

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 4**

PECO ENERGY COMPANY

Employer

and

Case 04-RC-223713

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO, LOCAL 614**

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The statutory supervisory status of utility workers is an oft-litigated question and is the subject of this case where the Board is called upon to ensure that the protections of the National Labor Relations Act extend only to those who are employees. Mindful of the directive to interpret broadly the Act's definition of employee and after careful consideration of the nature of the work performed by the petitioned-for utility workers, I find that, on balance, PECO Energy Company (the Employer) has failed to carry its burden to show that Foremen and Master Technicians constitute statutory supervisors excluded from the Act. Because the Employer has agreed that these employees share a community of interest with the employees in the existing bargaining unit and constitute an appropriate voting group for purposes of a self-determination election, I shall order a self-determination election in the petitioned-for unit.

Unrepresented employees who share a community of interest with an existing bargaining unit and are an appropriate voting group may vote whether to join the bargaining unit or remain unrepresented, so long as they are not otherwise excluded from the Act's coverage by statutory definition or Board policy. The Petitioner represents an existing unit of approximately 1200 production and maintenance employees, and now seeks a self-determination election, commonly referred to as an *Armour-Globe*¹ election, to ascertain whether approximately 150 Foremen and Master Technicians, Instrument Specialists, Power System Specialists, Support Service Planners/Schedulers, and Corrosion Control Specialists² wish to be included in that existing unit. While the Employer does not challenge the petition on community-of-interest grounds, it argues that inclusion of Foremen and Master Technicians in the unit is improper because they are supervisors within the meaning of Section 2(11) of the Act. The Employer maintains that Foremen and Master Technicians have the authority to assign and responsibly direct the work of employees using independent judgment, and to effectively recommend discipline, hiring, and

¹ The procedure is so named because it originated in *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937), and was refined in *Armour & Co.*, 40 NLRB 1333 (1942).

² Hereafter, any reference to Foremen or Master Technicians shall include reference to the Instrument Specialist, Power Systems Specialist Gas, Corrosion Control Specialist, and Support Service Planner/Scheduler.

promotion, and that they possess secondary indicia of supervisory authority. The primary indicia the Employer relies on are assignment and direction. As detailed below, to the extent that they participate in assignment of employees to jobs, there is insufficient evidence that they exercise sufficient independent judgment to be supervisors within the meaning of the Act. And to the limited extent that they direct the work of other employees, they are not “responsibly” directing that work within the meaning of the Act because there is insufficient evidence that they are held accountable for the work of the employees they supposedly supervise.

The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act. A Hearing Officer of the Board held a hearing. The parties presented oral arguments, and the Employer filed a brief at the conclusion of the hearing.

I. OVERVIEW OF OPERATIONS

The Employer, headquartered in Philadelphia, Pennsylvania and employing 2500 employees, transmits, distributes, and sells electricity to 1.6 million customers in six Pennsylvania counties – Philadelphia, Delaware, Chester, Montgomery, Bucks, and York. The Employer also distributes and sells natural gas to 400,000 customers in southeastern Pennsylvania. Its service territory is approximately 2000 square miles. As a public utility company, the Employer is subject to extensive federal, state, and interstate regulation. PECO is a subsidiary of Exelon Corporation.

II. BARGAINING HISTORY

IBEW Local 614 (the Petitioner) has represented the Employer’s production and maintenance employees since 2004. It currently represents about 1200 employees working in the following classifications and departments:

All full-time and regular part-time production and maintenance employees employed by the Employer including Billing Consultants employed in the Meter Services Group, Contractor Liaisons, Design and Construction Consultants, High Bill Consultants, Meter Process Clerks, Meter Technicians, Metering Design and Construction Consultants, Revenue Protection Technicians, Senior Lab Technicians, Facilities PM Technicians, General Facilities Mechanics, General Utility, High Rise Mechanics, Electrical Technicians 1/C, Equipment Operators, Equipment Operator Helpers, Material Coordinators, Material Process Clerks, Tool Mechanics, Truck Drivers, Damage Prevention Inspectors, Energy Technicians, Engineering Assistants (other than Engineering Assistants employed at the Customer Information Desk), Engineering Technicians, Line Mechanics, Maintenance Assistants, Paving Inspectors, Power Quality Technicians, Senior Corrosion Control Mechanics, Senior Distribution Mechanics, Tech Maintenance, Tech Maintenance Underground Transmission, Work Process Clerks, Equipment Update Clerks, Facilities Drafters, Gas Design Technicians, Mapping Records Clerks, Senior Designers, Senior Facilities Drafters, and Plant Operations Mechanics.

The Foremen and Master Technicians were specifically excluded from the most recent collective-bargaining agreement, effective from April 1, 2015 to March 31, 2021.³ The Foremen and Master Technicians have never been represented by any labor organization.

III. THE RELEVANT LEGAL STANDARDS

A. *Armour-Globe* Elections

An *Armour-Globe* self-determination election permits employees who share a community of interest with a unit of already represented employees to vote on whether to join the existing unit. *NLRB v. Raytheon Co.*, 918 F.2d 249, 251 (1st Cir. 1990); *Armour & Co.*, 40 NLRB 1333 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937). The Board has long recognized that a self-determination election is the proper mechanism by which an incumbent union adds unrepresented employees to its existing unit if the employees sought to be included share a community of interest with unit employees and “constitute an identifiable, distinct segment so as to constitute an appropriate voting group.” *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990).

B. Factors Relevant to Evaluating Supervisory Status Generally

The National Labor Relations Act specifically excludes supervisors from its coverage. It is well settled that the party asserting supervisory status bears the burden of establishing it by a preponderance of the evidence. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711-12 (2001); *Shaw Inc.*, 350 NLRB 354, 355 (2007); *Croft Metals, Inc.*, 348 NLRB 717, 721 (2006); *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006). The Board has made clear that the evidentiary burden is significant and substantial, holding that purely conclusory evidence is insufficient to establish supervisory status. *Golden Crest Healthcare Center*, 348 NLRB 727, 729 (2006); *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006); *Chevron Shipping Co.*, 317 NLRB 379, 381 n.6 (1995). The Board must not construe the statutory language too broadly because an individual found to be a supervisor is denied the Act’s protections. *Avante at Wilson, supra* at 1057; *Oakwood Healthcare, supra* at 687. The party seeking exclusion must demonstrate specific details or circumstances clearly showing that the claimed supervisory authority exists and is not merely paper authority, and that the authority is more than sporadic. *Avante at Wilson, supra* at 1057-58; *Shaw, supra* at 357, fn. 21; *Oakwood Healthcare, supra* at 693; *Kanahwa Stone Co.*, 334 NLRB 235, 237 (2001). Further, where the evidence conflicts or is inconclusive regarding particular indicia of supervisory authority, the Board will find that a party has not established supervisory status on the basis of those indicia. *The Republican Co.*, 361 NLRB 93, 97 (2014); *Dole Fresh Vegetables, Inc.*, 339 NLRB 785, 792 (2003).

Section 2(11) of the Act sets forth a three-part test for determining whether an individual is a supervisor. Under that test, employees are statutory supervisors if: (1) they hold the authority to engage in any one of the 12 listed supervisory functions; (2) the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment; and (3) the authority is held in the interest of the employer. *Kentucky River, supra* at

³ Petitioner also represents a unit of the Employer’s 200 call center employees employed under a separate collective-bargaining agreement.

712-13; *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-74 (1994). The 12 supervisory functions listed in the statute are the authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action. 29 U.S.C. § 152(11).

The criteria for supervisory status enumerated in Section 2(11) are read in the disjunctive; possession of any one of the 12 indicia listed will confer supervisory status, as long as they are exercised using independent judgment. *Kentucky River, supra* at 713; *Shaw, supra* at 355. On a case-by-case basis, the Board differentiates between exercising independent judgment and giving routine instruction, between effective recommendation and forceful suggestion, and between the appearance of supervision and supervision in fact. The exercise of some supervisory authority in a routine, clerical, or perfunctory manner is insufficient to render an employee a statutory supervisor. *Oakwood Healthcare, supra* at 693; *J.C. Brock Corp.*, 314 NLRB 157, 158 (1994). Under Board precedent, effective recommendation involves an action without independent investigation by supervisors, not simply a recommendation that is ultimately adopted. *The Republican Co., supra* at 97; *Children's Farm Home*, 324 NLRB 61 (1997).

