H. ISSUES AND POSITION OF THE PARTIES

   The initial issue in this case is whether the sergeants employed by the Employer at the International Monetary Fund are supervisors under Section 2(11) of the Act. If the sergeants are
found not to be supervisors, then the issue is whether there is a contract bar to an election by virtue of the inclusion of the petitioned-for group in the collective bargaining agreement between the Employer and the Interested Party. If there is no contract bar, then the issue is whether the petitioned-for unit is an appropriate unit. Finally, the Employer raised the issue in its post-hearing brief as to whether sergeants are guards as defined in the Act.

The Petitioner argues that sergeants are not supervisors, that there is no contract bar because the Employer and the Interested Party have agreed to exclude the sergeants from their collective bargaining agreement, and that the unit is an appropriate unit. The Employer and the Interested Party, on the other hand, contend that sergeants are supervisors, and that if they are not then they are included in the unit covered by the parties' collective bargaining agreement, barring the petition. The Employer also contends that the petitioned-for unit is not appropriate because it does not include all non-supervisory officers at the International Monetary Fund, and that if sergeants are found not to be supervisors, then they are non-guard "employee monitors," which the Petitioner cannot be certified to represent because it is a union that represents guards.

II. PROCEDURAL HISTORY

The hearing in this matter was originally scheduled on May 30. On May 24, the Employer's counsel filed a First Request for Rescheduling of Hearing (Request to Reschedule), requesting that the hearing be postponed to May 31 or June 1, due to his unavailability on the scheduled hearing date. The Request to Reschedule did not contain a request to reschedule the deadline for statements of position. On May 25, the Region granted the Employer's Request to Reschedule and postponed the hearing to June 1, but the deadline for the parties' statements of position remained May 29. On that date, the Employer and the Interested Party filed statements of position.

On June 1, the parties appeared before a hearing officer of the National Labor Relations Board (the Board). The parties presented evidence in the form of testimony and documents, and filed post-hearing briefs.

2 In his Statement of Position and at the hearing, the Employer's counsel objected to the deadline for the statements of position and the date of the hearing. The Employer's counsel made only one request for a two-day postponement, however, which the Region granted. He made no additional requests to postpone the hearing, and did not request to postpone the statement of position deadline at all, as required in Section 102.63(b)(1) of the Board's Rules and Regulations. He thus made no request for postponement that was denied. Also, counsel for the Employer provided no details regarding how the deadlines impaired his ability to prepare the Employer's case, such as identifying a witness or other evidence that he was prevented from presenting at the hearing. Indeed, when asked by the Hearing Officer if he had additional witnesses or evidence to present, the Employer's counsel merely repeated his general complaint and failed to specify what witnesses or evidence he could not present due to time constraints.
III. FACTS

The Employer is a contractor that provides security services at the International Monetary Fund (IMF) facilities in Washington, DC. It has provided such services at that location since January 1, 2018.

A. Collective Bargaining History at the IMF

The predecessor to the Employer at the IMF is AlliedBarton Security Services, LLC (the Predecessor). The Interested Party represents that the Predecessor employed the officers at the IMF from around 2010 until the Employer took over operations. When the Predecessor was the employer at the IMF, the Interested Party represented the officers and the parties had a collective bargaining agreement, which included a master agreement and a rider, and was effective from April 16, 2016 to April 15, 2020 (Predecessor CBA).

When the Employer took over security operations on January 1, 2018, it recognized the Interested Party as the employees’ bargaining representative. The Employer and the Interested Party represent that they were already signatories to a master agreement when the Employer took over operations, which then began covering the officers at the IMF per its terms. That agreement, which is also effective from April 16, 2016 to April 15, 2020, is similar, if not identical, to the master agreement between the Interested Party and the Predecessor. Both agreements provide the following unit description:

This Agreement shall apply to all full-time and regular part-time security officers ("Security Employees") employed at or assigned to the locations in Washington D.C. defined in (b) below, excluding managers, supervisors, professionals, confidential employees, non-security officer employees, and clericals within the meaning of the Labor Management Relations Act. Supervisors herein shall include shift supervisors.

Both master agreements also contain union-security provisions, discharge and discipline provisions, grievance and arbitration procedures, and no-strike and lockout provisions, among other general conditions of employment. The main provision the agreements are missing is a provision setting forth wages at the IMF, which is in the rider agreement with the Predecessor. The Interested Party and the Employer represented at the hearing that the Employer adopted the Predecessor’s rider pursuant to Article 9.2 of the master agreement. The record does not indicate when the Employer adopted the rider.

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3 The abbreviations used in citations to exhibits are as follows: Board (BD), Interested Party (IP) and Employer (ER).
B. The Employer's Operations at the IMF

The IMF is comprised of two facilities in Northwest, Washington, DC, referred to as HQ1 and HQ2. The buildings are located at 700 19th Street and 1900 Pennsylvania Avenue, with a tunnel connecting them. About an equal number of officers work at each building.

1. Shifts and Staffing

The Employer employs about 170 employees at the IMF, around 150 of which are officers, sergeants, lieutenants or captains. Around 130 of those employees are security officers. There are approximately five captains, eight lieutenants and 12 sergeants.

There are three shifts at the IMF. The morning shift runs from 6:45 am to 2:45 pm. The afternoon shift runs from 3:00 pm to 11:00 pm. The night shift runs from 11:00 pm to 7:00 am.

The staffing for each shift varies. The morning shift has one captain, two lieutenants and one sergeant in each building, along with an unspecified number of officers. The evening shift has one captain, one lieutenant, two sergeants, and between 16-20 officers in each building. The night shift has one lieutenant, two sergeants and four officers in HQ1, and one lieutenant, two sergeants and five officers in HQ2.

In addition to the regular shifts, security personnel are assigned to a renovation site at one of the IMF facilities. The security personnel are assigned to the site for 24 hours a day, 7 days a week. Typically, the assignment is one sergeant and five officers.

