veolia Transp. Servs.*, 363 NLRB No. 98, slip op. at 1 (2016); *Nymed, Inc.*, 320 NLRB 806, 808 (1996). In *Veolia Transportation Services*, road supervisors' involvement in the discipline process was to fill out an observation notice. 363 NLRB at 1, 9. The road supervisor merely submitted a narrative account to a manager, and then the manager's supervisor ultimately decided the level of discipline. *Id.* at 1. Similarly, the Board found that licensed practical nurses did not discipline where their authority involved merely issuing oral warnings for an initial infraction and providing a narrative account to a supervisor. *Nymed, Inc.*, 320 NLRB at 808.

The Maintenance Supervisors at issue here exercise authority to recommend and impose discipline. Much like *Venture Industries*, the Maintenance Supervisors have authority to determine if discipline is required and to issue oral reprimands within STP's progressive

discipline policy. *See* 327 NLRB at 919; Tr. 164; Tr. 342; Tr. 352; Tr. 575-76. Maintenance Supervisors “lay a foundation” for “future discipline” by investigating incidents and documenting incidents in employees’ Contact Logs, along with the Maintenance Supervisor’s discipline recommendation. *See Berthold Nursing Care Ctr.*, 351 NLRB at 28-29; *AlliedBarton Sec. Servs. LLC*, 2018 Reg. Dir. Dec. LEXIS 8, at *29-30. The Maintenance Supervisors also submit much more than a narrative account—they decide the level of discipline and impose it without a manager’s input. *Cf. Veolia Transp. Servs.*, 363 NLRB at 1; *Nymed, Inc.*, 320 NLRB at 808. Although Maintenance Supervisors may inform their superiors if they impose discipline, the Maintenance Supervisors are not required to do so. *Cf. Nymed, Inc.*, 320 NLRB at 1. Furthermore, Maintenance Supervisors choose whether to impose formal discipline or to address the problem outside of the discipline process. *See AlliedBarton Sec. Servs. LLC*, 2018 Reg. Dir. Dec. LEXIS 8, at *24. In fact, the IMT Manager even testified that he did not overrule a supervisor’s decision to impose counseling when he believed the direct report should have been subject to discipline. *See AlliedBarton Sec. Servs. LLC*, 2018 Reg. Dir. Dec. LEXIS 8, at *24.

Further, the Maintenance Supervisors testified regarding filling out numerous Contact Logs and cited specific instances where their initial discipline led to more severe discipline under the progressive discipline policy. *See Berthold Nursing Care Ctr.*, 351 NLRB at 27-28. For instance, the Mechanical Maintenance Supervisor testified that he completed a Contact Log when his crew members filled a diesel engine with the wrong oil. The Electrical Maintenance Supervisor issued an oral reminder when a direct report failed to attend computer-based training. The Facilities Maintenance Supervisor described his involvement in the discipline and eventual termination of a particular employee who continually arrived late to work. The Maintenance Supervisors did not obtain approval from a superior before completing these Contact Logs or

issuing discipline, nor were they required to do so. *See Berthold Nursing Care Ctr.*, 351 NLRB at 27-28; *AlliedBarton Sec. Servs. LLC*, 2018 Reg. Dir. Dec. LEXIS 8, at *29-30. Moreover, management does not conduct independent investigations of the discipline Maintenance Supervisors imposed. *See AlliedBarton Sec. Servs. LLC*, 2018 Reg. Dir. Dec. LEXIS 8, at *29-30. In fact, upper management only reviews a Maintenance Supervisor's discipline recommendation to ensure consistency with company policy. *See Mountaineer Park*, 343 NLRB at 1474-75. Though the Facilities Maintenance Supervisor's manager overruled his decision to send a crew member home, this one instance is an outlier that does not change the fact that the Maintenance Supervisors' discipline recommendations are followed more than 75 percent of the time. *See Venture Indus., Inc.*, 327 NLRB at 919; Tr. 495-96; *see also* Tr. 163; Tr. 260. The Regional Director ignored the weight of evidence that these Maintenance Supervisors performed more than a "reporting function," and in fact imposed discipline that "automatically or routinely le[d] to job-affecting discipline." *See Veolia Transp. Servs., Inc.*, 363 NLRB at 8.