In *Oakwood Healthcare*, the Board clarified the definitions of “assign” and “responsibly to direct.” The Board determined that the term “assign” refers to the “act of designating an employee to a place (such as a location, department or wing), appointing an employee to a time (such as a shift or overtime period) or giving significant overall duties, i.e., tasks, to an employee.” *Oakwood Healthcare, supra* at 689. The authority to “assign” requires more than choosing the order in which an employee will perform discrete tasks within an overall significant assignment of duties. *Id.*

With respect to clarifying the definition of “responsible direction,” the Board offered the following example: “If a person on the shop floor has ‘men under him,’ and if that person decides ‘what job shall be undertaken next or who shall do it,’ that person is a supervisor, provided that the direction is both ‘responsible’ . . . and carried out with independent judgment.” *Id.* In other words, responsible direction, unlike the authority to assign, encompasses the delegation of discrete tasks rather than overall duties. *Oakwood Healthcare, supra* at 690-92. However, the authority to responsibly direct other employees requires that the delegation of discrete tasks carries with it accountability for the putative supervisor. The Board has explained that “to establish accountability for 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 also must 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; *see also Community Education Centers*, 360 NLRB 85, 85-86 (2014).

A finding of supervisory status based on either authority to assign or responsibly direct must also involve an exercise of independent judgment. *Oakwood Healthcare, supra* at 692-93. In *Oakwood Healthcare*, the Board undertook a lengthy discussion of the “contours of ‘independent judgment,’” and explained that it requires that an individual act or effectively recommend action free from the control of others and form an opinion or evaluation by discerning and comparing data, provided that the act is not of a routine or clerical nature. The

Board made clear that judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, a collective-bargaining agreement, or a higher authority's verbal instruction. *Oakwood Healthcare, supra* at 692-93; *PPG Aerospace Industries, Inc.*, 353 NLRB 223, 223 (2008). Further, the Board's interpretation of the term "independent judgment" applies regardless of the supervisory function implicated and without regard to whether the individual exercising the judgment is relying on professional or technical expertise. *Oakwood Healthcare, supra* at 692.

C. Analysis of Supervisory Authority in the Utility Industry

Board law concerning the supervisory status of individuals working in the utility industry has evolved over the years. For decades, the Board regularly held that employees who monitored the transmission and distribution of electric power, designed some or most of the switching sequences, and directed field employees in carrying out the switching orders were not statutory supervisors and could therefore invoke their right under the Act to unionize. In *Big Rivers Electric Corp.*, 266 NLRB 380 (1983), however, the Board reversed course and concluded that these individuals responsibly directed other employees and that their assignment of employees to carry out switching directives involved the use of independent judgment. *Id.* at 383 n.2.

In *Mississippi Power & Light Co.*, 328 NLRB 965 (1999), the Board returned to its decades-long position and overruled *Big Rivers*. In overturning *Big Rivers*, the Board reasoned that the rationale in that case failed to give appropriate weight to the "quasi-professional, quasi-overseer" nature of electric utility dispatchers and overemphasized the inherent complexity of the dispatchers' duties and the potential adverse consequences to the health and safety of employees and the public resulting from possible dispatcher misjudgment. *Id.* at 969-70. In returning to prior precedent, the Board invoked the rationale of the charge-nurse supervisory cases and concluded that, while dispatchers exercise *critical* judgment based on professional experience, expertise, know-how, or formal training and education, they do not exercise *supervisory* judgment. *Id.*

As explained above, in *Oakwood Healthcare, supra* at 686, the Board clarified the definitions of "assign," "responsibly to direct," and "independent judgment" under Section 2(11) of the Act.⁴ The Board first applied *Oakwood Healthcare* to the utility industry in *Entergy Mississippi, Inc.*, 357 NLRB 2150 (2011). In that case, the Board held that the employer's electrical dispatchers were not statutory supervisors because they neither assigned work nor responsibly directed employees. Rather, according to the Board, the dispatchers directed field employees in the step-by-step instructions of a switching order and were held accountable for their own failures and errors, but not for the actions of the field employees they directed. The Board therefore found, relying on *Oakwood Healthcare*, that the dispatchers' direction was not sufficiently responsible. *Entergy Mississippi, supra* at 2154-55 (relying on *Oakwood Healthcare, supra*). With respect to the authority to assign, the Board observed that outages dictated the location or place for field employees to perform work, and field employees already assigned to the affected area handled the outage. Under these circumstances, the Board determined that the

⁴ See also *Croft Metals, Inc.*, 348 NLRB 717 (2006); *Golden Crest Healthcare Center, supra*.

dispatchers did not assign work pursuant to the exercise of independent judgment. *Entergy Mississippi, supra* at 2156. The Board found further that although the dispatchers had the authority to assign overtime to field employees during outages, they could not *require* the employees to work the outage overtime assigned to them. *Id.*; *Golden Crest Healthcare, supra* at 729.

More recently, in *NLRB v. NSTAR Electric Co.*, 798 F.3d 1 (1st Cir. 2015), the First Circuit enforced a Board order denying an employer's request for review of a decision and direction of election involving a determination that the employer's transmission systems supervisors and senior transmission outage coordinators were not statutory supervisors. Applying *Oakwood Healthcare*, the court agreed that the individuals occasionally reassigned field employees to alternate locations during planned and unplanned outage work, but did so without exercising independent judgment inasmuch as detailed instructions and established call-out procedures controlled the reassignments. *Id.* at 13-14. The court also agreed that the individuals did not "assign" work under Section 2(11) despite dispatching field employees to work that could require overtime because the field supervisors retained full authority to assign and approve overtime. *Id.* at 15.

IV. FACTS

A. Overview of the Employer's Organization

The Employer's organization includes five main departments, each with a distinct role in the sale, distribution, and transmission of gas and electricity:

- Construction and Maintenance (C&M) – Electrical and Aerial: construction and maintenance of aerial and underground electric distribution facilities throughout the Employer's system;
- Construction and Maintenance (C&M)– Gas: construction, maintenance, and testing of the Employer's gas pipelines and facilities, includes the West Conshohocken gas plant, which manufactures and stores liquefied natural gas;
- Customer Response: first responders to service disruptions to the system and other emergent work;
- Transmission and Substations (T&S): installation, maintenance, and testing of the Employer's transmission lines and substations; and
- Field and Meter Services: installation, maintenance, and inspection of meters throughout the system, includes revenue protection efforts (preventing theft of service) and high bills (customer complaints that the charge is too high).

The table below contains the titles of the petitioned-for Foremen and Master Technicians and the corresponding department.

Construction & Maintenance (C&M) – Electrical	Foreman Aerial Foreman Underground
Construction and Maintenance (C&M) – Gas (including Gas System Control and Plant Operations)	Operations Foreman Distribution Instrument Specialist Gas Power Systems Specialist Gas Corrosion Control Specialist Support Services Planner/Scheduler
Customer Response	Foreman Customer Response Foreman Energy Technician
Transmission and Substation (T&S)	Foreman T&S Master Technician
Field and Meter Services	Foreman Customer Response

B. Assignment of Work

1. Staffing and Work Planning (Assignment of Work)

Foremen and Master Technicians work in different locations and with work groups that perform varied duties. The work groups, ranging from three other employees to 22 employees, have at least one Foreman; some work groups have more than one Foreman. Despite the differences, the petitioned-for Foremen and Master Technicians share certain overarching job similarities, including staffing and work planning. The particular staffing methods and work planning procedures are outlined below by department and foreman or master technician.

Construction and Maintenance - Electrical

Foreman Aerial/Underground

In C&M – Electrical, the work is predominantly planned weeks in advance by the workweek managers, including the number and types of classifications needed. Foremen participate in weekly management calls to review the status of the planned work and provide information that affects the schedule. For example, Foremen advise whether necessary equipment is available, a customer is prepared for work or needs an alternative shut-off schedule, or additional crew is needed to complete the job. On the basis of this information, jobs may be rescheduled and revised. On the Friday before the week, the planned work schedule is finalized.