2. Employee Classifications

The Employer’s highest level employee onsite is the Project Manager, Roy Ridgeway. The Operations Manager, Global Security Operations Center Manager, and Fire and Life Safety Manager occupy the next level of authority. The following levels of authority, in descending order, are captain, lieutenant, sergeant, and officer. There are four categories of officers: armed, hazmat, unarmed and concierge.

a. Captains, Lieutenants and Officers

Each shift has a captain, who is responsible for the operation of the shift. Lieutenants have similar responsibilities and will run the shift if the captain is not present. Both positions “do everything, [from] payroll to regular operations.” Sergeants, lieutenants and captains can park for free in the IMF parking lot inside the building on the weekends and between 5:00 pm and 6:00 am on weekdays. The officers have to pay for parking. Sergeants are hourly

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4 Counsel for the Employer provided the number of employees at the IMF prior to any testimony. As the assertion was provided expressly for purposes of background, and no party objected to it, I have accepted it.
employees like officers, but make about 85 cents an hour more than officers. There is no record evidence regarding the wages of lieutenants or captains.

There is sparse evidence regarding the duties and responsibilities of officers. Officers generally work the floor and provide security, including performing access control and customer service. Concierge officers are stationed at the reception desk, where they give badges and sign in visitors to the building. The record does not support any findings specifically regarding the duties or responsibilities of armed, hazmat, or unarmed officers.

b. Sergeants

i. General Duties

Sergeants start their shifts about an hour earlier than the officers, to prepare for the shift. Along with lieutenants and captains, sergeants sign in officers for shifts. That process involves checking the officers’ uniforms and credentials, making sure the officers have their equipment, and making sure the officers sign in on time. If an officer’s uniform does not conform to the Employer’s uniform code, the sergeant can refuse to sign in the officer until the violation is fixed.

During the shift, one of the sergeants’ primary responsibilities is to conduct post inspections, which involves visiting the posts, making sure officers are performing their jobs, and checking for any issues. If something is wrong, the sergeant can ask the officer to correct it. While at the posts, the sergeants sign the log sheet at the post, noting anything relevant on the log. Those logs are turned into the captain at the end of the shift, who reviews them and then initials them at the bottom.

Sergeants can change post assignments in certain circumstances. For example, if an officer on a post needs to attend training, a sergeant can send a relief officer to the post or take over the post himself.

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5 As part of its evidence regarding sergeants’ duties, the Employer introduced Section 2 of its Security Operations Manual, titled “Job Descriptions.” By its own terms, the document was revised on May 22, after the petition was filed in this matter. The Employer did not introduce the previous version of the section, and when asked about the differences between the two versions, the Employer’s witness stated he could not remember what the previous version stated about sergeants. The exhibit thus does not support any conclusions regarding sergeants’ duties at the time the petition was filed and I do not rely on it.
ii. Disciplinary Authority

The Employer uses a progressive discipline system. The record evidence is unclear regarding the steps of the system, although it appears the initial steps include informal counseling and verbal warnings.

The Employer also has a disciplinary matrix, which all supervisory personnel must use in administering discipline, along with an employee handbook. All officers have the handbook. The matrix includes coaching as well as discipline. The testimony indicates the matrix has a list of infractions and appropriate discipline, which the supervisors consult when confronted with an infraction. The exact nature of the matrix is unclear because even though both parties’ witnesses testified about it in general terms, no witness described the steps in detail and no party entered the handbook or matrix into evidence.6

In addition to the disciplinary guidance in the handbook and matrix, the Employer has stationed a Human Resources representative, Bernie Rudd, at the IMF facility. The Predecessor did not have a representative onsite. The supervisors “always consult and get advice” from Rudd regarding enforcement of the Employer’s handbook and “exactly what steps need to be taken based on what offenses.”

Sergeants cannot hire, fire or suspend officers. Sergeants also cannot send an officer home without first obtaining approval from the captain. The Employer’s witness testified that if there were no captain or lieutenant on a shift, then a sergeant could send an officer home, but admitted that has never happened.

The witnesses disagree whether sergeants have discretion to issue discipline. The Employer’s witness, Lieutenant Janaka Abeysekara, testified that when faced with an infraction, a sergeant could choose to issue an informal counseling or to correct the officer. The Petitioner’s witness, Sergeant Cecil Butler, testified that sergeants report infractions up the chain of command, where their superiors then decide upon discipline.7

Sergeants have authority to enforce the Employer’s uniform code, which can involve refusing to sign in officers for their shifts until they fix the uniform violation. Abeysekara testified that if sergeants do not enforce the Employer’s uniform code, then they can be held accountable for the officers’ infractions, although when asked for a specific example of a time

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6 There is more evidence in the record regarding the Predecessor’s matrix than the Employer’s. Butler, for example, testified that the Predecessor’s matrix proceeded from verbal warning to written discipline, second written discipline, final discipline and then termination. There is no corresponding description for the Employer’s matrix from either witness.

7 Two witnesses testified at the hearing, Butler and Abeysekara. Abeysekara, a lieutenant at the IMF for the Employer, testified on behalf of the Employer. Butler, a sergeant at the IMF for the Employer, testified on behalf of the Petitioner.
when a sergeant was disciplined for not enforcing the Employer's rules and policies, he could not think of one.

### iii. Other Duties and Responsibilities

Captains, lieutenants and sergeants have individual email addresses and access to emails. Officers generally do not have such access, although some posts have email addresses assigned to them, and the officers assigned to those posts can access emails sent to those email addresses.

Sergeants have access to IMF's incident report system, along with lieutenants and captains, but not officers. Incident reports are created for such things as medical emergencies. The responding sergeant, lieutenant or captain is responsible for taking notes and then completing the report and submitting it to the appropriate authorities.

If an officer needs to call off, they call the Security Operations Center (the Center). A sergeant, lieutenant or captain at the Center then documents the call on a call-off template and emails it to an email list comprised of sergeants, lieutenants and captains. The record evidence does not indicate what role, if any, sergeants play in approving call offs.

