

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ALLIED POWER SERVICES, LLC,)
)
Employer,)
)
and) Case 13-RC-252563
)
INTERNATIONAL BROTHERHOOD OF ELECTRICAL)
WORKERS, LOCAL UNIONS 145, 146, 176, 364 and 601)
)
Joint Petitioners,)

**JOINT PETITIONERS' RESPONSE IN OPPOSITION TO EMPLOYER'S
REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S
DECISION AND DIRECTION OF ELECTION**

Joint Petitioners, International Brotherhood of Electrical Workers, Locals 145, 146, 176, 364 and 601 (hereinafter "IBEW" or "Union"), pursuant to 29 CFR 102.67(f), hereby state their opposition to the request for review of the decision and direction of election filed on December 24, 2020, by the Employer, Allied Power Services, LLC ("Employer" or "Allied"). The Regional Director's January 31, 2020 Decision and Direction of Election was well reasoned and amply supported by the record evidence. Moreover, Allied had full opportunity to present evidence in support of its position on the supervisory status of classifications within the petitioned for bargaining unit.

Conspicuously absent from Allied's brief is any recognition that it bears the burden of establishing the supervisory status of the classifications at issue. The Regional Director correctly identified the burden that a party asserting supervisory status must satisfy in both the June 11, 2018 and January 31, 2020 Decisions and Direction of Election (referred to as "2018 D&DE" and "2020 D&DE", respectively) (see, 2018 D&DE, p. 11; 202 D&DE, p. 5), stating in the 2020 D&DE:

In excluding individuals from a unit based upon supervisory status, the burden of proof rests upon the party alleging that an individual is a supervisor. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001); *Bennett Industries*, 313 NLRB 1363 (1994).

The Regional Director also correctly recognized why the burden is so high, because “[t]he Board is reluctant to confer supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act.” (2020 D&DE, p. 5, citing, *Vencor Hospital - Los Angeles*, 328 NLRB 1136, 1138 (1999)). In other words, if Allied had satisfied its burden, it would be free to retaliate against Superintendents that supported the Union. If Superintendents are going to lose the protections of the Act, then Allied indeed must provide clear evidence that they are statutory supervisors. Despite five days of hearings and hundreds of pages of exhibits, Allied has twice failed to do so. Nothing submitted with its request for review warrants a different conclusion.

Having failed to even recognize the burden it faces to exclude Superintendents and Lead Work Planners as statutory supervisors, Allied provides no explanation in its brief as to why or how it satisfied its heavy burden. Moreover, Allied’s cherry-picked transcript excerpts and exhibits¹ do not satisfy its obligation to submit “a self-contained document enabling the Board to rule on the basis of its contents without the necessity of recourse to the record[.]” 29 CFR 102.67(e).² For these reasons alone, Allied’s request for review should be denied.

¹ Allied included just 238 pages of the nearly 1000 pages of transcript and (239 pages) of the 63 exhibits (570 pages) it introduced at the hearings. The Union is providing some additional excerpts of the transcripts herewith, to highlight some of the serious omissions that Allied made in its submission. However, the Union will not take up Allied’s burden to provide a self-contained document.

² In its October 15, 2020 Order denying Allied’s request for review of the Regional Director’s decision on ballot challenges, the Board correctly recognized that Allied failed to submit a self-contained document, despite being prepared by counsel. The situation is the same here, warranting the same result.

Allied's request for review also should be denied because the Regional Director provided clear explanations and reference to the testimony and documentary evidence to support her conclusion that Allied failed to satisfy its burden to establish supervisory status. Allied limits its request for review to the issues of responsibly directing or assigning work (Allied Br., p. 2, n.3). The 2020 D&DE included a detailed review of the evidence regarding Superintendents (p. 12-20) and Lead Work Planners (p. 8-12). The Regional Director reviewed the job descriptions that Allied prepared, along with the witnesses testimony and documentary evidence submitted by Allied. Allied's claim that the Regional Director did not conduct an independent analysis of the evidence in her 2020 D&DE (Allied Br., p. 5, n. 4) is belied by the fact that the Regional Director did reach a different conclusion as to the supervisory status of Lead Superintendents (Compare 2018 D&DE, p. 20 with 2020 D&DE, p. 20-28). The Regional Director's conclusions set forth in the 2020 D&DE based on the evidence presented by Allied are reasonable and do not warrant review by the Board.

A. The Regional Director correctly found that Allied failed to satisfy its burden to establish that Lead Electrical Planners are statutory supervisors and therefore should be excluded from the bargaining unit.