Foremen then assist with determining which crew members will perform particular jobs based on a series of factors, including complexity of job, qualifications, training needs, and the

type of truck. A complex job may require more crew members or exclude certain crew members. For instance, apprentices cannot do switching work and they may be paired with more experienced employees for training purposes. A job may require hotstick qualification, which is a training involving insulated stick work on 34000 volt lines. Certain jobs may require a bucket truck, which not all employees have. Bucket work requires two employees. Foremen also schedule two senior employees to do tally boards, which are customer commitment jobs that are smaller, "quick hitter" jobs, because those employees like the work.

Foremen may need to reschedule a job because, for instance, a customer does not want to have its electrical power shut off or because a needed truck or piece of equipment is unavailable. Foremen may also reprioritize jobs because of an emergent assignment (referred to as Priority-10) or re-arrange employees among crews to accommodate absent employees or storms.

Construction and Maintenance - Gas

Foremen

In C&M – Gas, which is responsible for the leaks and main work, one of the Foremen establishes the daily schedule for maintenance jobs (valve, bridge, and regulatory station inspections and odorant testing) and emergent leak repairs. The planned work generally originates from the work management team and Distribution Operation Center (DOC).⁵ Planned leak jobs include non-emergent issues discovered by employees in the course of other work or requests from a designer who is planning new business. Most of the planned work (valve, regulatory station, and bridge) is annual and routine; a maintenance schedule is kept in a software system and by Foremen. Odorant testing is both random (emergent) and fixed. As the name makes clear, emergent leak repairs are unplanned and they require immediate attention.

Foremen look over the work relayed from the work management team and DOC and assist with staffing the jobs. Foreman Gant testified that he assembles crews based primarily on qualifications and training concerns. For instance, regulatory station inspections must be done by specially qualified employees, referred to as R-qualified. Foremen will pair R-qualified employees with non-qualified employees to ensure training opportunities pursuant to company policy. Likewise, odorant testing must be performed by R-qualified employees. According to Foreman Gant, R-qualified employees, who are all equally qualified, are scheduled based on availability. The remaining crew members are scheduled for valve inspection work. Foremen schedule the most senior employee to the bridge inspection work. Foremen will designate one crew every day to be responsible for any emergent leak repairs.

⁵ DOC refers to a group in a region that is responsible for dispatching in that area. It appears that employees use this term interchangeably with OCC, operations control center. Both OCC and DOC refer to designated authorities that act as dispatchers.

Instrument Specialist, Power Systems Specialist Gas, Corrosion Control Specialist, and Planner/Scheduler⁶

The C&M – Gas department includes liquefied natural gas work done in the West Conshohocken gas plant. The Foremen assist in planning preventative maintenance work, calibration schedules, and repair of leaking valves. Foremen make crew determinations based on employee skill set, which employees have learned on the job and through job trainings. Based on their experience with the crew members, Foremen know which employees are skilled at particular work. For example, Instrument Specialist Robert Braxton testified that, on his team, one employee is particularly skilled at computer work, another at regulators and odorizers, and third at regulatory issues. Foremen share crews depending on availability.

Customer Response

Customer Response Foreman

In Customer Response, which primarily performs emergent work, the Customer Response Foreman (electric) obtains the schedule for the work group from OCC dispatchers at the start of each work day. The OCC schedule includes the emergent work scheduled for the day and preliminary assignments of specific employees to particular jobs. Employees receive their daily assignments by calling the OCC at the start of their shift. The Customer Response team also performs corrective and preventative maintenance work, as time permits. When the OCC advises that emergent work is relatively light, Foremen will schedule the OCC-designated preventative maintenance employee to do preventative and corrective maintenance work. It is the OCC and not the Foreman that designates the preventative maintenance employee. Foremen also support guarantee work, which is when a customer has paid to have manpower and work done at a date and time certain. Guarantee work is scheduled by the workweek managers, and Foremen follow a set process for scheduling employees to the guarantee work.

As not all members of the team are equally qualified, Foremen may change particular assignments based on qualifications, certain proficiencies among the crew, and well-known job skills. For instance, changing out gas gauges on switches and underground work are tasks that not all team members can complete. Foremen may also make scheduling changes when situations arise that require additional employees for a particular job. For instance, proper protocol requires a minimum number of employees for certain switching jobs or manhole work. In cases where the OCC's schedule lacks the necessary manpower under the proper protocols, the Foreman will ask the OCC to send additional employee(s) to the job. Foremen may also suspend a job under certain circumstances. Foreman Collazzo testified that he once shut down a job because the employees could not physically access a manhole. In such circumstances, when a job is shut down, employees contact OCC for alternate work assignments, and if there is no alternative assignment, they go home. Foremen also make changes to the schedule to equalize the workload, and when a job requires overtime based on protocols.

⁶ The Employer stipulated that the testimony of Instrument Specialist Robert Braxton applies to the other three specialists: Power Systems Specialist Gas, Corrosion Control Specialist, and Support Service Planner/Scheduler.

Foremen and supervisors share responsibility for being the on-call supervisor. Each foreman or supervisor is on-call once every 12 weeks. The on-call supervisor is responsible for any emergency or high-profile jobs that arise after approximately 4:00 p.m. and before the start of the shift the next day at 7:00 a.m. The on-call supervisor staffs the whole system, not just one particular region. In making staffing determinations, the on-call supervisor will follow the call-out protocols for each of the individual regions.

Foreman Energy Technician

The energy technicians in Customer Response primarily perform emergent work. The OCC schedules the emergent work based on geography. Foremen schedule appointments for padmount inspections⁷ and for customers who want to establish gas service or reactivate service. Foremen staff open shifts according to company procedures. Foremen schedule inactive gas jobs based on employee work schedules and well-known skill sets. They schedule padmount inspections based on circuit and geographic area. For padmount inspections, Foremen also pair less experienced employees with more experienced ones to assist with progressions.

Foremen also assist with staffing levels in several ways. They may, after receiving a call from an energy technician who has asked for help, contact the OCC and indicate that additional employees are needed. Foremen do not decide which employees to dispatch; they simply relay the stated staffing need to the OCC. Similarly, in surge events, where there is a risk of higher voltages energizing into houses, Foremen will tell the OCC if the extent of the damage requires more technicians. Technicians are then scheduled based on call-out lists. Foremen may also make staffing adjustments if the OCC schedule is over-staffed for a day as extra employees generally perform padmount work. Alternatively, if Foremen discover over the radio that additional help is needed on emergent work, padmount inspection employees will be moved to help with the emergent work. In these instances, Foremen select the preventative maintenance employee who is nearest to the jobsite needing assistance.

Customer Response Foreman (fault locate)

The Customer Response Foremen (fault locate) rotate weekly to one of seven different foreman roles on the fault locate team.⁸ In the “set-up” rotation, Foremen prepare job packets for the jobs scheduled by OCC. In the “heavy fault locate” rotation, the Foreman goes with the crew to locate the fault and repair it. In the underground residential development (URD) rotation, Foremen visit jobsites to ensure that the crews have everything they need. In the utility rotation, Foremen perform catch up work, including cleaning the truck, getting materials or tools, administrative work, and they assist the Philadelphia city crews.

When performing set-up rotation, Foremen schedule the work based on company protocol. Priority 10 work (which must be addressed as soon as possible) is completed first and

⁷ This involves inspecting a transformer that is fed from underground wires.

⁸ The seven roles are: day work set-up (7:00 a.m. - 3:00 p.m.), backshift set-up (3:00 p.m. - 11:00 p.m.), heavy fault locate, backshift heavy fault locate, day work heavy fault locate, underground residential development, and utility.

then any other job that, according to the Employer's system, is considered a priority due to an approaching or passed target date for completion. Once the higher priority work is scheduled, Foremen next schedule the oldest work, but also may consider the geographical proximity of jobs. Foremen may assign a job out of order if it is in close proximity to another scheduled job. Foremen also base staffing decisions on the nature of the work (e.g., URD development job will naturally go to the URD team), travel considerations, and shift rotations.