C. Maintenance Supervisors Hire, Promote, and Transfer Employees.

Maintenance Supervisors hire, promote, and transfer employees. The authority to hire, promote, and transfer exists when the evidence establishes that the putative supervisors interview and recommend candidates for open positions and that the employer generally follows those recommendations. *Cnty. Educ. Ctrs., Inc.*, 360 NLRB 85, 91 (2014). Putative supervisors must exercise independent judgment in the hiring process. *In re Fred Meyer Alaska, Inc.*, 334 NLRB at 649. Where supervisors use their own experience and assessment of a job opening to determine if a candidate is qualified, the Board will find the supervisor exercises independent judgment. *Id.* Here, the Maintenance Supervisors participate in interviewing candidates and STP consistently follows their recommendations, and thus are statutory supervisors.

The Board has found that an employee is a statutory supervisor where the employee participates in the interview process and the employer follows the employee's recommendation. See *In re Fred Meyer Alaska, Inc.*, 334 NLRB at 649; *Venture Indus., Inc.*, 327 NLRB at 919. The Board found that putative supervisors were supervisors under the Act where they interviewed internal applicants for promotions and recommended whether or not those applicants should receive the promotion. *Venture Indus., Inc.*, 327 NLRB at 919. Significantly, the "managers follow[ed] the supervisors' recommendations about 80 to 90 percent of the time." *Id.* Likewise, in *Fred Meyer Alaska*, the Board found that employees exercised hiring authority sufficient to establish supervisory status where they "participated in several interviews and . . . made specific recommendations that [were] followed" by the employer. 334 NLRB at 649.

By contrast, the Board has found that employees are not statutory supervisors where they perform merely ministerial roles in the hiring process or the employer conducts an independent review of the employees' recommendations. See *Peacock Prods. of NBC Universal Media, LLC*, 364 NLRB No. 104, slip op. at 19 (2016); *J.C. Penney Corp, Inc.*, 347 NLRB 127, 129 (2006). In *Peacock Productions*, the Board found television producers did not effectively recommend hire because the employer conducted independent reviews of any person that the producer recommended. 364 NLRB No. 109, slip op. at 19. Likewise, in *J.C. Penney*, the employee did not exercise hiring authority where she merely performed a "ministerial role" in the process, and management interviewed candidates and were the "sole individuals vested with hiring authority." 347 NLRB at 129. The Board reasoned the employer's training explicitly provided that "all applicants were to be interviewed by management" and that this instruction was followed without deviation. *Id.* The employee "simply steered applicants through the system and completed their hiring paperwork," which the Board found insufficient. *Id.*

Here, the Maintenance Supervisors have authority to hire, promote, and transfer because STP generally follows their recommendations. *See Cmty. Educ. Ctrs., Inc.*, 360 NLRB at 91. Each Maintenance Supervisor testified that they “participated in several interviews” and made recommendations that were followed. *See Fred Meyer Alaska, Inc.*, 334 NLRB at 649. In fact, the Metrology and Radiology Laboratory Supervisor testified about one instance where he recommended a candidate for hire over the highest scoring candidate, and STP ultimately hired based on this recommendation. *See Fred Meyer Alaska, Inc.* Further, STP’s management followed the Maintenance Supervisors’ recommendations more than 80 or 90 percent of the time—the Maintenance Supervisors did not describe a single instance in which the candidate they recommended was not ultimately hired. *See Venture Indus., Inc.*, 327 NLRB at 919. And the IMT Manager even testified he has never overruled a supervisor’s recommendation. *See Venture Indus., Inc.*, 327 NLRB at 919. Nor did management conduct independent reviews of any candidate that the Maintenance Supervisors recommended. *Cf. Peacock Prods. of NBC Universal Media, LLC*, 364 NLRB at 19.