### IV. ANALYSIS

As explained below, I conclude that the evidence is insufficient to prove that sergeants are supervisors under Section 2(11) of the Act, that the CBA between the Employer and the Interested Party bars an election for sergeants, and that the petitioned-for unit is inappropriate. I also conclude that sergeants are guards as defined by the Act.

#### A. Supervisory Status of Sergeants

I conclude that the Employer has not satisfied its burden of proving that sergeants are statutory supervisors. The Employer's position and the record evidence touch upon three supervisory indicia for sergeants: the authority to discipline and effectively recommend discipline, to responsibly direct, and to assign officers. I find that the record evidence is insufficient to prove any of the three indicia.

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8 The Employer does not contend, and the evidence does not suggest, that sergeants hire, transfer, suspend, lay off, recall, promote, discharge, or reward employees, or effectively recommend such actions. The Interested Party claims in its post-hearing brief that sergeants have the authority to fire subordinate employees, but the record does not support the claim. The Petitioner's witness, a sergeant, stated he could not fire or suspend employees, and the Employer's witness did not testify to the contrary. Instead, he admitted that lieutenants did not have authority to suspend employees, indicating that the lower-ranked sergeants also would not have such authority, let alone authority to take the more severe action of terminating an employee.
1. Legal Standard for Supervisory Status

Section 2(3) of the Act excludes from the definition of "employee," and thus from much of the Act's protection, "any individual employed as a supervisor." Section 2(11) of the Act defines a "supervisor" as:

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

Accordingly, under Section 2(11), individuals are deemed to be supervisors if they meet the following criteria: (1) they have authority to engage in any one of the above Section 2(11) indicia; (2) their exercise of such authority is not routine or clerical but requires independent judgment; and (3) their authority is held in the interest of the employer. See NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 712-13 (2001) (citing NLRB v Health Care & Retirement Corp. of America, 511 U.S. 571, 573-74 (1994)).

Section 2(11)'s definition is read in the disjunctive, so the Board considers possession of any one of its enumerated powers, if accompanied by independent judgment and exercised in the interest of the employer, sufficient to confer supervisory status. Id. at 713. Supervisory status may likewise be established if the individual in question has the authority to effectively recommend one of the powers. See, e.g., Children's Farm Home, 324 NLRB 61, 65 (1997). An effective recommendation requires the absence of an independent investigation by superiors and not simply that the recommendation be followed. Id.

The burden of proving supervisory status rests on the party asserting that status. Kentucky River, 532 U.S. at 711-12; Oakwood Healthcare, Inc., 348 NLRB 686, 687 (2006). The Board requires that supervisory status be established by a preponderance of the evidence, and lack of evidence is construed against the party asserting supervisory status. Dean & DeLuca New York, Inc., 338 NLRB 1046, 1047-48 (2003); Elmhurst Extended Care Facilities, Inc., 329 NLRB 535, 536 fn.8 (1999). The party bearing the burden must establish that an individual "actually possesses" a supervisory power; mere inferences or conclusory statements of such power are insufficient. See, e.g., Golden Crest, 348 NLRB 727, 731 (2006); Volair Contractors, Inc., 341 NLRB 673, 675 (2004); Sears, Roebuck & Co., 304 NLRB 193, 194 (1991). Job titles, job descriptions, or similar documents are not given controlling weight and will be rejected as mere paper, absent independent evidence of the possession of the described authority. Golden Crest, 348 NLRB at 731 (citing Training School at Vineland, 332 NLRB 1412, 1416 (2000)). Where evidence is in conflict or otherwise inconclusive for a Section 2(11) indicium, the Board will decline to find supervisory status. Dole Fresh Vegetables, Inc., 339 NLRB 785, 793 (2003).
2. Authority to Discipline and Effectively Recommend Discipline

The Employer's core argument is that sergeants have the authority to discipline officers and to effectively recommend discipline, but the record evidence is insufficient to support the claim. The Petitioner's witness, a sergeant, described his disciplinary authority as being limited to observing officers and reporting any infractions up the chain of command, where superiors then decide upon discipline. Such limited authority is insufficient to establish supervisory status. Ken-Crest Services, 335 NLRB 777, 778 (2001) (finding no supervisory authority where "role in the disciplinary process is nothing more than repororial").

For its case, the Employer relies on three substantive pieces of evidence: an alleged admission from the Petitioner's witness, an informal counseling memorandum, and two "disciplinary notices." As explained below, that evidence is insufficient to prove that sergeants have disciplinary authority.

a. Butler's Alleged Admission

The evidence the Employer cites as the most important to its case is an alleged admission from Butler that "he exercises independent judgment in determining whether to issue a verbal warning in response to a particular situation." That testimony, however, is not an admission about the Employer's discipline policy because it is about the disciplinary practices of the Predecessor. In the exchange between the Employer's counsel and Butler that leads up to the testimony at issue, the Employer's counsel makes clear he is asking about the Predecessor's discipline policy:

Q. BY MR. FOSTER: Cecil, you were kind enough a moment ago to talk about the progressive discipline track that sergeants, floor supervisors, or shift supervisors, whatever term you want to use, were responsible for applying while you were at Allied. You talked about verbal, then written, then second written. Do you remember that? (emphasis added)

A. Yes.

The Employer's counsel then continues to ask Butler about his authority under the Predecessor's progressive discipline policy:

Q. Okay. So let's go to the first one then. Verbal warning.

A. Yes.

Q. The verbal warning. That's where the sergeant or the floor supervisors or shift supervisors, as you use the term, that's where you do have the opportunity to use independent judgment because you're looking at what occurred to be able to determine whether or not you should approach it with a verbal of any kind, right?
Butler's testimony is thus about his discretion under the Predecessor's progressive disciplinary policy, and does not prove that Butler had such discretion under the Employer's policy.