Transmission and Substation

T&S Foreman

For the Transmission and Substation department, DOC generates work requests and routes them to Foremen through a software program called Asset Suite. Foremen assist with staffing for planned corrective and preventative maintenance work and Priority 10 and 20 work (work that must be completed within one or two weeks). Foremen review the work requests and make staffing decisions based on location, skill sets, equipment, and nature of the job. For example, Foremen try to minimize drive time, ensure that the proper equipment is available and employees have the required skill set. For instance, hot fill work requires certain skills and not all employees have hot fill equipment or test equipment. Foremen schedule employees for "repeat" jobs if that employee has had success with a particular job and that type is on the schedule again. Foremen also pair newer employees with more experienced ones to help with training. Once the schedule is set, Foremen prepare work orders, including information that, based on job experience, will be useful, and clearance requests for the employees.⁹

Foremen may adjust work schedules if multiple Priority 10 jobs arise, but otherwise staffing changes are few. Under company policy, Priority 10 jobs take precedence, so other jobs may be canceled to handle competing Priority 10 work. Foreman Louis Collazzo testified that "once the day has started [and his] crews already got their work, [he] just can't pull them without talking to the OCC." Foremen may also adjust staffing when one job has progressed to the point of no longer requiring a second employee. Foremen can make staffing adjustments by asking the workweek manager whether employees are available due to canceled jobs. Foremen negotiate with DOC or system managers (designated authorities that are part of OCC) to reprioritize work, but cannot overrule personnel assignments made by DOC or system managers.

Master Technician

Master Technicians maintain, replace, and repair system control and data acquisition (SCADA) equipment. Work management develops the weekly schedule, which includes job descriptions and possibly material requests. Work management then provides the weekly schedule to Master Technicians on Thursdays, who review it, identify jobs for their teams, and then determine staffing. Jobs are typically staffed by two employees and possibly an apprentice and depend on classification (A, B, or C technician), widely known skills and abilities, training

⁹ Clearance requests are used to create clearance orders, which include the step-by-step detailed instructions for the work. Foremen do not prepare clearance orders.

opportunities ensuring broad exposure to work needed to progress, and occasionally personality traits.

Master Technicians make changes to the schedule based on emergent work needs of another T&S group (Fix It Now) that are directed from the designated authority. They also make changes when jobs must be canceled because materials do not support the job. When work is canceled, Master Technicians schedule employees for other prioritized work. Additionally, Master Technicians may swap one classification for another if an employee is having difficulty. For instance, a technician B is changed out for a technician A.

Field and Meter Services

In the Field and Meter Services Department, Foremen plan theft investigations, service terminations for theft, meter work and maintenance, and storm work. The work originates from several sources. The Employer monitors meters using DataRaker, a system that uses algorithms to detect gas or electric theft, which accounts for the largest number of meter “flags.” The Employer also has a customer hotline for suspected meter issues and receives reports from employees while out on jobs. Additionally, Foremen plan and schedule job requests from the Employer’s external affairs department, which usually come from government agencies.

In creating the schedule, Foremen first identify 10-15 total job requests from external affairs or older jobs and schedule employees for those jobs. Foremen staff jobs based predominantly on geography and whether the work requires a bucket truck, which, by regulation, necessitates a two-person crew. Employees do two-week rotations for bucket-truck and single technician jobs. Foremen also consider familiarity with the area and preferences on working alone or in pairs in making scheduling decisions. They also consider crime rates in the area for deciding whether a job is a two-person job. Once Foremen have made the preliminary job and staff designations, the work group planner fills out the rest of the schedule for the 11-person team with other theft and meter work based on geography. Each employee can typically handle up to 20 jobs per day.

Foremen make scheduling changes if priority work comes in during the day. Foremen will also make changes when bucket-truck work, which requires two people, arises and only one employee has been scheduled. Other schedule changes occur when an employee finishes early, as Foremen either have that employee call the planner for additional work or equalize the workload themselves.

2. Walk-downs

In addition to planning work and schedules, Foremen and Master Technicians, to varying degrees, make jobsite visits before commencing work, known as “walk downs,” to better understand the physical location and layout. During a walk-down, Foremen and Master Technicians consider job set-up, equipment needs, crew size, safety, and underground (gas) issues, and work with customers to determine the best time to shut off services. Foremen and Master Technicians sometimes take other crew members or Foremen with them. Not all jobs are walked down; some Foremen do more frequent walk-downs than others. For instance, Foreman

McHugh testified that he does very few walk-downs. Planners, designers, and technicians (bargaining unit employees) also complete walk-downs.

Foremen and Master Technicians use information gleaned from walk-downs to develop or adjust work plans. Given the highly regulated nature of the utility industry, company policy and procedure, industry standards and regulations, safety protocols, state and federal laws, and other proscriptions heavily circumscribe the Employer's work plans. For example, Foreman Coleman testified that he adjusted pole placement based on a walk-down. During the visit, he observed that the speed limit and federal law required the pole to be placed at a particular distance from the curb and ramps. Foremen also testified that walk-downs may show that plans that include building poles may need adjustments due to minimum clearances required and because city buildings are often close to one another. Foremen testified that a physical visit to the site may also show that digging is necessary, which will affect the work plans because state law requires a Pennsylvania One Call for any digging work and minimum three business days' advance notice of excavation. With respect to equipment adjustments, Foreman Collazzo testified that, during the walk-down, he evaluated the availability of space for a generator that was to be brought to the jobsite and then was able to request a generator of a particular size. Master Technician John Doherty similarly testified that a walk-down may reveal that a particular piece of equipment, like a monitor, is defective or broken, and he can then make adjustments to the equipment needed for the job.¹⁰ Walk-downs also allow Foremen and Master Technicians to exercise common sense in work planning. For example, where a walk-down shows public inconvenience because of road blocks or a similar obstacle, Foremen and Master Technicians will expedite the work to minimize disruptions to the public. Foremen and Master Technicians likewise testified that walk-downs, combined with the knowledge and experience gained through their employment, provide information that helps them plan the work.

3. Overtime

As a general matter, Foremen and Master Technicians testified about two different kinds of overtime: (1) emergent (also variously referred to as emergency and outage) and (2) non-emergent overtime, including scheduled and continuing. With regard to emergent overtime, the Employer has a company-wide procedure outlined in "Job Aid 70 PECO All-Call Progression," also referred to as call-out procedures. Those call-out procedures govern personnel response to load off (addressing imbalances between supply and demand of electricity), public safety, odor response, weather events, and outages. The personnel response naturally intensifies as the severity or impact of the event increases. Foremen and Master Technicians have no discretion to deviate from the prescribed call-out procedures.

Foremen and Master Technicians testified, without contradiction, that they follow the call-out procedures when there is emergent work and that the nature of the work (emergencies) establishes the need to finish it. For instance, Foreman Mercado testified *precisely* to the Level 2 procedure when he offered an example of how he assigned overtime. In his outage example, he told employees who were currently working that they needed to stay; employees who had constraints notified him and he instructed employees to stay until relief arrived, and they complied. This example comports exactly with the instructions of Job Aid 70. Foremen Gant,

¹⁰ According to Master Technician Doherty, he performed this particular walk-down when he was acting supervisor.

McHugh, Collazzo, and Clarke similarly testified, again without contradiction, that they follow the Employer's call-out procedures for emergent overtime.

With respect to non-emergent overtime, Foremen and Master Technicians testified that they follow overtime lists and procedures that have been negotiated between the parties. Foremen Gant, Doherty, McHugh, Clarke, Thomas, Quigley, Schmitt, and Houlihan all testified that their work groups maintain and follow overtime procedures, including continuity of work (allowing existing shift members to complete jobs) and lists of eligible employees. Foremen and Master Technicians acknowledged that in non-emergent situations, they do not force employees to work overtime. For example, Foreman Mercado testified that in non-outage situations, he has never ordered a crew to stay and if employees do not want to stay, there is "no consequence," and the work is put off until the next day. Foreman Clarke similarly testified that in a surge (non-emergent) event, he uses an overtime list and moves to the next person if an employee declines the overtime.¹¹ Further, Foremen and Master Technicians testified that experience and knowledge of the work acquired through their years on the job assists them in determining whether overtime is necessary to complete an ongoing non-emergent job.¹² In some work groups, overtime is always available because there is a backlog of work.