The Maintenance Supervisors also use their experience and assessment of a job opening to determine if a particular candidate is qualified. *See Fred Meyer Alaska, Inc.*, 334 NLRB at 649. Specifically, the Metrology and Radiology Laboratory Supervisor testified he looks for candidates with related experiences, military experience in metrology, or two-year degrees. *See id.* Maintenance Supervisors also performed more than a “ministerial role” considering that they screened resumes themselves, selected the candidates to be interviewed, and had the ultimate authority to decide which candidates to hire. *Cf. J.C. Penney Corp., Inc.*, 347 NLRB at 129. Therefore, the Regional Director ignored evidence that these Maintenance Supervisors exercise independent judgment and authority to hire, promote, and transfer.

D. Maintenance Supervisors Adjust Grievances.

The Regional Director ignored the clear weight of evidence showing Maintenance Supervisors adjust grievances. Employees still exercise supervisory authority where they resolve grievances at a “fairly low level—before they become either particularly memorable or subject to the formalities of higher steps of the grievance procedure.” *Sheet Metal Workers Int’l Ass’n, Local Union 68*, 298 NLRB 1000, 1003 (1990). The Board has stated that “the view that no real grievance adjustment. . . could occur until a dispute reached the level of a formal meeting between an employer representative and the [employer’s] business agent simply ignores the realities of the workplace.” *Id.* at 1004. Here, the Maintenance Supervisors exercise authority to adjust employee grievances, and they should be recognized as statutory supervisors.

The Board has concluded that employees possessed authority to adjust grievances where the employees had initial authority to adjust grievances without the input of upper level management. *See Sheet Metal Workers Int’l Ass’n, Local Union 68*, 298 NLRB at 1004; *Berkeley Marina Rest. Corp.*, 274 NLRB 1167, 1174 (1985). For example, the Board found that putative supervisors exercised authority to adjust grievances where they were the only persons available to address the day-to-day problems on a jobsite. *Sheet Metal Workers Int’l Ass’n, Local Union 68*, 298 NLRB at 1004. The Board reasoned that the putative supervisors had “initial responsibility and authority” to address dangerous conditions or discipline on the jobsite. *Id.* at 1001. The Board rejected the argument that the putative supervisors did not resolve grievances simply because they resolved them “at a fairly low level.” *Id.* at 1003-04. The Board also found that a bar manager had some authority to adjust grievances sufficient to confer supervisory status in *Berkeley Marina Restaurant Corporation*. 274 NLRB at 1174. The Board concluded the bar manager could adjust grievances because employees spoke to him first to dispute wage

discrepancies and would handle the problems with the accounting department “without the involvement of higher-level management.” *Id.*

In contrast, where employees are merely informed of a dispute and do not handle a grievance in any way, the Board has found that the employees are not statutory supervisors. *See Avante at Wilson, Inc.*, 348 NLRB 1056, 1058 (2006). For instance, where staff nurses were merely “informed of a dispute” between employees and did not handle the problem in any way, the Board found that the staff nurses did not exercise authority to adjust grievances. *Id.* Though the collective bargaining agreement stated that employees should present complaints to their immediate supervisor and the employer’s job descriptions stated that staff nurses served as the representative in the grievance process, the Board concluded that the staff nurses did not “actually possess that authority.” *Id.* at 1057. Further, the staff nurses testified that their superiors did not inform them of any authority to adjust grievances. *Id.*

Here, the Maintenance Supervisors exercised authority to adjust grievances since they were the only persons available to address problems. *See Sheet Metal Workers Int’l Ass’n, Local Union 68*, 298 NLRB at 1004. Though the Maintenance Supervisors may have handled grievances at a “fairly low level,” they still served as the first step in the grievance process. *See Sheet Metal Workers Int’l Ass’n, Local Union 68*, 298 NLRB at 1003. The Maintenance Supervisors testified regarding instances where they handled workplace problems without engaging the formal grievance process, which the Board has still found to be an exercise of supervisory authority. *See Sheet Metal Workers Int’l Ass’n, Local Union 68*, 298 NLRB at 1003. Further, the Maintenance Supervisors handled problems “without the involvement of higher-level management.” *See Berkeley Marina Rest. Corp.*, 274 NLRB at 1174. The Maintenance Supervisors did much more than merely inform their supervisors of a dispute; they actually

investigated and wrote the formal grievances themselves. *Cf. Avante at Wilson, Inc.*, 348 NLRB at 1058. Thus, the Regional Director chose to “ignore[] the realit[y] of the workplace” in finding that the Maintenance Supervisors in the present case did not have the ability to address grievances. *See Sheet Metal Workers Int’l Ass’n, Local Union 68*, 298 NLRB at 1004.