Interestingly, Allied spends a disproportionate amount of time addressing the testimony from the lone employee it identified as a Lead Electrical Planner. In so doing, Allied disingenuously argues that his testimony was wrongly deemed irrelevant based on mere "semantics" (Allied Br., p. 29) and that there was "confusion" about his job title (Allied Br., p. 31). In fact, any confusion was resolved at the hearing where Meyer testified very clearly that he considered himself as something other than a Lead Electrical Planner on pages of the transcript that Allied failed to include with its request for review (and now attached hereto). Meyer testified on cross-examination:

- Q: So, you are serving as the Electrical Lead Superintendent -- Electrical Lead Planner at Braidwood, right?
- A: I am the Work Planning Lead for all disciplines.
- Q: Work Planning Lead?
- A: Yes.
- Q: Okay, so in your mind, is there a difference between a Work Planning Lead and a Mechanical Lead and an Electrical Lead Planner?
- A: Yes. We have one Lead Planner at Braidwood --
- Q: Okay.
- A: -- over the entire group, and then we have planners under me for the two disciplines.
- Q: Okay. So am I correct in understanding there is no Electrical Lead Planner at Braidwood, at the moment, anyway?
- A: That is correct. (2019 Tr., p. 139-140).

Shortly thereafter, Meyer testified:

- Q: Okay. So, I guess I want to talk a little bit more about the distinction between your title and the Lead Planner title, because you know, frankly I am not sure that I picked up on the difference at the outset, but it seems like they really are two different positions. Am I correct there?
- A: A -- a Lead Electrical Planner versus a Work Planning Lead?
- Q: Yes.
- A: Yes, they could be two different positions. (2019 Tr., p. 145-146).

Then, in response to leading questions on re-direct seeking to have Meyer deem the two titles interchangeable, Meyer testified that he was unfamiliar with the position of Lead Electrical Planner:

- Q: Are there times when you are wearing the hat of the Lead Electrical Planner when you are working at Braidwood?
- A: Yes, when I am reviewing and approving electrical packages.
- Q: When you are assigning and directing work to Electrical Planners, are you doing that in the function of Lead Electrical Planner?
- A: Yes, I believe -- you know, I -- I -- **I am unfamiliar with that position somewhat**, but, yes, I -- I am the lead for any of the disciplines below -- (2019 Tr., p. 148, Emphasis added).

To avoid the clear impact of Meyer's testimony, Allied cites to the 2018 hearing, where the Lead Electrical Planner position were sometimes referenced in different ways (Allied Br., p. 29). Allied then mischaracterizes the agreement of the parties as to the appropriate titles in the petitioned

for unit at the start of the 2019 hearing to suggest that “the Parties recognized that the job titles employed in the Petition were ‘functional[.]’” (Allied Br., p. 30). In fact, the portion of the transcript cited by Allied makes clear that Allied had the specific title of Lead Electrical Planner in mind for the petitioned for unit (which was agreeable to the Union), and clearly did not include the Work Planning Lead position held by Meyer. As Allied’s counsel explained at the start of the hearing:

that we are in agreement that the job titles that are used in the description of the unit in the Petition should be the appropriate job titles used in any Voter List, . . . , so we will be referring in this hearing, in any subsequent briefing, and would ask the Region to refer to, in its DD&E, the Electrical Superintendent, the Electrical Lead Superintendent, the Work Planner - Electrical, the Lead Electrical Planner, and the Work Planner - Electrical (Trainee). Also -- and we represented that while there may have been some changes in our internal systems as to classifications, that those are the functional job titles and those are what we believe to be the appropriate titles for determination as to who is a supervisor, and then for purposes of the Voter List. (2019 Tr., p. 23-24).

Given Meyer’s status in a position outside of the petitioned for unit and his statement that he is unfamiliar with the Lead Electrical Planner position, the Regional Director was correct to find his testimony inapt. Allied’s position is not saved by Nevin’s testimony (Allied Br., p. 30) (Nevin was Allied’s party representative and present for Meyer’s testimony), which can most charitably be described as a self-serving to the extent it is inconsistent with Meyer’s testimony. Allied presented no other testimony from employees with first-hand experience as Lead Electrical Planners at either the 2018 or 2019 hearings. Accordingly there is no record evidence to support Allied’s claim that individuals serving as Lead Electrical Planners are statutory supervisors and it therefore failed to satisfy its burden.

B. The Regional Director correctly found that Allied failed to satisfy its burden to establish that all Superintendents are statutory supervisors and therefore should be excluded from the bargaining unit.