Butler's testimony about the Predecessor's disciplinary policy might apply to the Employer if there was evidence establishing a material similarity between the Predecessor's and the Employer's disciplinary policies, but there is not. The Employer did not introduce its disciplinary policy, matrix or handbook into the record. The Predecessor's policy is also not in the record. The testimonial evidence is similarly lacking. Abeysekara testified only generally about the policies and admitted he could not remember the details of the Predecessor's policy. Butler did not testify about the Employer's disciplinary policy or matrix at all, and provided only a general sketch of the Predecessor's progressive discipline. The record evidence is thus too sparse and vague to allow a comparison between the two policies, and therefore cannot support the conclusion that the policies are sufficiently similar such that statements regarding one policy can be applied to the other.

In fact, the scant evidence in the record regarding the Employer's policy indicates it is materially different than the Predecessor's. Abeysekara testified that the Employer brought in a Human Resource representative to work onsite and provide oversight regarding enforcement of the disciplinary policy, stating that the officers "always consult and get advice" from the representative regarding the policy. The witnesses also testified that the Predecessor's progressive discipline started with a verbal warning, whereas it appears the Employer added an "informal counseling memorandum" as another step in the discipline, which it claims sergeants can issue. Abeysekara, who was a sergeant for the Predecessor but not for the Employer, testifies that under the Predecessor the sergeants did not issue informal counseling memoranda, explaining "we didn't use the word 'informal counseling' for that. We used just verbal warning straightway." The evidence thus indicates there are significant differences between the disciplinary policies of the Predecessor and the Employer that would affect the authority of sergeants under those policies.

9 The Employer's decision not to introduce its handbook or disciplinary matrix into the record is notable, given the testimony from the Employer's witness regarding his reliance on both documents when issuing discipline. Such testimony demonstrates the importance of the documents and renders their absence significant to the Employer's argument that sergeants have disciplinary authority in enforcing the rules contained in such documents. Indeed, the hearing officer specifically asked the Employer's counsel if he intended to introduce the disciplinary matrix, and the Employer's counsel said no. The Employer's counsel did not explain why he did not introduce the handbook or matrix, but it is unlikely due to time constraints because Abeysekara testified that he, along with all officers, have a copy of the handbook, indicating that getting the handbook would have required nothing more than asking Abeysekara to bring it to the hearing.
The Employer relies on Abeysekara's testimony that the job duties and responsibilities of a sergeant did not change from the Predecessor to the Employer, but I do not accord the claim weight because it is a conclusory assertion that Abeysekara does not support with sufficient details about the disciplinary policy of either the Employer or the Predecessor. See, *G4S Regulated Security Solutions*, 362 NLRB No. 134, slip op. at 3 (2015) ("mere inferences or conclusory statements, without detailed, specific evidence, are insufficient to establish supervisory authority"). Also, Abeysekara's general claim that the Employer's and the Predecessor's policies are the same is undermined by his testimony regarding specific differences between the two policies. As discussed above, the few details in the record regarding both employers' disciplinary policies—including Abeysekara's own testimony regarding the addition of a human resources representative and an informal counseling step—indicate that the authority of sergeants changed under the Employer's policy. Abeysekara's conclusory assertion thus cannot be relied upon in the face of specific evidence to the contrary.

b. Informal Counseling Memorandum

The Employer cites an informal counseling memorandum as an example of a sergeant's authority to discipline, but the evidence does not establish a sergeant exercised independent judgment in issuing the memorandum. Nobody with personal knowledge of the contents of the memorandum or its issuance testified, so there is no evidence establishing what role Sergeant Mendoza Manuel (i.e., the sergeant named in the memorandum as its purported author) played in issuing it. See, *Wackenhut Corp.*, 345 NLRB 850, 854 (2005) (finding discipline completed by lieutenants did not establish supervisory status where no witnesses with personal knowledge of the discipline testified about the lieutenants' role). Abeysekara, who testified regarding the document, admitted he had no knowledge of the matter being discussed in the document and had not seen the document before it was shown to him by the Employer's counsel at the hearing. He did not testify about how or why Manuel issued the memorandum, if he issued it himself or at the direction of a superior, or if he even wrote it. Abeysekara also did not testify about what the purported recipients, the project and operations managers, did upon receiving the memorandum, and whether they independently investigated the incident referenced in the memorandum. There is thus insufficient evidence that a sergeant used independent judgment in issuing the memorandum or whether it was an effective recommendation.

Moreover, Abeysekara's testimony indicates that the Employer's disciplinary policy sets forth specific guidelines regarding the issuance of such a memorandum, leaving insufficient room for discretion. "Where employees follow detailed orders or regulations issued by the employer, they do not exercise truly independent judgment within the meaning of Section 2(11) of the Act." *Wackenhut Corp.*, 345 NLRB at 854. Here, when testifying about the issuance of discipline under the Employer—and specifically about the informal counseling memorandum—Abeysekara explained "we go by the Whelan handbook and the disciplinary matrix." Abeysekara later testified the Employer's disciplinary matrix prescribes certain disciplines for certain infractions. When asked how a sergeant should address an infraction, he explained, "I just do use the disciplinary matrix." Abeysekara's testimony thus indicates the Employer's disciplinary matrix is a detailed list of infractions with prescribed disciplines that the sergeants must follow. Without the Employer's disciplinary policy, or testimony from somebody with
personal knowledge of the memorandum, the record is insufficient to combat that indication and satisfy the Employer’s burden of proving the issuance of the informal counseling memorandum required the use of independent judgment.