C. Responsible Direction

1. Jobsite Visits

Foremen and Master Technicians testified that, to varying degrees, they visit jobsites while the employees are working, to ensure adherence to safety procedures, availability of all needed materials and equipment, and completion of the work. They also use jobsite visits to discuss operating procedures and to ensure that work performance comports with all procedures and policies. As discussed above, the work performed by the Employer's employees is heavily regulated and widely prescribed by procedures, standards, and policies. Given these factors, when Foremen and Master Technicians speak to employees about how to perform certain tasks, they are relying on established protocols and years of experience. For example, Foreman Clarke testified, when asked about various examples of instruction he had offered at the jobsite, that "[t]he procedure is set. . . . Everything we do has a procedure to follow." He offered further that "[i]f it's a procedure, yes, you must follow it and it tells you exactly what you should do." Foreman Clarke gave an example of an on-the-jobsite direction to an employee to follow a specific procedure for gas odorants. Foreman Thomas also gave an example of a direction at the jobsite based on company policy of doing certain cuts remotely rather than while in the manhole. Foremen Quigley and Smith both testified that they do not direct employees on what tasks to do or how to do them because there are procedures in place for all of the jobs which employees follow.

¹¹ Foremen Quigley and Smith both testified that they contact their supervisor if there is an overtime situation, and the supervisor approves it. Foreman Braxton testified that he can force an employee to work overtime, but only gave a single example of such direction.

¹² Foremen Quigley and Schmitt testified that their supervisor or shift manager decides whether overtime is necessary.

In addition to reliance on set, detailed protocols when communicating with employees, Foremen and Master Technicians also testified that they rely heavily on their experience and knowledge gained through their employment as apprentices and then progressing to line mechanics or technicians. Foreman Gant, for example, testified that while instructing employees at the jobsite, he “rel[ies] on years of experience as a foreman and as a senior distribution mechanic.” Foreman Thomas likewise testified that he instructed crews where to cut a cable based on his experience on the job and his ability to read prints and cable cards properly.

Other Foremen and Master Technicians testified to few instances of directing employees how to do a job. Foreman Collazzo does so only if there is a hazard. Foreman Steger presented an example where the “employee did all the work. . . . [He] basically just assisted him and talked to the customer was the main thing.” Foreman Steger agreed that he only helps employees with “discrete tasks on the overall job.” Foreman Clarke similarly agreed that his example involving taps on a flicker was simply a discrete task.

2. Accountability

Many of the Foremen and Master Technicians also testified that they are not held accountable for the work of the crews. Foremen Steger, Clarke, Quigley, Houlihan, and Smith denied accountability for the work of the employees. Performance evaluations of Foremen and Master Technicians do not establish otherwise. The performance evaluations contain a broad range of goals and core competency assessments, including “Lead,” “Coaching,” and “Manage.” However, these goals and competencies appear simply to be addressing the ability of the Foremen and Master Technicians to be an example, to foster a positive working environment, to coach employees and develop their skills, and similar assessments. The evaluations do not provide any clear guidance on whether Foremen and Master Technicians are accountable for other employees.

The record disclosed two incidents where the Employer chastised foremen for their own failures in overseeing their crew’s work. One incident involves the Employer issuing a foreman a written reprimand for: (1) failing to stop certain members of his crew from intentionally trespassing onto customer property to handle customer property; and (2) failing to stop a crew member from riding on the bed of a pickup truck unsecured. However, the foreman in question was disciplined due to his own role in the events surrounding the discipline. The second incident involves the Employer merely giving a master technician an oral coaching for scheduling an employee for a job without the requisite experience to adequately perform the job. Again, the Employer faulted the judgment of the master technician.

D. Other Responsibilities of the Foremen and Master Technicians

Foremen conduct safety and driver audits for employees. Audit results are anonymous and do not provide the basis for any adverse consequence to employees. They have no effect on wages. Audits are used to reinforce safety protocols and audit incidents may be raised among foremen, supervisors and managers as learning opportunities.

The annual vacation schedule is created at the beginning of the year based on seniority and factors outlined in the collective-bargaining agreement. With respect to day-to-day vacation time, some Foremen and Master Technicians appear to approve vacation requests provided that

minimum staffing levels are maintained; Foremen and Master Technicians do not establish those staffing thresholds. Master Technician Doherty acknowledged that a supervisor could overrule his approval. Foremen Quigley, Schmitt, and Houlihan all testified that they do not have the ability to approve leave requests. Foreman Mercado testified that he can request employees to come in early to work, but he cannot require them. Foreman Mercado further testified that he can permit employees to leave work early if employees work through their lunch break.

Foremen and Master Technicians will occasionally serve as the Employer's single point of contact (SPOC) during a high profile situation where the Employer wants one person to "run that site." The SPOC is the liaison for the Employer with regard to customers, media, and Employer representatives.

E. Other Supervisory Indicia

There is insufficient evidence that Foremen and Master Technicians have the authority to hire or effectively recommend the hire of other employees. In his last twenty years as a Master Technician, Doherty twice reviewed a pile of resumes and pared down the number of applicants based on whether the resume revealed obvious technical abilities. He also scored applicants on certain aptitudes as either a plus or a minus. Several other Foremen offered similar testimony. Instrument Specialist Braxton testified that he developed aptitude tests for applicants, told his supervisor how they performed, and sat in on meetings with management to determine whether to hire applicants. However, there is no evidence that Braxton's recommendations are followed. Moreover, neither Foremen nor Master Technicians participate in interviews, rank candidates, effectively recommend hiring, or make hiring decisions. Further, their participation in the hiring process is voluntary and not required as part of their regular duties. Indeed, Foreman Quigley no longer participates in the process because he believes that human resources made poor hiring decisions.

There is similarly insufficient evidence that Foremen and Master Technicians have the authority to discipline or effectively recommend such discipline. Although there were some examples of Foremen and Master Technicians coaching employees,¹³ the record is devoid of a single example of an effective discipline recommendation from a foreman or master technician. Foremen and Master Technicians are occasionally part of a "fact-finding" process, which is an interview conducted by the supervisor to review an infraction. Foremen and Master Technicians act only as witnesses if they have relevant information to provide or, more often, as note-takers. After the fact finding, there is a "consensus call," where human resources and "local leadership" review the information and decide the appropriate discipline, if any. Foremen and Master Technicians are on the call to present the fact-finding information and answer questions.

¹³ There was an isolated example of a foreman having been involved with sending an employee for fitness for duty testing. The evidence, however, is that the foreman did not act alone and that a supervisor and human resources were also involved. Foreman Coleman likewise testified that he "got a supervisor" when he suspected an employee was not fit for duty. Foreman Quigley corroborated the need to involve a supervisor.

According to Master Technician Doherty, they do not have any input into the disciplinary decision.¹⁴ (Tr. 824.)

There is similarly insufficient evidence that Foremen and Master Technicians have the authority to promote or effectively recommend promotion. The record establishes that the Employer's employees progress through the negotiated wage scale by satisfying time-in-classification requirements. Once an employee has met the timing requirement, the employee progresses to the next step and higher pay by operation of the collective-bargaining agreement. Foremen and Master Technicians have absolutely no authority to otherwise override the terms of the parties' agreement. The Employer did not offer any evidence of non-progression promotions.

The parties' agreement definitively forecloses any assertion that evaluations play a role in promotions. In any event, Foremen and Master Technicians do not have any formal role in evaluating employees. Foremen and Master Technicians inconsistently testified as to whether they have any role in evaluating employees. Some might give feedback to supervisors; maintain evaluative information in their heads and pass it up the chain; or send information to a supervisor. They were, however, unanimously agreed on one critical point: their feedback and comments do not affect wages.

There is similarly insufficient evidence that Foremen and Master Technicians have the authority to reward or effectively recommend such rewards. Foremen and Master Technicians testified that they may give employees \$25 Wawa convenience store or gas cards for doing a great job. The frequency of these gift cards was inconsistent among the Foremen and Master Technicians as one gave gift cards to employees as often as five to 10 times per month and others gave them only once or twice per year. With respect to meals purchased for employees, Foremen and Master Technicians are simply complying with the collective-bargaining agreement, which entitles employees to a meal allowance under certain circumstances, including working two hours overtime and working five hours of call-out time.