Allied only asserts supervisory status for Superintendents based on assigning or responsibly directing the workforce (Allied Br., p. 2, n. 3), but it muddles the two concepts throughout its brief (Allied Br., p. 35-47). Nevertheless, Allied failed to satisfy its burden to establish supervisory status of Superintendents, regardless of the basis. Accordingly, Allied's request for review should be denied.

1. Allied has not satisfied its burden to establish that Superintendents assign work.

Assignment is defined as “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, Inc.*, 348 NLRB 686, 689 (2006). Determining “the order in which the employee will perform discrete tasks within those assignments. . . would not be indicative of” the authority to assign. *Id.* Supervisory authority will not be found where “there is only one obvious or self-evident choice,” or to merely balance work loads. *Id.* at 693.

The Board has consistently applied the principle that authority effectively to recommend generally means that the recommended action is taken without independent investigation by superiors, not simply that the recommendation is ultimately followed.” *Children's Farm Home*, 324 NLRB 61, 61 (1997). The Board has held that: “[t]he fact that a recommendation for the employment of an applicant is approved out of respect for the judgment of another, rather than because of his

delegated authority to participate in the hiring process, is also not an indicium of supervisory authority.” *Local Union No. 195*, 237 NLRB 1099, 1102 (1978).

The independent judgment necessary to establish supervisory status based on the ability to assign work must be established by specific evidence showing the factors considered in determining how one employee was selected over another for an assignment. *See, Brusco Tug & Barge Co.*, 359 NLRB 486, 492 (2012); *WSI Savannah River Site*, 363 NLRB No 113, slip op. at 3 (2016). Under *Oakwood*, “to exercise ‘independent judgment’ an individual must at a minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data.” 348 NLRB No. 37 at 8. “[A] judgment is not independent if it is dictated or controlled by detailed instruction, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement.” *Id.* The Act “contrasts ‘independent judgment’ with actions that are ‘of a merely routine or clerical nature.’” *Id.* Thus, “[i]f there is only one obvious and self-evident choice . . . , or if the assignment is made solely on the basis of equalizing workloads, then the assignment is routine or clerical in nature and does not implicate independent judgment, even if it is made free of the control of others and involves forming an opinion or evaluation by discerning and comparing data.” *Id.* at 8-9. Assignment based on known skills or employee abilities are not supervisory because they do not require independent judgment. *CNN America, Inc.*, 361 NLRB No. 47, slip op. at 22 (2014); *WSI Savannah River*, 363 NLRB No. 113 at 3.

There was no testimony that Superintendents had the authority to require overtime or work unscheduled hours. *See, Entergy Mississippi, Inc.*, 357 NLRB 2150, 2156-57 (2011). Allied

misstates Dickson's 2018 testimony³ regarding lunch breaks (Allied Br., p. 32, 36)⁴ and again excludes portions of the transcript giving more detailed explanation, including the collectively bargained restrictions on start and end times and the limited flexibility provided therein for lunch breaks (2018 Tr. 585-587).

In *Shaw*, the Board found that any assignments made by the foremen were "self-evident" and did not require independent judgment because they were determined the employees' known trades or skills as needed to complete the tasks for the day. 350 NLRB No. 37, at 2. Likewise, the Board found no independent judgment needed to assign mundane tasks to employees based on their availability to complete the work, or made to vary tasks or equalize workload. *Id.*, at 3. Similar to *Shaw*, the ALJ in *Diversified* found that the foreman did not exercise independent judgment by giving employees on his crew assignments based on the skills he knew they had (such as whether they could operate heavy equipment), and based on the needs of the job as specified in blueprints. 2007 NLRB LEXIS 281.

The *Shaw* Board analogized the foremen at issue there to the "lead persons" at issue in *Croft Metals*. 350 NLRB No. 37, at 3, n. 10. In *Croft Metals*, the Board found that "lead persons" did not assign employees under the Act because they did "not prepare the posted work schedules for employees, appoint employees to the production lines, departments, shifts or any overtime periods,

³ Allied faults the Union for not having Dickson testify at the 2019 hearing (Allied Br., 4), confirming Allied's unwillingness to accept that it bears the burden of proving supervisory status. The Union does not bear the burden to prove that Superintendents are not statutory supervisors. Given the 2018 testimony and Allied's failure to bear its burden at the 2019 hearing, there was no need for the Union to present any witnesses.