Finally, the Employer failed to provide specific evidence showing that the “informal counseling memorandum” carries any weight in the disciplinary process. Such counseling does not confer supervisory status if it does not affect future discipline. See Veolia Transportation Services, Inc., 363 NLRB No. 188, slip op. at 6 (2016) (“The Board has found that putative supervisors do not possess disciplinary authority where counseling, warnings, or reports do not constitute an initial step in a progressive disciplinary system, and thus do not impact job status”). Here, the only evidence that informal counseling affects an officer’s future discipline is Abeysekara’s testimony that the Employer’s handbook and disciplinary matrix require the counseling to be relied on in administering future discipline. Abeysekara did not provide any details to substantiate his generic claim, however, and as noted above, the Employer did not introduce its handbook or matrix into evidence. Also, unlike the “disciplinary notice forms” introduced by the Employer (discussed below), which list previous disciplines and warn of specific future discipline, the informal counseling memorandum does not place itself in the disciplinary process by citing past infractions or warning of future actions. The record evidence thus does not satisfy the Employer’s burden of proving that the memorandum carries actual weight in the Employer’s progressive disciplinary process such that the discretion to issue it would confer supervisory status.

c. Disciplinary Notice Forms

The Employer also relies on two “disciplinary notice forms” as evidence that sergeants can discipline employees, but the record evidence is insufficient to show that sergeants issued or effectively recommended the issuance of the disciplines, or if they did, that they exercised independent judgment in doing so. The disciplines themselves fail to establish that sergeants did anything more than report infractions, which is insufficient to establish the requisite authority. See Ken-Crest Services, 335 NLRB at 778. They reference sergeants only in their factual summaries as the officers who observed the infractions, and they are signed by captains and lieutenants, not sergeants. Such layouts indicate that the sergeants reported the infractions, while the captains and lieutenants decided upon the discipline.

The testimonial evidence about the disciplines does not add any material details to establish a supervisory role played by sergeants. Nobody who signed or was referenced by the disciplines testified, nor did anybody else with personal knowledge of the disciplines or the underlying events. Abeysekara testified only that he was present when the disciplines were pulled from the Employer’s files for the hearing. He demonstrated no personal knowledge of the disciplines, and instead testified based on the written hearsay in the documents, as shown in the below testimony (emphasis added).

Q. And is it a -- at the top of the document, does it indicate that this is a final written documentation?
A. Yes, it's a final written documentation.

Q. And, sir, who is it that determined that there was a policy violation and there was a need for discipline?

A. So according to this, it's Sergeant Jackson. She noticed him on post sleeping. So she determined that this needed to be addressed.

Such testimony, which amounts to nothing more than reading from the disciplines, does not add any credible details about the disciplines or their issuance. The record evidence thus does not establish that sergeants played a supervisory role in the issuance of the disciplinary notice forms.

d. Enforcement of Uniform and Appearance Standards

The Employer claims that sergeants enforce its appearance standards and can refuse to sign in non-compliant officers for their shifts, but the evidence does not show such enforcement requires independent judgment, or that the sergeants have any actual disciplinary authority to enforce the standards. As stated above, the Board has found that employees do not exercise independent judgment where they follow detailed orders or regulations. *Wackenhut Corp.*, 345 NLRB at 854. Here, the Employer did not provide the uniform or appearance standards at issue, and Abeysekara’s description of the standards indicate they are the kind of detailed rules that preclude the use of discretion. When asked for examples of when a sergeant has enforced the standards, for example, Abeysekara explained, “...like hair, female, according to handbook, their hair should be off their collar. So I know the sergeants, they correct the officers. They ask them to correct their hair before they sign in.” Enforcing a rule requiring that officers’ hair be off their collars by asking officers to fix their hair does not require discretion. The evidence regarding the rules thus does not support the conclusion that they require the use of independent judgment.

Moreover, the evidence does not establish that sergeants have disciplinary authority to enforce the uniform standards. Abeysekara states that sergeants can refuse to sign in officers until they comply with the appearance code, but he does not testify that such action is relied on as part of the Employer’s progressive disciplinary policy. Abeysekara also does not testify to any other discipline sergeants can issue based on appearance or uniform infractions. When asked by the Employer’s counsel if sergeants can send officers home, Abeysekara replies they need “to consult obviously the chain of command,” but they could do so if no captain or lieutenant were present. He admits, however, that such an absence of captains and lieutenants has never happened, and that a sergeant has never sent anybody home. More directly, Butler testifies that sergeants “can never send anyone home.” The testimony thus indicates that if a sergeant notices a uniform infraction, he can ask the officer to correct it and refuse to sign in the officer until the correction is made, but that if the officer cannot or will not correct the infraction right away, then the sergeant has no authority to discipline the officer, but instead must report up the chain of command. Such authority is insufficient to qualify as disciplinary authority under the Act.
3. Responsible Direction

The Employer argues that sergeants are supervisors because they can be disciplined for the performances of officers, raising the issue of whether sergeants have authority to responsibly direct officers. Responsible direction does not include lead employees who perform minor supervisory functions, but instead includes employees “who exercise basic supervision but lack the authority or opportunity to carry out any of the other statutory supervisory functions.” Oakwood Healthcare, Inc., 348 NLRB at 690. To prove responsible direction, an employer generally must show that the putative supervisor has employees under him or her and decides “what job shall be undertaken next or who shall do it,” and that such direction “is both responsible and carried out with independent judgment.” Id. (internal quotes omitted). As set forth below, the Employer fails to prove that direction offered by sergeants is responsible or requires independent judgment.

a. Responsibility of the Direction

There is insufficient evidence that any direction provided by sergeants is “responsible” in the manner required by the Board. To prove that direction is responsible, the employer must show the putative supervisors are held accountable for the performance and work of the employees they direct. Id. at 691-92. To establish such accountability, the employer must show that it “delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary” and “that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps.” Id. “In determining whether accountability has been shown, we shall similarly require evidence of actual accountability,” which is “a more-than-merely-paper showing” that the prospect of adverse consequences based on accountability actually exists. Golden Crest Healthcare Center, 348 NLRB at 731.