E. Maintenance Supervisors Reward Their Direct Reports.

Determining whether an individual “rewards” employees within the meaning of the Act, the Board considers whether the reward leads to positive consequences. *Veolia Transp. Servs., Inc.*, 363 NLRB at 43. Further, the authority to exercise independent judgment in rewarding employees must be more than sporadic. *Id.* Here, the Maintenance Supervisors decidedly exercise authority to reward their direct reports.

The Board has found that an employee exercises authority to reward direct reports where the reward leads to consequences for the direct reports. *See Pine Manor Nursing Ctr.*, 270 NLRB 1008, 1009 (1984). For instance, in *Pine Manor Nursing*, the Board found that putative supervisors were empowered to reward within the meaning of the Act when the employer implemented a program where the putative supervisors could recommend an “employee for a ‘star’ as a reward for special effort or quality work,” which led to a 10-cent increase in the employee’s hourly wage after the employee accumulated 10 stars. 270 NLRB at 1009. Notably, the putative supervisors initiated the granting of stars at their own discretion and their managers did not independently investigate the basis for granting a star. *Id.*

However, the Board will not find that an employee has authority to reward employees where the direct reports experience no positive consequences or the authority is limited to specific circumstances. *See Veolia Transp. Servs., Inc.*, 363 NLRB at 43. For example, in *Veolia Transportation Services*, the Board found that road supervisors did not have authority to reward the operators who reported to them because they merely recorded positive observations

on a form. 363 NLRB at 43. The Board reasoned that these observations did not lead to “any positive consequences for the operators.” *Id.* Further, the authority to reward was limited to a safety blitz, which the Board determined to be too “isolated, infrequent, or sporadic.” *Id.* at 44. The Board also concluded that road supervisors did not exercise independent judgment because gift cards were handed out solely based on operators’ ability to “recite the safety message.” *Id.*

The evidence establishes that Maintenance Supervisors reward their direct reports within the meaning of the Act. Maintenance Supervisors receive “Boss Points,” which are only available to supervisory-level employees and, in turn, supervisors may grant to employees at their sole discretion. *See Pine Manor Nursing*, 270 NLRB at 1009. The Maintenance Supervisors did not provide a single example of a manager independently reviewing a decision to award Boss Points. *See id.* Further, the Maintenance Supervisors here did much more than merely record positive observations on a form. *Cf. Veolia Transp. Servs., Inc.*, 363 NLRB at 43-44. Instead, the Maintenance Supervisors actually awarded Boss Points based on their independent judgment that a direct reports’ conduct deserved appreciation based on their performance. *Cf. Veolia Transp. Servs., Inc.*, 363 NLRB at 43-44. Thus, the Regional Director erred in its decision because the Maintenance Supervisors’ rewards led to positive consequences for direct reports. *See Veolia Transp. Servs., Inc.*, 363 NLRB at 43.

F. Maintenance Supervisors Also Exhibit Many Recognized Secondary Indicia of Supervisory Status.

The Regional Director ignored the weight of the secondary indicia of supervisory status. Though insufficient to establish supervisory status on their own, the presence of secondary indicia supports a finding of supervisory status where primary indicia are also present. *Veolia Transp. Servs.*, 363 NLRB at 46. The Board recognizes a number of secondary indicia of supervisory status, including, but not limited to, the following: (1) the putative supervisors

consider themselves supervisors and hold themselves out as such,¹ *K. W. Elec., Inc.*, No. 9-CA040422, 2004 WL 1144055, at *5 (N.L.R.B. Div. of Judges May 18, 2004); (2) the putative supervisors' direct reports consider² them their supervisors, *Palagonia Bakery Co.*, 339 NLRB 515, 534 (2003); (3) the putative supervisors attend management meetings, *McClatchy Newspapers, Inc.*, 307 NLRB 773, 773 (1992); (4) the putative supervisors receive higher wages than the employees they supervise, *Ken-Crest Servs.*, 335 NLRB 777, 779 (2001); (5) the putative supervisors grant time off to their direct reports, *Sam's Club, a Division of Wal-Mart Stores, Inc.*, 349 NLRB 1007, 1014 (2007); (6) the ratio of supervisors to direct reports³, *United Operations, Inc.*, 338 NLRB 123, 126 (2002); and (7) whether the putative supervisors wear the same uniforms as other statutory supervisors, *Mountaineer Park, Inc.*, 343 NLRB at 1476. These secondary indicia, coupled with the evidence of primary indicia further support a finding that the petitioned-for employees are statutory supervisors within the meaning of the Act.