⁴ Even as to the portion of Dickson's testimony attached by Allied, it cites to statements Dickson made concerning his employment by Allied's predecessor (2018 Tr. 585-587). Any testimony regarding Allied's predecessors must be disregarded.

or give significant overall duties to employees.” The lead persons worked along side other employees who performed work “according to their classifications. . . every day.” 348 NLRB No. 37, at 5-6. Lead persons had no authority regarding who worked for them, but may make assignment decisions from the people on their crew based on what the individuals were capable of doing. *Id.* at 6. The Board further found that occasionally rotating tasks among the crew was more akin to ad hoc direction than to the assignment of work, and therefore was not indicative of supervisor status. *Id.*

Contrary to Allied’s claims (Allied Br., p. 4), in a portion of the transcript again omitted by Allied, Dickson testified that he did not have any role as a superintendent in assigning foremen and craft workers to a particular project (2018 Tr. p. 459). The most input he would have on the crew would be to raise questions regarding its size, either being too large or too small (2018 Tr. p. 459). In such instances, he would discuss his concern with the day’s lead superintendent (2018 Tr. p. 459-460). In considering abilities for a particular task, it would concern things like whether an individual is too big to fit in the given work space (2018 Tr. p. 460).

Incredibly, Allied claims: “Although the 2019 DDE appeared to conclude that Superintendents’ authority was highly circumscribed by ‘detailed instructions,’ there is no reference to evidence demonstrating that Francimore’s or Dickson’s responsibilities were controlled by instruction at all, let alone detailed instructions sufficient to render judgment dependent.” (Allied Br., p. 9). The detailed instructions that Superintendents must follow are the work packages. Work packages provide detailed instruction on how a particular job must progress (2018 Tr. p. 78). "The work packages are written from a - they are written so that anybody could execute the work package." (Tr. p. 480). If the superintendent has a concern about a step in a work package, he can

go back to a planner for discussion, but "he cannot work outside the package." (2018 Tr. p. 157-158). In addition to the work package, the Superintendent, foreman and craft workers have access to a "reference only procedure" document, that they may reference to compete various tasks in a work package (2018 Tr. p. 256).

The Regional Director's decision finding that Allied failed to satisfy its burden to establish that Superintendents responsibly assign work was correct (2020 D&DE, p. 19-20). Accordingly, Allied's request for review should be denied.

2. Allied has not satisfied its burden to establish that Superintendents responsibly direct other employees.

The Regional Director correctly found that Allied failed to satisfy its burden to establish that Superintendents responsibly direct the workforce. In *Shaw, Inc.*, 350 NLRB 354; 350 NLRB No. 37, slip. op., pp. 2-5 (July 30, 2007), the Board for the first time applied *Oakwood's* definition of "independent judgment" to foremen in the construction industry, reversing the ALJ's decision, and finding that the individuals were not statutory supervisors. The Board declined to decide whether any of the purported supervisor's acts were supervisory in nature, because it found that even if they were, the individuals did not exercise independent judgment. *Id. at 2.*

The *Shaw* Board found that the foremen acted "essentially as job site lead persons, overseeing routine functions and following established prescribed practices." *Id.* The foremen in *Shaw* "provided a degree of direction to ensure the work's completion[,] but, this direction was based on "prior instructions," and only minimal guidance was needed. *Id. at 3.* The Board also found that the *Shaw* foremen did not exercise independent judgment because their direction was subject to "close scrutiny" by management, who "generally visit every job site at least once a day, checking on

progress and providing guidance as needed.” *Id.* at 3. The Board noted that the foremen “have the means to contact and communicate with supervisors when they are not on site[,]” and that problems on site are addressed to the supervisors. *Id.* Accordingly, the Board found the foremen to be mere conduit for carrying out the employer’s assignments, and that even if they were “in charge” on the job site, “being’ in charge’ does not establish that the foremen exercise supervisory authority.” *Id.* at n. 15. (citing *Dean & DeLuca New York, Inc.*, 338 NLRB 1046, 1047 n. 13 (2003)). See also, *Diversified Enterprises, Inc.*, 355 NLRB 492 (2010) (incorporating 353 NLRB 1174, 1181-1182 (2009)) (The foreman “was given a copy of the blueprints for the job and he gave people their assignments based upon the blueprints.”).