There is also no evidence that Foremen or Master Technicians have the authority to transfer, lay off, or recall employees or to adjust their grievances, or to effectively recommend such action. The Employer did not offer any testimony or documentary evidence that Foremen or Master Technicians have any of these authorities.

F. Secondary Indicia of Supervisory Status

Foremen and Master Technicians are paid an hourly wage that is 10.5% higher than the journey-level hourly rate. They are eligible for benefits that are not available to the bargaining unit, including: the Employer's annual incentive plan bonus, seven weeks of bonding leave, two weeks of caregiver leave, and a take-home vehicle.¹⁵ Foremen and Master Technicians receive

¹⁴ It is not clear that all foremen participate in consensus calls. Indeed, Foreman Thomas testified that foreman involvement "went away a couple of years ago," and Foreman Clarke also testified that participation in consensus calls ended two years ago.

¹⁵ There is no evidence in the record as to details or qualifications for an incentive bonus other than that it is based on individual performance.

certain trainings, attend certain meetings with supervisors and other managers, and are subject to the same severance policy as supervisors and managers.

The testimony overall established that Foremen and Master Technicians have no meaningful role relating to time sheets; rather, Foremen and Master Technicians simply forward the sheets to supervisors and managers. Foreman Schmitt testified that he does not even have access to the online time sheet system so he could not approve any time sheets. Foreman Houlihan recounted an event when he had a time sheet returned to him because there was a concern as to his authority to approve it; in that instance, he had approved the time sheet while upgraded to supervisor. Foreman Steger offered an isolated instance of time sheet approval during an inclement weather event where he had knowledge of hours worked during the storm. He clarified, however, that supervisors “normally” approve time sheets.

V. ANALYSIS

A. **Supervisory Status of Foremen and Master Technicians**

As the party asserting supervisory status, the Employer has the burden to produce sufficient evidence to show that Foremen and Master Technicians exercise at least one of the supervisory indicia set forth in Section 2(11) of the Act, and that they do so through the exercise of independent judgment. The Employer primarily contends that Foremen and Master Technicians assign work to employees with independent judgment and responsibly direct them, but the record evidence supports neither contention.

Foremen and Master Technicians have the difficult task of staffing and, to varying degrees, performing the Employer’s vast and varied utility operation, including emergent incidents resulting in widespread outages and other threats to public safety. They must be familiar with and follow a range of protocols, procedures, and regulations and be constantly mindful of safety precautions. While their job is certainly demanding, they make staffing decisions primarily based on factors which indicate limited and routine judgment, such as experience, training and geographic or regulatory factors. Similarly, they perform and oversee the difficult and critical work of the crews based upon heavily prescribed procedures and their experience, expertise, training, or education, and they are not held accountable for the work of their crews. Under established Board precedent, Foremen and Master Technicians therefore do not exercise sufficient supervisory authority to exclude them from the Act’s protection. *Oakwood Healthcare, supra, Mississippi Power, supra, Providence Hospital, supra.*

1. **Assignment of Work**

As described above in *Oakwood Healthcare, supra* at 689, the Board stated that the term “assign” refers to “the act of designating an employee to a place (such as a location, department or wing), appointing an employee to a time (such as a shift or overtime period) or giving significant overall duties, i.e., tasks, to an employee.” Accordingly, designating an employee to a particular shift or assigning certain significant tasks would qualify as assignment. While Foremen and Master Technicians assist in assigning employees to significant tasks, the record

evidence falls short of establishing that they exercise independent judgment in making these assignments as these decisions require merely routine judgments. See *WSI Savannah River Site*, 363 NLRB No. 113, slip op. at 3 (2016).

The Board has recognized that, in the utility industry, the location of an outage or other service issue fully dictates the location of work assignments. *Entergy Mississippi, supra*. Assignment of work based on geographic proximity is commonsense efficiency, and assignments on this basis are routine and insufficient to establish supervisory status. *Id.*; *St. Vincent Hospital*, 344 NLRB 586, 595 (2005), citing *Carlisle Engineered Products, Inc.*, 330 NLRB 1359 (2000). In *NSTAR Electric, supra*, the Board determined that a putative supervisor does not exercise independent judgment where detailed instructions and procedures control assignments. Further, the Board will find independent judgment lacking “[i]f there is only one obvious and self-evident choice.” *Oakwood Healthcare, supra* at 693.

Foremen and Master Technicians do not designate the location of the work; service issues and outages do. As discussed in far more detail above, Foremen and Master Technicians use a number of considerations to staff jobs, none of which, however, is more than a routine or prescribed choice. Like the non-supervisors in *Entergy Mississippi*, the Foremen and Master Technicians in this case exercise commonsense efficiency and often let geography dictate assignments. When proximity to the job is not the deciding factor, Foremen and Master Technicians rely on certain non-discretionary considerations, such as safety protocols and company procedures that require a particular skill (e.g., hotsticking) or a particular number of employees (e.g., work requiring a bucket truck), where there is only “one obvious choice.” For example, Master Technician Doherty testified that his team is made up of “A, B, and C” technicians. When he staffs a job, he knows which category of technician has the skill set that is needed for that job, and he will assign a technician from that category. Although he sometimes has to choose between technicians within a particular category, he does so based on well-known factors such as the years of experience each one has applying their particular skills. Foremen and Master Technicians also follow company policies and the parties’ agreement that require the advancement of training opportunities in making assignments of apprentices and trainees.

Foremen and Master Technicians do not schedule shifts or determine working hours of employees. Although Foremen and Master Technicians may conclude that overtime work is necessary, they simply follow the collective-bargaining agreement or the Employer’s call-out procedure in determining which employees work overtime. Their overtime decisions, therefore, are not the result of independent judgment, but rather, that of compliance with an established, written set of detailed procedures or adhering to an overtime list. As the Board stated in *Entergy Mississippi, supra*, the authority to allocate overtime to employees during outages, without more, does not equate to the assignment of work as it is not a requirement that particular employees work the overtime assigned to them. Likewise, the routine ability to allow employees to leave work early when they work through lunch does not establish an assignment of work within the meaning of Section 2(11) of the Act. See *Washington Nursing Home*, 321 NLRB 366, fn. 4 (1996).

While it is clear that Foremen and Master Technicians serve a pivotal role in the Employer’s operation, they do not assign significant tasks through the exercise of independent

judgment. In making decisions while “walking down” a job, for example, they predominantly rely on common sense, their on-the-job knowledge, and established protocols and policies. Their decisions regarding the type of crew, equipment used, length of a particular job, or instructions used therefore do not amount to assignment of work using independent judgment.

Accordingly, I find that there is insufficient evidence to establish that Foremen and Master Technicians assign work using independent judgment within the meaning of Section 2(11) of the Act.

2. Responsible Direction

“Direction” encompasses both monitoring employee performance to make certain that tasks are performed correctly and making discrete assignments of specific jobs. *Golden Crest Healthcare Center, supra* at 730. The Board defines “discrete assignments” as deciding what job will be performed next or who shall do it, provided that such direction is both responsible and carried out with independent judgment. *Oakwood Healthcare, supra* at 694. The evidence must establish that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. Here, then, the Employer must show that Foremen and Master Technicians exercise independent judgment in deciding whether employees’ performance meets appropriate standards; that they can take corrective action in response to deficient performance; and that they are held accountable for employees’ performance and can suffer adverse consequences if those employees perform poorly. *Community Education Centers, supra* at 85; *WSI Savannah River Site*, 363 NLRB No. 113, slip op. at 2 (2016). The Employer has failed to make that showing.

There is no record evidence to establish that Foremen and Master Technicians use jobsite visits or audits to evaluate whether an employee’s performance meets the Employer’s standards, or that they have the authority to take any corrective action for performance deficiencies. To be clear, Foremen and Master Technicians are certainly concerned with safety, and during these visits and audits they do not ignore, and will correct, safety and equipment concerns. However, such concern is distinct from a general requirement that putative supervisors must have the authority to evaluate performance standards. Nor do Foremen and Master Technicians direct *how* the work is performed. Rather, company protocols, state regulations, federal law, and a host of other prescriptions direct how the work will be performed; Foremen and Master Technicians simply remind or advise employees of these procedures when necessary. There is similarly insufficient evidence that the Foremen and Master Technicians are held accountable for employee performance or that they suffer adverse consequences if employees perform poorly. The Foremen’s performance evaluations do not establish otherwise. Those documents are inconclusive and include only vague references that do not demonstrate accountability for the work of others. The Employer cites two isolated incidents in an attempt to show accountability for the performance of others, but these examples are hardly dispositive. In fact, as the record makes clear, the Foreman’s written reprimand in the first incident stemmed from his own failings, not solely from the deficiencies of others. In short, the Foreman and employee were jointly involved in the incident, which resulted in separate discipline for both.