Where primary indicia are also present, the Board has found the presence of secondary indicia to bolster an employees' status as a supervisor where the employee holds out as a supervisor, attends meetings exclusive to managers, grants time off, or receives a higher salary. *See Starwood Hotels & Resorts Worldwide, Inc.*, 350 NLRB 1114, 1118 (2007); *In re Progressive Transp. Servs., Inc.*, 340 NLRB 1044, 1047 (2003); *HS Lordships*, 274 NLRB 1167, 1174 (1985). For example, in *Starwood Hotels*, the Board found the secondary indicia corroborated the finding that a front desk supervisor of a hotel was a statutory supervisor. 350 NLRB at 1114. The Board reasoned that the supervisor held out as a supervisor and his direct

¹ See, e.g., Tr. at pp. 803:21-:24, 901:14-:15.

² See, e.g., Tr. at p. 901:10-:13.

³ See, e.g., Jt. Exh. 2 (Organizational charts indicating the manager to whom Maintenance Supervisors report and the specific crew members who report to each Maintenance Supervisor). Note that if the Maintenance Supervisors are considered members of their crews' bargaining unit, the Mechanical Maintenance Manager, for example, will then directly oversee 48 bargaining unit members instead of 9 Maintenance Supervisors. The result is similar for all other managers, who currently oversee 6 or more Maintenance Supervisors in an intervening leadership position.

reports viewed him as such, the employer paid the supervisor more than his direct reports, and the supervisor attended meetings exclusive to management. *Id.* The Board similarly found in *HS Lordships* that a bar manager was a statutory supervisor, which was corroborated by the fact that he enjoyed privileges exclusive to managers, regularly attended management-only meetings, received a salary while his direct reports received only hourly pay, and employees believed him to be their supervisor. 274 NLRB at 1174. Additionally, the bar manager granted vacation time to employees. *Id.* at 1172. Where a deck lead supervisor received substantially higher pay than her direct reports, introduced herself as a supervisor, and referred to her direct reports as her staff, the Board found that the secondary indicia corroborated a finding that the deck lead supervisor was a supervisor. *In re Progressive Transp. Servs., Inc.*, 340 NLRB at 1047.

The evidence demonstrates that Maintenance Supervisors not only exhibit many of the primary indicia for supervisory status under the Act, they also exhibit many of the secondary indicia. These indicia further support that the Regional Director erred in rejecting their statutory supervisor status. The Company held Maintenance Supervisors out as supervisors and their direct reports viewed them as such. *See Starwood Hotels & Resorts Worldwide, Inc.*, 350 NLRB at 1114; *In re Progressive Transp. Servs., Inc.*, 340 NLRB at 1047; *HS Lordships*, 274 NLRB at 1174. The Maintenance Supervisors also attend meetings and trainings exclusive to management. *See Starwood Hotels & Resorts Worldwide, Inc.*, 350 NLRB at 1114; *HS Lordships*, 274 NLRB at 1174. The Maintenance Supervisors grant vacation and sick time to their direct reports as well. *See HS Lordships*, 274 NLRB at 1172, E. Exh. 10. Maintenance Supervisors also receive a higher salary than their direct reports and are eligible for twice as much incentive pay. *See Starwood Hotels & Resorts Worldwide, Inc.*, 350 NLRB at 1114; *In re Progressive Transp. Servs., Inc.*, 340 NLRB at 1047; *HS Lordships*, 274 NLRB at 1174.