Where directions are based on the employer’s policies and procedures, putative supervisors are not using independent judgment. See, *Community Education Centers*, 360 NLRB 85 (2014); *WSI Savannah River Site*, 363 NLRB No. 113, slip op. at 2 (2016). In *Croft Metal*, the Board found no independent judgment where the lead persons “follow a pre-established delivery schedule and generally employ a standard loading pattern that dictates the placement of different products in the trucks.” 348 NLRB No. 38 at 6. Direction such as where and how to load a package, or to go get materials or missing items to help load, did not require independent judgment. *Id.*

The Regional Director correctly concluded that the Employer again failed to provide concrete examples of a Superintendent using independent judgment to direct the crew at a work site (2020 D&DE, p. 17-18). As with assignments, *supra* p. 9-10, any directions are based on the work packages, which control the work to be done. Any direction is ministerial at most and does not require the use of independent judgment. Superintendents’ roles are not substantively different from

those of Foremen, serving as mere conduit for the employer's directions. Accordingly, Allied's request for review should be denied.

CONCLUSION

The Employer has not established a basis warranting Board review of the decision of the Regional Director under Section 102.67(d). Accordingly, the Employer's request for review should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that a true and correct electronic copy of the foregoing document was e-filed and served via email to the following before 11:59 p.m., Eastern Standard Time, this 4th day of January 2021:

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2019 Transcript Excerpts

1 Oh, did you want to put 8, 9, and 10 --

2 MS. SIEGEL: Yeah -- yeah, I think that we didn't
3 close that loop.

4 I wanted to move for the admission of 7 to 10,
5 which I think were the remaining outstanding Employer
6 documents.

7 HEARING OFFICER MILLER: Yes. Do you have any
8 objections to that?

9 MR. RYAN: No, objections.

10 HEARING OFFICER MILLER: Okay, then Exhibits --
11 Employer's Exhibits Nos. 8, 9, and 10, are moved into
12 evidence.

13 **(Employer's Exhibits Nos. 8 through 10, received into**
14 **evidence.)**

15 HEARING OFFICER MILLER: Okay, cross?

16 MR. RYAN: Yes, thank you.

17 CROSS EXAMINATION

18 Q BY MR. RYAN: Mr. Meyer, thank you for being here
19 today. I just have a -- probably not a ton of questions
20 but just a couple of points that I wanted to try to
21 clarify.

22 A Okay.

23 Q So, you are serving as the Electrical Lead
24 Superintendent -- Electrical Lead Planner at Braidwood,
25 right?

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1 A I am the Work Planning Lead for all disciplines.

2 Q Work Planning Lead?

3 A Yes.

4 Q Okay, so in your mind, is there a difference

5 between a Work Planning Lead and a Mechanical Lead and

6 an Electrical Lead Planner?

7 A Yes. We have one Lead Planner at Braidwood --

8 Q Okay.

9 A -- over the entire group, and then we have planners

10 under me for the two disciplines.

11 Q Okay. So am I correct in understanding there is no

12 Electrical Lead Planner at Braidwood, at the moment,

13 anyway?

14 A That is correct.

15 Q Okay. Do you know, are the other five facilities

16 operating with a similar structure?

17 A I can't speak to that.

18 Q Okay. Do you ever prepare work packages yourself

19 still?

20 A Very occasionally. I mean, during an outage maybe,

21 if there is an emergent one that is hot and it needs out

22 like the next shift or something like that, I will jump

23 in and plan a package, yes.

24 Q Okay, but ordinarily, that is not a part of your

25 day to day?

1 A No. I task out the EC's and I task out the -- the
2 programs, work, fact, ISI, snubbers [*Phonetic*], which
3 consists of 600 or 700 work order tasks.

4 Q Okay.

5 A I do that and then oversee the group.

6 Q Okay, so you are tasking out both the Mechanical
7 and the Electrical and the Scaffold Groups?

8 A Yes.

9 Q Okay.

10 *[Long pause]*

11 Q When you are reviewing the work packages that other
12 planners have prepared, is your ability to do so based
13 on your position as the Work Planner Lead, or --

14 A Qualifications.

15 Q Based on the qualification level?

16 A Right.

17 Q So that's the 300-Qualification Level?

18 A That's correct.

19 Q Okay, so that's -- is it fair to call that a peer
20 review?

21 A No. That's an approval review.

22 Q An approval review?

23 A Yeah. We occasionally assign peer reviews.

24 Q Okay.

25 A If we know that we are having issues in a certain,

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1 you know, maybe the mechanical side, we will step it up
2 and have another planner perform a peer review before it
3 comes to a 300-Level qualified approval review.