Here, the evidence is insufficient to show the actual prospect of adverse consequences for sergeants who fail to direct work or take corrective action. Abeysekara admits he cannot remember any time under the Employer in which a sergeant was disciplined for the actions of officers, and there are no examples of such disciplines in the record. Abeysekara claims such discipline occurred under the Predecessor, but the Predecessor is not the employer whose policies are at issue here. Also, even for the Predecessor, Abeysekara offers no details in support of his claim, stating only that, “[w]e discipline sergeant, not discipline officers actually, lack of supervision. Due to that reason, we discipline sergeant.” Abeysekara does not explain when the discipline occurred, what the facts of the infraction were, or how he knows about it. The record evidence of accountability—a vague claim that some sergeant was disciplined at some time by

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10 The Employer does not claim that sergeants have authority to responsibly direct officers, but instead makes this claim in support of the sergeants’ disciplinary authority. As discussed above, the evidence does not support the conclusion that sergeants’ exercised sufficient disciplinary authority to qualify as supervisors. As this claim also touches upon the elements for responsible direction, however, I consider it appropriate to evaluate whether it could support a conclusion of supervisory status based on the ability to responsibly direct other employees.
the Predecessor—is insufficient to support the conclusion that the Employer holds sergeants responsible for directing officers.

b. Independent Judgment

The evidence also is insufficient to show that sergeants use independent judgment in directing officers. To prove that responsible direction involves the use of independent judgment, the Employer must show that such direction “involve[s] a degree of discretion that rises above the routine or clerical.” *Oakwood Healthcare*, 248 NLRB at 693 (internal quotes omitted). “[J]udgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective bargaining agreement” *Id.* Evidence of a putative supervisor’s direction is thus insufficient if it does not demonstrate the discretion required, or “the factors weighed or balanced,” in the use of such direction. *Croft Metals, Inc.*, 348 NLRB 717, 722 (2006).

Here, the record evidence fails to show that sergeants’ direction of officers requires more than routine enforcement of detailed rules. There is sparse evidence in the record regarding how sergeants direct officers, or the discretion exercised by sergeants in doing so. Abeysekara testified regarding certain corrective actions sergeants can make, but his testimony indicates such actions are nothing more than routine enforcement of rules. For example, he claimed that sergeants enforce uniform and appearance standards and will correct officers who violate such standards. However, rather than describe the factors the sergeants consider in enforcing the standards, Abeysekara indicated they simply follow the rules in the handbook, stating, “hair, female, should according to the handbook, their hair should be off their collar. So I know the sergeants, they correct the officers.” Abeysekara also testified that all officers have handbooks, which has a disciplinary matrix, and that everything is outlined exactly by the handbook. Abeysekara’s testimony thus indicates that the sergeants’ direction amounts to routine enforcement of detailed rules contained in the Employer’s handbook, and as there is no other testimony or evidence demonstrating the use of discretion in directing officers, the record is insufficient to prove that direction by sergeants requires the use of independent judgment.

4. Assignment

The Employer argues that sergeants have the authority to change officers’ post assignments, but the evidence does not show that the assignments require the use of independent judgment. In the context of Section 2(11), assignment refers to the “designation of significant overall duties to an employee” rather than “ad hoc instruction that the employee perform a discrete task.” *Oakwood Healthcare*, 348 NLRB at 689. It includes “the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee.” *Id.*

To prove that such authority requires the use of independent judgment, the Employer must show that it involves discretion, which requires more than describing the assignments a
purported supervisor can make, even if those assignments appear on their face to require the use of independent judgment. *See Central Plumbing Specialties*, 337 NLRB 973, 975 (2002) (finding employee who gave out work assignments, moved employees from one activity to another, told drivers which deliveries to make, and instructed employees to unload trucks when deliveries were made, was not a supervisor where evidence did not also show that such assignments involved independent judgment). The Board has explained that assignments made to equalize workloads are routine, even if they are “made free of the control of others and involve[] forming an opinion or evaluation by discerning and comparing data.” *Oakwood Healthcare*, 348 NLRB at 693. The Board has thus found that lieutenants with authority to approve and adjust post rotations and temporarily reassign officers were not supervisors where the employer failed to establish that such assignments involved more than routine judgment. *G4S Government Solutions, Inc.*, 363 NLRB No. 113, slip op. at 3 (2016).

Here, the Employer claims that sergeants can change post assignments in specific circumstances, but fails to prove that such assignments involve more than routine judgment. Abeysekara testifies that sergeants can change post assignments, but does not describe how they do so, why they do so, what factors they consider in doing so, or otherwise offer any details showing that such assignments involve discretion. The only evidence in the record regarding such details is when Abeysekara is asked for an example of when a sergeant would change an officer’s post, and explains that if an officer on a post is sent to training, then a sergeant could send the relief officer to fill the empty post, or fill the post himself. Abeysekara does not explain what factors the sergeant would consider in making the decision, and filling an empty post with the relief officer appears to require nothing more than routine judgment. Without more, the record evidence fails to show that the sergeants’ authority to assign officers to posts requires the use of independent judgment.

5. Secondary Indicia of Supervisory Authority

The Employer argues that sergeants are supervisors because they attend supervisory meetings, perform post inspections, train officers, receive higher pay and different performance awards than officers, and have parking privileges that officers do not. Setting aside the evidentiary issues of some of these claims, none of these purported responsibilities are listed as primary criteria of supervisory status in Section 2(11). In the absence of evidence that an individual possess one of the primary indicia of Section 2(11) supervisory status, “secondary indicia are insufficient by themselves to establish supervisory status.” *Ken-Crest Services*, 335 NLRB at 779; see also *Dean & Deluca New York, Inc.*, 338 NLRB at 1048 (attending management meetings does not establish supervisory status); *Central Plumbing Specialties, Inc.*, 337 NLRB 973, 975 (2002) (finding employee who “received substantially higher pay and yearly bonuses than other employees” not a supervisor absent primary indicia). Since I find that the

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11 For example, the evidence is insufficient to show that sergeants are regularly invited to supervisory meetings. Butler claims he has not been invited to attend supervisory meetings while employed by the Employer. The Employer introduced an email into evidence to show that sergeants are invited to supervisor meetings, but the email was sent four days after the petition was filed in this case, and thus carries little weight.
Employer has failed to show that sergeants possess any primary indicia of supervisory authority, I do not rely on these secondary indicia.