Maintenance Supervisors also wear the same uniforms as other supervisors within the Company. *See Mountaineer Park, Inc.*, 343 NLRB at 1476. Thus, Maintenance Supervisors exhibit many of the secondary indicia, corroborating that they are statutory supervisors under the Act.

G. Maintenance Supervisors Do Not Share a Community of Interest with The Employees in The Current Bargaining Unit.

The Regional Director ignored the weight of evidence showing that Maintenance Supervisors do not share a strong community of interest with employees in the current bargaining unit.⁴ The Board considers the appropriateness of the bargaining unit and will only group employees with “substantial mutual interests.” *Met Elec. Testing Co., Inc.*, 331 NLRB 872, 876 (2000). When determining whether employees share a community of interest, the Board analyzes the following factors:

whether the employees 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.

PCC Structural, Inc., 365 NLRB No. 160, slip op. at 13 (Dec. 15, 2017). Significantly, the mere “fact that other employees perform some of the same tasks is not sufficient in itself to render the requested unit appropriate.” *Grace Indus., LLC*, 358 NLRB 502, 505 (2012). The Maintenance Supervisors in the present case do not share a community interest with the bargaining unit employees, and thus the Regional Director erred in finding otherwise.

Where employees perform distinct functions, require special training, and receive greater benefits than other employees, a community of interest does not exist. *See Coca-Cola Bottling*

⁴ STP notes that the NLRB hearing officer committed an additional clear error by disallowing the Company to inquire into Mechanical Maintenance Supervisor Langston’s past, pre-supervisor period in which he may have had involvement with the union’s disciplinary board. *See* Tr. at pp. 898:12-901:9. This line of questioning could have demonstrated the lack of a community of interest between supervisors taking disciplinary action against fellow bargaining unit members if supervisors are allowed into the bargaining unit.

Co., No. 01-RC0207847, 2017 WL 6350173, at * 8 (Nov. 17, 2017); *Grace Indus., LLC*, 358 at 505; *Nationsway Transp. Serv.*, 316 NLRB No. 2, slip op. at *4-5 (1995). For example, in *Grace Industries*, a community of interest did not exist where employees who primarily performed asphalt paving had “distinct skills and functions” from the concrete pavers in the petitioned-for unit. 358 NLRB at 505. The Board reasoned that the asphalt pavers required special training and experience, used special tools and equipment, and received higher wages than concrete laborers. *Id.* at 505. Though the Board noted “some degree of overlap” between the asphalt pavers and other employees, the Board concluded that “this alone does not render a separate unit of asphalt pavers inappropriate.” *Id.* Similarly, the Board concluded that drivers and warehouse employees did not share a community of interest where they performed entirely different duties and their working conditions varied. *Coca-Cola Bottling Co.*, 2017 WL 6350173, at *8. The Board reasoned that the warehouse employees unload trucks and stock shelves, while the drivers make deliveries. *Id.* Drivers also received a higher hourly wage, worked fewer holidays, and had a separate room to prepare paperwork, while the warehouse employees worked longer hours and wore special uniforms. *Id.* Though the Board acknowledged drivers and warehouse employees had a similar goal of delivering products to customers, it ultimately concluded “these shared characteristics do not outweigh other factors” showing that the warehouse employees’ job duties, skills, schedules, uniforms, work area, wage rates, and supervision were different from the drivers. *Id.* at *9. The Board also determined that trainees did not share a community of interest where the employer had a formal management trainee program for four to seven years with the expectation that trainees learn the business. *Nationsway Transp. Serv.*, 316 NLRB at *4-5.

In contrast, the Board finds that a community of interest exists where employees perform essentially the same functions and work under identical terms and conditions of employment. *See*