4 Q Okay.

5 A No package goes out without a 300-Level approval
6 review.

7 Q Okay, but there are -- the 300-Level quals that are
8 not leads; correct?

9 A There are -- that are not Lead Planners, that is
10 correct.

11 Q Okay.

12 *[Long pause]*

13 HEARING OFFICER MILLER: I am just going to ask,
14 since this seems like a good time...

15 You just said there -- there are Lead Planners, or
16 there are employees who are 300-Level qualified who
17 aren't Lead Planners?

18 THE WITNESS: That's correct.

19 HEARING OFFICER MILLER: Who is that for your team?

20 THE WITNESS: I have a Mechanical Planner, a Senior
21 Mechanical Planner, that has 300-Level quals. So he
22 reviews and approves the -- some of the mechanical
23 packages.

24 HEARING OFFICER MILLER: Okay. But you don't have
25 any Electrical Planners who are 300-Level qualified --

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1 THE WITNESS: No, I do not.

2 HEARING OFFICER MILLER: -- other than you?

3 THE WITNESS: I'm it.

4 HEARING OFFICER MILLER: Okay.

5 THE WITNESS: If we need a review -- if we need an
6 approval and I am not available, they get Exelon, the
7 house side, one of the 300-Level qualified planners over
8 there to review and approve.

9 HEARING OFFICER MILLER: Okay.

10 [Long pause]

11 Q BY MR. RYAN: So, for the planners who work under
12 you, how do they -- who hires them?

13 A Umm, one, two, three of us are full-time, me
14 myself, and two other planners are full-time employees.
15 The others are -- well, one other one is a full-time
16 employee, but he's in and out supporting other outages.

17 Q Okay.

18 A So, who hires -- who hired the original ones, I
19 can't speak to that because I -- I wasn't there at the
20 time.

21 Q Okay.

22 A But since I have been there, I have -- I have
23 brought in or hired, like I have two mechanical planners
24 which were ex-Exelon retirees --

25 Q Uh-huh.

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1 A -- that I provided their names to John Janek, and
2 they were brought in.

3 Q Okay.

4 MS. SIEGEL: Can I -- can I just make an objection,
5 or a request, in that I think, to some extent, maybe due
6 to the questions not be honed, or just the witness'
7 response, we are kind of crossing the line between
8 asking about Mechanical and Electrical, and I just think
9 that we need to have some clarity as to -- because this
10 election pertains only to Electrical, when the questions
11 are being asked, that is the scope of what is being
12 inquired into. I just -- I am concerned about having a
13 fuzzy record in that regard.

14 MR. RYAN: And yeah, I mean, we are certainly not
15 claiming --

16 MS. SIEGEL: Okay.

17 MR. RYAN: -- the Mechanical side of things --

18 MS. SIEGEL: Okay.

19 MR. RYAN: -- but I am just trying to understand
20 Mr. Meyer's kind of role in --

21 HEARING OFFICER MILLER: So, Mr. Meyer, when you
22 are answering, think about your Electrical --

23 THE WITNESS: I understand.

24 HEARING OFFICER MILLER: -- Planners.

25 THE WITNESS: Understood.

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1 HEARING OFFICER MILLER: Okay?

2 THE WITNESS: Yes.

3 HEARING OFFICER MILLER: So I guess I should
4 sustain the objection?

5 MS. SIEGEL: My objection is --

6 HEARING OFFICER MILLER: Yeah.

7 MS. SIEGEL: -- in regards to any questions that
8 will delve into Mr. Meyer's responsibilities, except for
9 just kind of the basic job duties and his role as it
10 pertains to Mechanical or Scaffolding.

11 HEARING OFFICER MILLER: Okay. So -- all right.
12 Yes.

13 THE WITNESS: I understand.

14 HEARING OFFICER MILLER: Thank you.

15 I'm sorry, can you ask your question again, so we
16 know where --

17 MR. RYAN: If I remember it.

18 MS. SIEGEL: It was who hired the planners under
19 him.

20 THE WITNESS: Right. And from the Electrical
21 standpoint, Gary Gruhn was there prior to me, so I can't
22 speak to that, but Kyle Roberts, I brought him in
23 through Janek, and Mike Redice, I recommend he be
24 brought back through Janek.

25 Q BY MR. RYAN: Okay. So, I guess I want to talk a

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1 little bit more about the distinction between your title
2 and the Lead Planner title, because you know, frankly I
3 am not sure that I picked up on the difference at the
4 outset, but it seems like they really are two different
5 positions. Am I correct there?