Accordingly, I find that the Employer has failed to establish that Foremen and Master Technicians responsibly direct the job performance of any employees. *Oakwood Healthcare, supra* at 695; *Golden Crest Healthcare Center, supra* at 731-32.

3. Other Indicia of Supervisory Status

The Employer further argues that other supervisory indicia support its contention that Foremen and Master Technicians are statutory supervisors. Specifically, the Employer asserts that Foremen and Master Technicians have the authority to hire, discipline, and promote, or to effectively recommend such action. As outlined above, the record evidence simply does not establish that Foremen or Master Technicians have any meaningful role in the hiring process. To the contrary, on an infrequent basis, some Foremen and Master Technicians have reviewed resumes, scanned for key words that suggest certain minimal proficiencies, and then passed those resumes on to human resources. Later in the process, they confirm whether a particular applicant has completed an assessment successfully. They do not interview, rank, or effectively recommend anyone for hiring. This minimal, largely clerical function in the hiring process is further not an obligatory job duty. Merely having input into management decisions which are actually made by others does not confer supervisory status. *SDI Operating Partners*, 321 NLRB 111 (1996). Under these circumstances, I reject the Employer's contention that Foremen and Master Technicians hire or effectively recommend such action.

There is likewise no record evidence that Foremen and Master Technicians have the authority to discipline employees, or to effectively recommend discipline. Their participation in fact-finding and a subsequent consensus call falls well short of the required showing.¹⁶ In fact-finding sessions, Foremen and Master Technicians participate as witnesses, recounting any knowledge of an incident being investigated, or as note-takers. Neither capacity rises to the level of statutory supervisory authority to discipline or effectively recommend discipline. Similarly, on consensus calls, they have little to no input and are there to answer questions. The Employer failed to establish that mere coaching constitutes discipline. See *Veolia Transportation Services, Inc.*, 363 NLRB No. 98 (2016). The record lacks a single example where a Foreman or Master Technician either meted out discipline or effectively recommended discipline. Accordingly, I reject the Employer's contention that Foremen and Master Technicians discipline or effectively recommend discipline.

The Employer argues that through their role in evaluating employees, Foremen and Master Technicians exercise the authority to promote or effectively recommend promotion. As a preliminary matter, I note that the Employer has not shown that Foremen and Master Technicians have any meaningful role in evaluating employees. Testimony was inconsistent, and the single piece of documentary evidence established nothing more than the fact that Foreman Houlihan was listed on an employee's evaluation as his foreman. Foreman Houlihan did not draft the evaluation or sign it as the employee's supervisor. Assuming, however, that Foremen and Master Technicians do, in fact, evaluate employees, the parties' collective-bargaining agreement wholly eliminates any relevance of this finding since the agreement expressly sets forth the terms under which employees receive step and wage increases, and

¹⁶ It is not clear that Foremen continue to participate on consensus calls. For purposes of addressing this argument, however, I assume they still have occasion to be on consensus calls.

evaluations are *not* a factor. Employees progress based on time in a particular classification. Therefore, whether Foremen or Master Technicians evaluate employees, a finding the record does not support, is entirely beside the point. It is settled that completion of employee appraisals or evaluations does not establish supervisory status absent evidence that the appraisals directly determine personnel actions affecting the employees. *Williamette Industries*, 336 NLRB 743 (2001) (“when an evaluation does not, by itself, affect the wages and/or job status of the employee being evaluated, the individual performing such an evaluation will not be found to be a statutory supervisor”) citing *Elmhurst Extended Care Facilities*, 329 NLRB 535, 536 (1999); *Nymed, Inc.*, 320 NLRB 806, 813 (1996). I therefore reject the Employer’s contention that Foremen and Master Technicians promote or effectively recommend promotions.

There is also insufficient evidence that Foremen and Master Technicians have the authority to reward or effectively recommend rewards. I find the sporadic and limited grant of \$25 gift cards is insufficient to establish supervisory authority. See *Veolia Transportation*, 363 NLRB No. 188, slip op. at 5 (2016).

4. Secondary Indicia of Supervisory Status

Finally, the Employer argues that the ratio of supervisors to employees, higher pay, and shared characteristics with supervisors and managers support a finding that they are statutory supervisors. Significantly, absent evidence that an individual possesses any one of the primary indicia enumerated in Section 2(11) of the Act, such secondary indicia alone are insufficient to establish supervisory status. *Ken-Crest Services*, 335 NLRB 777, 779 (2001); *Billows Elec. Supply of Northfield, Inc.*, 311 NLRB 878, 878 n.2 (1993); *Juniper Industries, Inc.*, 311 NLRB 109, 110 (1993).

I reject the Employer’s contention that the supervisor to employee ratio would be too high if foremen are not considered supervisors. The ratio of employees to supervisors alone is insufficient to establish supervisory status. *North Jersey Newspapers Co.*, 322 NLRB 394, 395 (1996). In any event, the Employer itself has defended its wide span of control among supervisors in response to an August 2017 audit conducted by the Pennsylvania Public Utility Commission (PUC). When questioned about its supervisory span of control during the audit, the Employer explained:

[W]ide spans of control are typically the result of a supervisor overseeing a larger group containing Foremen or Master Technicians. These Foremen each oversee a subset group of employees for their respective supervisor with group composition changing day-to-day depending on work/needs. Foremen *are not considered supervisory employees*; however, they address day-to-day performance issues, direct other employees on the job sites and help perform work tasks. Meanwhile, supervisors are more administrative in nature and provide work oversight, planning, budgeting, etc. (emphasis added).

The Employer’s own stated justification to a state regulatory body as to why a high ratio of employees to supervisors was acceptable undercuts its claim here that a finding of non-supervisory status will have a negative effect on its dealings with that same regulatory body. Likewise, with respect to higher salary, this factor is insufficient to support a finding of supervisory status. *Wilshire at Lakewood*, 343 NLRB 141 (2004).

B. Appropriate Voting Group

The Employer has stipulated that, in the event that I found the Foremen and Master Technicians to be non-statutory supervisors, the petitioned-for Foremen and Master Technicians share a community of interest with the employees in the existing bargaining unit and that “an *Armour-Globe* election would be appropriate.” Accordingly, I shall order an *Armour-Globe* election to determine whether the Foremen and Master Technicians wish to be included in the existing bargaining unit.

VI. CONCLUSIONS AND FINDINGS

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

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

All full-time and regular part-time Foremen, Master Technicians, Instrument Specialist Gas, Power Systems Specialist Gas, Support Services Planner/Scheduler, Corrosion Control Specialist employed by the Employer, excluding all other employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **International Brotherhood of Electrical Workers, Local 614** as part of the existing unit of employees in the following classifications:

All full-time and regular part-time production and maintenance employees employed by the Employer including Billing Consultants employed in the Meter Services Group, Contractor Liaisons, Design and Construction Consultants, High Bill Consultants, Meter Process Clerks, Meter Technicians, Metering Design and Construction Consultants, Revenue Protection Technicians, Senior Lab Technicians, Facilities PM Technicians, General Facilities Mechanics, General Utility, High Rise Mechanics, Electrical Technicians I/C, Equipment Operators, Equipment Operator Helpers, Material Coordinators, Material Process Clerks, Tool Mechanics, Truck Drivers, Damage Prevention Inspectors, Energy Technicians, Engineering Assistants (other than Engineering Assistants employed at the Customer Information Desk), Engineering Technicians, Line Mechanics, Maintenance Assistants, Paving Inspectors, Power Quality Technicians, Senior Corrosion Control Mechanics, Senior Distribution Mechanics, Tech Maintenance, Tech Maintenance Underground Transmission, Work Process Clerks, Equipment Update Clerks, Facilities Drafters, Gas Design Technicians, Mapping Records Clerks, Senior Designers, Senior Facilities Drafters, and Plant Operations Mechanics,

EXCLUDING Customer Consultants, Customer Service Center Clerks, Engineering Assistants assigned to work at the Customer Information Desk (CIDEAs), Executive Administrative Assistants to the President, Administrative Assistants, Executive Administrative Assistants, Executive Assistants to the President PECO, Junior Analysts External Relations, Rate Coordinators, Regulatory Assistants, Regulatory Clerks, Accounts Receivable Representatives, Billing Coaches, Billing Consultants (other than Billing Consultants employed in the Meter Services Group), Billing Specialists, Credit Specialists, Customer Consultant Coaches, Junior Analysts, Junior Analysts Payment Processing, Revenue Control Representatives, Revenue Recovery Representatives, Facilities Clerks, Customer Choice Consultants, Finance Assistants, Senior Administrative Coordinators, Analysts IT, Claims Coordinators, Real Estate and Facilities Clerks, Communications Assistants, Executive Chauffeurs, office clerical employees, guards, and supervisors as defined by the Act.