**B. Contract Bar**

The parties argue that the CBA, which covers “all full-time and regular part-time security officers,” was meant to cover all non-supervisory officers at the IMF, so if sergeants are found not to be supervisors, then it follows they must be covered by the CBA. However, the parties fail to meet their burden of proving the CBA clearly encompasses the sergeants sought in the petition.

For a collective bargaining agreement to constitute a bar, it must (1) be reduced to writing, (2) signed by all parties prior to the filing of the petition, (3) contain substantial terms and conditions of employment sufficient to stabilize the bargaining relationship, (4) clearly encompass the employees sought in the petition and (5) cover an appropriate unit. *Appalachian Shale Products Co.*, 121 NLRB 1160, 1162-64 (1958). The contract must also contain both an effective date and an expiration date. *South Mountain Healthcare & Rehabilitation Center*, 344 NLRB 375, 375 (2005). The burden of proving that a contract is a bar to an election is on the party asserting the bar. *Roosevelt Mem'l Park, Inc.*, 187 NLRB 517, 518 (1970).

Here, the evidence is insufficient to prove that the CBA clearly encompasses sergeants, and in fact shows that the Employer and the Involved Party mutually intended for the CBA not to cover sergeants. The parties do not claim that the CBA has been applied to cover the sergeants sought in the petition at issue in this case, and it is materially similar—if not identical—to the Predecessor CBA, which the Involved Party admits did not cover sergeants. Moreover, the Employer adopted the Predecessor's rider, which contains a wage provision for officers but not for sergeants, demonstrating an intent to exclude them. The terms of the CBA, the past bargaining history and the present bargaining relationship thus fail to prove that the CBA between the Employer and the Interested Party clearly covers sergeants, and instead show an intent to exclude them. The CBA between the Employer and the Interested Party is therefore not a bar to an election.

**C. Appropriate Unit**

The Employer argues that if the sergeants are not supervisors, then the petitioned-for unit is not appropriate because it does not include all non-supervisory officers at the IMF. The record evidence shows, however, that sergeants have historically been excluded from the unit represented by the Interested Party at the IMF, and the Employer fails to meet its heavy burden of showing that the historical unit is no longer appropriate.

The Hearing Officer referred to the issue regarding the propriety of the unit as a community of interest issue, but as the D.C. Circuit has noted, “the Board usually applies the community-of-interest and plant-wide unit tests only when delineating units of previously unrepresented employees, not...when it is assessing historical units that have had long periods of successful collective bargaining.” *Trident Seafoods, Inc. v. NLRB*, 101 F.3d 111, 118 (D.C. Cir.)
It is well settled that the existence of significant bargaining history weighs heavily in favor of a finding that a historical unit is appropriate, and that the party challenging the historical unit bears the burden of showing that the unit is no longer appropriate.” Canal Carting, Inc., 339 NLRB at 970. The challenging party’s burden is a “heavy evidentiary burden” and requires showing that “compelling circumstances” warrant disturbing the historical bargaining unit. Ready Mix USA, Inc., 340 NLRB 946, 947 (2003); see also id. at 969 (“the Regional Director should have considered whether compelling circumstances warranted disturbing the historical bargaining units...”).

Here, the evidence shows that the Interested Party has represented a unit that includes officers and excludes sergeants at the IMF for a significant period of time. The Interested Party represents it has represented the officers since 2010, when the Predecessor employed the officers, and that sergeants were not included in the unit under the Predecessor. During that time, the Interested Party entered into at least one CBA that covered officers and excluded sergeants. When the Employer took over security operations on January 1, 2018, the parties already had a CBA that mirrored the Predecessor’s CBA, and the Employer adopted the Predecessor’s rider, which excluded sergeants. There is no contention or evidence that the Interested Party or the Employer significantly altered the scope of the unit at any time, or that the unit has ever included sergeants. The evidence thus establishes that there is a historical unit at the IMF that includes officers but not sergeants.

In the face of such evidence demonstrating a historical unit excluding sergeants, the Employer and Interested Party fail to prove that compelling circumstances warrant disturbing the historical bargaining unit to add sergeants. The parties argue generally that if the sergeants are not supervisors, then they must have a community of interest with officers, but they do not cite evidence of or even refer to any actual changes to the operations at the IMF that would warrant disturbing the historical unit of officers there.

Indeed, there is no such evidence. The only evidence in the record regarding circumstances that might warrant disturbing the historical unit are the few details Abeysekara mentioned regarding the Employer’s changes to the disciplinary policy—such as adding a human resources representative and an informal counseling memoranda to the disciplinary progression—because such changes might have changed the authority of sergeants. If they sufficiently stripped sergeants of disciplinary authority, for example, and that authority was the primary point of distinction between officers and sergeants, then it is possible such changes might be sufficiently compelling to justify disturbing the historical unit of officers to include sergeants. The evidence of the Employer’s changes to the disciplinary policy, however, does not show the actual impact on the sergeants’ duties and responsibilities, and thus cannot support a conclusion that the sergeants’ responsibilities have changed so significantly that they warrant disturbing the historical unit of officers to add sergeants. The Employer and Interested Party have therefore failed to meet their heavy evidentiary burden.

12 A historical bargaining unit is not entitled to less deference simply because it was not certified by the Board. Ready Mix USA, Inc., 340 NLRB at 947, n.10.
D. Sergeants’ Status as Guards

The Employer argues for the first time in its post-hearing brief that the record evidence fails to establish that sergeants are guards as defined by the Act and therefore cannot be represented by the Petitioner because it admits only guards to membership. The record evidence shows, however, that sergeants are guards.13

Section 9(b)(3) of the Act states that “no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.” It defines guards as employees who “enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer’s premises.”

When assessing whether an employee qualifies as a guard under Section 9(b)(3) of the Act, the Board considers whether the disputed employee’s responsibilities “include those typically associated with traditional police and plant security functions,” such as the following:

[T]he enforcement of rules directed at other employees; the possession of authority to compel compliance with those rules; training in security procedures; weapons training and possession; participation in security rounds or patrols; the monitor and control of access to the employer's premises; and wearing guard-type uniforms or displaying other indicia of guard status.