6 A A -- a Lead Electrical Planner versus a Work
7 Planning Lead?

8 Q Yes.

9 A Yes, they could be two different positions.

10 Q Okay.

11 MR. RYAN: May we go off the record for a second,
12 please?

13 HEARING OFFICER MILLER: Yes, off the record.

14 *[Off the record]*

15 HEARING OFFICER MILLER: Back on the record.

16 Petitioner, if you would like to continue with any
17 questions?

18 MR. RYAN: Yes, thank you.

19 Mr. Meyer, actually I don't think I have any more
20 questions for you today. I do appreciate your time and
21 your help in understanding this.

22 Off-the-record we had a conversation about Mr.
23 Meyer's position as the Work Planning Lead, Work Planner
24 Lead -- I might have my language mixed up there.

25 In our view, this is not a position that we

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1 consider to be within the petitioned-for bargaining
2 unit, you know, on that basis, we don't see a need to
3 proceed with further questioning at this time.

4 HEARING OFFICER MILLER: Okay. Let me ask you, on
5 the record, are there any -- that you are aware of, are
6 -- does Allied, the Employer, employ any other Work
7 Planning Leads at other locations in the state of
8 Illinois, that you know of?

9 THE WITNESS: I believe they employ other Work
10 Planning Leads, but I don't know if they are discipline-
11 specific or not. Yes.

12 HEARING OFFICER MILLER: Okay. And --

13 THE WITNESS: Because I have a contact list of
14 Planning Leads to contact if I have any issues or
15 questions as to how it is being done at other stations.

16 HEARING OFFICER MILLER: And that list for Planning
17 Leads includes lists for multiple -- like Mechanical
18 Leads, Electrical Leads --

19 THE WITNESS: The -- it includes a single contact
20 for the other stations.

21 HEARING OFFICER MILLER: Okay, for -- for --

22 THE WITNESS: For getting hold of someone in my
23 same position --

24 HEARING OFFICER MILLER: Oh, okay.

25 THE WITNESS: -- at another Exelon/Allied station.

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1 HEARING OFFICER MILLER: Okay.

2 Do you want to ask some follow-up questions to what
3 I asked, either one of you?

4 MS. SIEGEL: Yeah, I think I can ask some follow-up
5 questions.

6 HEARING OFFICER MILLER: Okay.

7 REDIRECT EXAMINATION

8 Q BY MS. SIEGEL: Are there times when you are
9 wearing the hat of the Lead Electrical Planner when you
10 are working at Braidwood?

11 A Yes, when I am reviewing and approving electrical
12 packages.

13 Q When you are assigning and directing work to
14 Electrical Planners, are you doing that in the function
15 of Lead Electrical Planner?

16 A Yes, I believe -- you know, I -- I -- I am
17 unfamiliar with that position somewhat, but, yes, I -- I
18 am the lead for any of the disciplines below --

19 Q So, are you the -- the person responsible for the
20 electrical -- the assignment of work to Electrical
21 Planners?

22 A Yes, I am.

23 Q Okay. Has it ever been the case that a Lead
24 Electrical Planner has reported to you at Braidwood?

25 A No.

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1 required.

2 Q Okay.

3 A The production superintendent has to sign off.

4 Q Okay. So every --

5 A If the planner gives inadequate direction, doesn't
6 follow the correct procedure, there's obviously
7 discipline there.

8 Q Okay. So everyone is responsible for ensuring the
9 safety of this site. Is that fair?

10 A Correct, correct.

11 Q Everyone's responsible to make sure they're doing it
12 right, even the craft worker?

13 A Yeah.

14 Q But for the new superintendent who's never been at
15 the site before, do they rely on the planner to give
16 them the correct instructions?

17 A Yeah, but I'd say all the superintendents rely on
18 the planner to give the correct instructions.

19 Q Does the superintendent have the authority to say,
20 "Nah, I don't like the planner's work package, I'm going
21 to do it my own way?"

22 A No.

23 Q So the --

24 A He may not like the direction in the package, but he
25 has to go back to the planner and have a discussion. He

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1 cannot work outside the package.

2 Q Okay. He must follow the steps within the package?

3 A Correct, he can't go off on his own.

4 Q Okay.

5 A I mean, if he doesn't agree with the steps in the
6 package, he has to raise his concern to get the package
7 changed, but we work outside the boundaries of a work
8 package.

