

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MOUNTAIN VIEW HEALTH CARE AND
REHABILITATION CENTER, LLC
Employer

and

Case 04-RC-242288

RETAIL WHOLESALE AND DEPARTMENT
STORE UNION (RWDSU)
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

JOHN F. RING,	CHAIRMAN
MARVIN E. KAPLAN,	MEMBER
WILLIAM J. EMANUEL,	MEMBER

Dated, Washington, D.C., December 11, 2019.

¹ In denying review, we do not rely on the Regional Director's citations to *Regal Health & Rehab Ctr., Inc.*, 354 NLRB 466 (2009), *PPG Aerospace Industries, Inc.*, 353 NLRB 223 (2008), and *Family Healthcare, Inc.*, 354 NLRB 254 (2009), as they are two-member Board decisions. See *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010).

We agree, for the reasons stated by the Regional Director, that the Employer's LPNs are not supervisors even under the standards employed by the United States Court of Appeals for the Third Circuit. See *NLRB v. New Vista Nursing & Rehabilitation*, 870 F.3d 113, 130-136 (3d Cir. 2017); see also *NLRB v. Attleboro Associates*, 176 F.3d 154, 164-166 (3d Cir. 1999). The Employer has failed to establish, among other things, that the two disciplinary actions that its LPNs can take—engaging in verbal counseling and filling out “write-up” forms—consistently result in any particular discipline under the Employer's progressive discipline policy; nor has the Employer provided any evidence of such actions increasing the severity of future discipline. We note, however, that the concerns articulated by the Third Circuit regarding the Board's test for whether putative supervisors may effectively recommend discipline warrant careful consideration, and we would be open to reconsidering extant Board law on this topic in a future appropriate case.