Based on such factors, the Board has found employees to be guards who were charged with monitoring and reporting information from electronic fire security systems, exit door alarms, motion detectors and a watch tour system. MGM Grand Hotel, 274 NLRB 139, 140 (1985). The Board has also found emergency medical technicians to be guards where they were charged with making rounds of a hospital premises twice a shift to check for “fire, theft,

13 Even if the evidence were insufficient to prove that sergeants were guards, the result would not be a dismissal of the petition as the Employer seeks but rather a remand of the issue for hearing, because the Employer did not raise the issue of whether sergeants were guards in its position statement, or at the hearing. Rather, at the beginning of the hearing the Employer conceded that if it is determined that the sergeants are not statutory supervisors then they are guards that appropriately belong in the unit represented by the Interested Party. The Employer does not waive the issue by failing to raise it because it is an issue of statutory jurisdiction. Board’s Rules and Regulations § 102.66(d). Nevertheless, the Employer cannot bootstrap itself into a favorable conclusion by failing to raise an issue until after the hearing, thus ensuring that no party has an opportunity to present evidence on the issue, and then rely on the lack of evidence in the record to support its claim.
vandalism, and unauthorized personnel," even though the technicians did not wear guard uniforms or carry firearms, and took no action upon discovering an irregularity, but instead reported it to the department head where it occurred. Wright Memorial Hospital, 255 NLRB 1319, 1320 (1980).

Here, the evidence shows that sergeants’ duties satisfy the requirements of Section 9(b)(3). When asked about sergeants’ duties, the Employer’s witness stated that sergeants do everything lieutenants do, including “regular operations.” They are part of the Employer’s chain of command for security operations at the IMF, above officers and below lieutenants and captains. They are armed, even though the officers—who the Employer concedes provide security,—are not. They train officers on how to do their jobs, i.e., provide security, and if an officer’s post is empty, a sergeant can fill the post him or herself. They have authority to enforce the Employer’s “security standards,” an example of which is enforcing the Employer’s uniform codes for officers. Their primary responsibility is to perform rounds, which involve walking to and checking the posts where the officers are stationed. If there is an issue at the post, the sergeant can call to report it and obtain assistance. If there is an incident, such as a medical emergency, they respond and then prepare and submit an incident report stating what happened. Sergeants thus patrol the IMF while armed, sit at posts when necessary, respond to incidents involving employee safety such as medical emergencies, and report irregularities they observe up the security chain of command. Such duties satisfy the requirements of 9(b)(3).

The Employer relies on Butler’s testimony that as a sergeant “all he does is observe the officer, reports what the officers are doing and push things through the chain of command.” Butler stated, however, that if he saw something on the floor out of the ordinary, he would report it up the security chain of command, which is consistent with Abeysekara’s testimony that sergeants were expected to respond to and report on any irregularities they saw while performing their rounds. The witnesses thus agree on sergeants’ observing and reporting functions. As discussed above, the Board has found that employees whose duties are limited to observing and reporting irregularities can nevertheless qualify as guards. See, e.g., Wright Memorial Hospital, 255 NLRB at 1320 (finding ambulance department employees guards even though they do not enforce rules because “it is sufficient that they possess and exercise responsibility to observe and report infractions”); Rhode Island Hospital, 313 NLRB 343, 347 (1993) (finding dispatchers guards who monitored closed circuit TV and reported infractions but did not personally confront employees or others); A.W. Schlesinger Geriatric Center, 267 NLR 1363, 1364 (1983) (finding maintenance employees guards and explaining “[t]he fact that they may report to supervisors, if present, or notify the police does not detract from their guard status. Rather it is sufficient that

14 The Employer also argues that the Petitioner’s position is that sergeants are not guards because the Petitioner’s representative stated as much during the hearing. Although the Petitioner’s representative stated that sergeants were not security guards while discussing an amendment to Board Exhibit 2, the context makes clear he was referring to the Petitioner’s position that sergeants are not officers. The Petitioner’s position on the issue is clearly stated in its petition, which describes the unit sought as “[a]ll regular full-time and regular part-time armed sergeants performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act....”(emphasis added).
they possess and exercise responsibility to observe and report infractions."). Sergeants thus qualify as guards even if their authority to address security concerns is limited to observing and reporting them.

V. CONCLUSIONS

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

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer, Whelan Security Co., is a corporation with an office and place of business in St. Louis, Missouri, and is engaged in the business of providing physical security services to various firms and institutions throughout the United States, including at the International Monetary Fund facilities currently located at 700 19th Street NW, Washington, DC 20431. In conducting its operations during the 12-month period ending April 30, 2018, the Employer performed services valued in excess of $50,000 in States outside the District of Columbia.

3. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

4. The Petitioner is a labor organization as defined in Section 2(5) of the Act, and is qualified to represent a unit of security guards within the meaning of Section 9(b)(3) of the Act.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 2(6) and (7) of the Act.

6. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective-bargaining within the meaning of Section 9(b) of the Act:

   All full-time and regular part-time armed sergeants performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act, employed by the Employer at the International Monetary Fund in Washington, D.C., but excluding all office clerical employees, professional employees, security officers and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they
wish to be represented for purposes of collective bargaining by the Law Enforcement Officers Security Unions LEOSU-DC, LEOS-PBA.

A. Election Details

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

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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

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

C. Voter List

As required by Section 102.67(1) of the Board’s Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be received by the Regional Director and the parties by Friday, September 14, 2018. The list must be accompanied by a certificate of service showing service on all parties. The Region will no longer serve the voter list.

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee’s last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency’s website at www.nlrb.gov. Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

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

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

D. Posting of Notices of Election

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

Pursuant to Section 102.67 of the Board’s Rules and Regulations, a request for review may be filed with the Board at any time following issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request from review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board’s Rules and Regulations.

A request for review may be E-Filed through the Agency’s website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: September 12, 2018

Nancy Wilson, Acting Regional Director
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