Lab. Corp. of Am. Holdings, 341 NLRB 1079, 1082 (2004); *Transerv Sys., Inc.*, 311 NLRB 766 (1993). In *Transerv Systems*, the Board concluded that bicycle messengers did not have a sufficiently distinct community of interest to warrant representation separate from drivers who performed “essentially the same function” within the same department of an employer that provided package delivery services. 311 NLRB at 766-67. Though the Board recognized factors supporting a division between the bicycle messengers and the drivers, it found it “more significant” that they performed the same functions. *Id.* at 766. The drivers and bicyclists also had “frequent contact,” shared similar terms and conditions of employment, and had common supervisors. *Id.* Similarly, in *Laboratory Corporation of America Holdings*, a phlebotomist had a sufficient community of interest with employees she supervised because she had common supervision in the employer’s regional structure and her terms and conditions of employment were the same as the other employees. *Lab. Corp. of Am. Holdings*, 341 NLRB at 1082. The Board noted that the employer’s supervisory structure was “always changing,” which did not constitute a “sufficiently stable collection of facilities forming a cohesive, coherent unit.” *Id.* Further, the supervisor had the same skills, performed the same functions of drawing blood or urine for testing, and worked under “identical terms and conditions of employment” as the phlebotomists she supervised. *Id.* at 1083.

The Regional Director erroneously ignored evidence establishing that Maintenance Supervisors do not share a community of interest with bargaining unit employees. The Maintenance Supervisors have “distinct skills” and perform different functions. *See Grace Indus., LLC*, 358 at 505. The Maintenance Supervisors oversee their crew members, coordinate and schedule work, and ensure their crews have training. *See id.* Further, Maintenance Supervisors spend very little time in the field with their crews. *See Grace Indus., LLC*, 358 at

505. Instead, Maintenance Supervisors have offices where they spend most of their time. *See Coca-Cola Bottling Co.*, 2017 WL 6350173, at * 8. Moreover, Maintenance Supervisors receive higher wages and their potential for incentive compensation is significantly higher than their direct reports. *See Grace Indus., LLC*, 358 at 505; *Coca-Cola Bottling Co.*, 2017 WL 6350173, at *8. Maintenance Supervisors also receive exclusive benefits that are not available to non-supervisors, including two additional weeks of paid time off. *See Coca-Cola Bottling Co.*, 2017 WL 6350173, at *8.⁵

Maintenance Supervisors also receive special training to become a supervisor. *See Grace Indus., LLC*, 358 at 505; *Nationsway Transp. Serv.*, 316 NLRB at *4-5. Further, Maintenance Supervisors wear different uniforms than their direct reports. *See Coca-Cola Bottling Co.*, 2017 WL 6350173, at * 9. While Maintenance Supervisors wear a blue button-down shirt and tan pants, crew members wear different colored pants and company shirts according to the bargaining unit guidelines. *See Coca-Cola Bottling Co.*, 2017 WL 6350173, at * 9.

Significantly, the Maintenance Supervisors do not share common supervision with their direct reports. *Cf. Lab. Corp. of Am. Holdings*, 341 NLRB at 1082; *Transerv Sys.*, 311 NLRB at 766. Nor do they have the same terms and conditions of employment. *Cf. Lab. Corp. of Am. Holdings*, 341 NLRB at 1082; *Transerv Sys.*, 311 NLRB at 766. In fact, the Maintenance Supervisors responsibilities are different, they receive a higher salary, additional paid time off, and exclusive benefits. *Cf. Lab. Corp. of Am. Holdings*, 341 NLRB at 1082; *Transerv Sys.*, 311 NLRB at 766. The Regional Director erred in concluding that Maintenance Supervisors share a community of interest with their direct reports because he failed to appropriately consider evidence that Maintenance Supervisors perform distinct functions and receive different treatment.

⁵ *See* E. Exhs. 7, 8, and 10.

V. CONCLUSION

Contrary to the Regional Director's finding, STP proved beyond a preponderance of the evidence that the Maintenance 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 Maintenance Supervisors regularly discipline and recommend discipline for other STP employees, as well as reward employees for good performance. Additionally, the Maintenance Supervisors exercise authority to adjust grievances. The primary indicia of supervisory status are further corroborated by the presence of secondary indicia, including that the Maintenance Supervisors hold themselves out as supervisors, receive a higher salary, and attend meetings exclusive to supervisors. Moreover, the Maintenance Supervisors do not share a community of interest with their direct reports.

As outlined above, the Regional Director's finding that Maintenance 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 un rebutted testimony evidencing the Maintenance Supervisors' supervisory status under the Act. Finally, the Regional Director failed to recognize the unique nature of the positions at issue and the environment in which Maintenance 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 employees and the public. 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 19th day of July, 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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