A. Election Details

The election will be held on **October 25, 2018** from 6:30 a.m. to 8:30 a.m. and 2:30 p.m. to 4:30 p.m. in the following locations:

- Cafeteria of the Employer's Oregon Maintenance Shop located at 2610 S. Delaware Ave, Philadelphia, PA 19148
- Electric Ready Room in the Employer's West Chester Service Building located at 896 S. Bolmar St., West Chester, PA
- Conference Room 7 and 8 of the Employer's Warminster Service Building located at 400 Park Avenue, Warminster, PA
- MD&S Conference Room in the Employer's Plymouth Service Building located at 680 Ridge Pike, Plymouth Meeting, PA
- Conference Room A and B of the Employer's Baldwin Service Building located at 1510 Chester Pike, Eddystone, PA.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **October 12, 2018**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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

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

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

C. Voter List

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

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **October 17, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once

the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

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

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

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

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

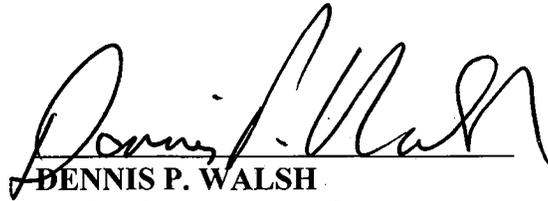
RIGHT TO REQUEST REVIEW

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

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

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: October 15, 2018

A handwritten signature in black ink, appearing to read "Dennis P. Walsh", written over a horizontal line.

DENNIS P. WALSH
Regional Director, Region Four
National Labor Relations Board



United States of America
National Labor Relations Board
NOTICE OF ELECTION



PURPOSE OF ELECTION: This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

SECRET BALLOT: The election will be by SECRET ballot under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling place. Violations of these rules should be reported immediately to an NLRB agent. Your attention is called to Section 12 of the National Labor Relations Act which provides: ANY PERSON WHO SHALL WILLFULLY RESIST, PREVENT, IMPEDE, OR INTERFERE WITH ANY MEMBER OF THE BOARD OR ANY OF ITS AGENTS OR AGENCIES IN THE PERFORMANCE OF DUTIES PURSUANT TO THIS ACT SHALL BE PUNISHED BY A FINE OF NOT MORE THAN \$5,000 OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BOTH.

ELIGIBILITY RULES: Employees eligible to vote are those described under the VOTING UNIT on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off, and also include employees in the military service of the United States who appear in person at the polls. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are *not* eligible to vote.

SPECIAL ASSISTANCE: Any employee or other participant in this election who has a handicap or needs special assistance such as a sign language interpreter to participate in this election should notify an NLRB Office as soon as possible and request the necessary assistance.

PROCESS OF VOTING: Upon arrival at the voting place, voters should proceed to the Board agent and identify themselves by stating their name. The Board agent will hand a ballot to each eligible voter. Voters will enter the voting booth and mark their ballot in secret. **DO NOT SIGN YOUR BALLOT.** Fold the ballot before leaving the voting booth, then personally deposit it in a ballot box under the supervision of the Board agent and leave the polling area.

CHALLENGE OF VOTERS: If your eligibility to vote is challenged, you will be allowed to vote a challenged ballot. Although you may believe you are eligible to vote, the polling area is not the place to resolve the issue. Give the Board agent your name and any other information you are asked to provide. After you receive a ballot, go to the voting booth, mark your ballot and fold it so as to keep the mark secret. **DO NOT SIGN YOUR BALLOT.** Return to the Board agent who will ask you to place your ballot in a challenge envelope, seal the envelope, place it in the ballot box, and leave the polling area. Your eligibility will be resolved later, if necessary.

AUTHORIZED OBSERVERS: Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the voting place and at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.



United States of America
National Labor Relations Board
NOTICE OF ELECTION



VOTING UNIT 04-RC-223713

EMPLOYEES ELIGIBLE TO VOTE:

Those eligible to vote are: All full-time and regular part-time Foremen, Master Technicians, Instrument Specialist Gas, Power Systems Specialist Gas, Support Services Planner/Scheduler, Corrosion Control Specialist employed by the Employer who were employed during the payroll period ending October 12, 2018.

EMPLOYEES NOT ELIGIBLE TO VOTE:

Those not eligible to vote are: All other employees, guards, and supervisors as defined in the Act.

If a majority of valid ballots are cast for International Brotherhood of Electrical Workers, AFL-CIO, Local 614, they will be taken to have indicated the employees' desire to be included in the existing non-professional unit currently represented by the incumbent union. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

DATE, TIME AND PLACE OF ELECTION

Thursday, October 25, 2018	6:30 AM to 8:30 AM and 2:30 PM to 4:30 PM	Multiple Locations (See Below)
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EMPLOYEES ARE FREE TO VOTE AT ANY TIME THE POLLS ARE OPEN.

ALL BALLOTS WILL BE MINGLED AND COUNTED IMMEDIATELY AFTER THE CONCLUSION OF THE LAST VOTING SESSION.

- Cafeteria of the Employer's Oregon Maintenance Shop located at 2610 S. Delaware Ave, Philadelphia, PA
- Electric Ready Room in the Employer's West Chester Service Building located at 896 S. Bolmar St., West Chester, PA
- Conference Room 7 and 8 of the Employer's Warminster Service Building located at 400 Park Avenue, Warminster, PA
- MD&S Conference Room in the Employer's Plymouth Service Building located at 680 Ridge Pike, Plymouth Meeting, PA
- Conference Room A and B of the Employer's Baldwin Service Building located at 1510 Chester Pike, Eddystone, PA.

The count will be held at the Cafeteria of the Employer's Oregon Maintenance Shop located at 2610 S. Delaware Ave, Philadelphia, Pennsylvania.



United States of America
National Labor Relations Board
NOTICE OF ELECTION



	<p>UNITED STATES OF AMERICA National Labor Relations Board 04-RC-223713</p> <p>OFFICIAL SECRET BALLOT</p> <p>For certain employees of PECO ENERGY COMPANY</p>	
<p>Do you wish to be represented for purposes of collective bargaining by INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, LOCAL 6143</p>		
<p>MARK AN "X" IN THE SQUARE OF YOUR CHOICE</p>		
<p>YES</p> <input type="checkbox"/>	<p>NO</p> <input type="checkbox"/>	
<p>DO NOT SIGN THIS BALLOT. Fold and drop in the ballot box. If you spoil this ballot, return it to the Board Agent for a new one.</p> <p>The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.</p>		



United States of America
National Labor Relations Board
NOTICE OF ELECTION



RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union
- Choose representatives to bargain with your employer on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities
- In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.

If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:

- Threatening loss of jobs or benefits by an Employer or a Union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time, where attendance is mandatory, within the 24-hour period before the polls for the election first open or the mail ballots are dispatched in a mail ballot election
- Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a Union or an Employer to influence their votes

The National Labor Relations Board protects your right to a free choice.

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law.

Anyone with a question about the election may contact the NLRB Office at (215)597-7601 or visit the NLRB website www.nlr.gov for assistance.