9 Q Okay.

10 HEARING OFFICER MILLER: Can I ask really quick?
11 In that column, SRAQ, what does SH mean?

12 WITNESS: Supervisor hold.

13 HEARING OFFICER MILLER: And SV?

14 WITNESS: Supervisor verification.

15 HEARING OFFICER MILLER: Okay, thank you.

16 WITNESS: And one further down, supervisor witness.
17 That's the three I talked about. The craft either has
18 to stop before I get there, wait and I'll verify it as
19 you do it, or I'll come back -- you don't have to worry
20 about me, I'll come back and verify that when you're
21 done.

22 HEARING OFFICER MILLER: Thank you.

23 *[Long pause]*

24 Q We've given a lot of overview of service, what do
25 you do at the site. Now I want to get down to the

1 step. That work step is going to tell you to make sure
2 that there is no energy there.

3 Q Okay.

4 A And he -- he is going to tell you from a reference
5 only procedure that he knows, "Hey, this is everything that
6 we've got to do."

7 Q So he is probably execute on that item.

8 A Right.

9 Q Okay.

10 HEARING OFFICER MILLER: Is the "reference only
11 procedure" like another written document or something --

12 THE WITNESS: It is.

13 HEARING OFFICER MILLER: -- that Superintendents have
14 access to?

15 THE WITNESS: Yes.

16 HEARING OFFICER MILLER: Okay.

17 THE WITNESS: Yes, it is, and yes, they do.

18 HEARING OFFICER MILLER: Does -- does anybody else
19 have access to the "reference only" document?

20 THE WITNESS: Anybody else meaning?

21 HEARING OFFICER MILLER: Like Foremen, General
22 Foreman, craft workers?

23 THE WITNESS: Yeah. We could -- they -- they
24 oftentimes ask for that, and the Superintendent will
25 provide that for them.

1 craft has a lead supervisor.

2 HEARING OFFICER MILLER: Okay. I just wanted to
3 make sure that I had it clear on the record. Thank you.

4 Q The electrical lead assigns it to the superintendent
5 and --

6 A Well, puts the work on -- yes, and basically he'll
7 match up a superintendent to the work. As I like to
8 say, they use the best athlete to get that work done. A
9 general foreman will assign craft members to work with
10 that. Every craft should have a general foreman.

11 Q Can you explain to me the relationship between the
12 superintendent and the general foreman?

13 A I would say we're at a peer level. At that point,
14 there's direction to be taken from the electrical lead
15 to perform this work and the general foreman to assigned
16 craft to the work.

17 Q Are there usually foremen on the package as well?

18 A To work the package?

19 Q Yes.

20 A That's what the -- what I've seen is that what
21 happens is the number of craft that's been estimated for
22 this work will be on the same piece of paper as was
23 given to the general foreman, the same one that I've
24 been handed. It's the crew size to work the job. The
25 general foreman will assign a foreman in the correct

1 number of craft to perform the work.

2 Q Does the superintendent have any role in assigning
3 foremen or craft workers?

4 A I have not picked them.

5 Q When you worked as a superintendent, you've never
6 done that?

7 A No. About the input that I would have is sometimes
8 your troop can get too big. I'd say crew size would be
9 about the thing I would discuss. Sometimes you can have
10 a crew that's too big, it actually hampers the job.
11 Other times, you can have a crew that's too small.
12 That's the kind of input they'd have back that says, hey
13 -- but you have to work together at that point because
14 there's so many resources and it's up to the electrical
15 leads to figure out which resources get priority for the
16 day. Schedule-wise, there's things that have higher
17 considerations, things they must finish first before
18 other jobs.

19 HEARING OFFICER MILLER: When you say you are --
20 your crew is too big or too small and you discuss it
21 with someone, you were talking about your lead?

22 WITNESS: Discuss it with the electrical lead.

23 HEARING OFFICER MILLER: Okay.

24 Q That's the size of the crew?

25 A Size of the crew.

1 Q Not --

2 A Not who's there, no.

3 Q Okay.

4 A The other input is if you would notice -- let's say
5 somebody's got a handicap, not like you're crippled but
6 there's things that -- for instance, we were working
7 outside and there's a lot of scaffold climbing. The
8 person doesn't have scaffold climbing skills, you would
9 want to put somebody better, better able to do something
10 like that.

11 Q Okay.

12 A That's what I mean, we match abilities. Sometimes a
13 person's too big to go into a certain spot.

14 Q Pretty tight quarters there?

15 A Not with Allied, but I've worked inside steam
16 generators. Part of a reactor system when I worked for
17 the welding company and there was a gentleman who was
18 just too big, he couldn't fit into it. There's
19 different reasons.

20 Q Okay. But as --

21 A Every one of them, I'm going to call on their common
22 sense.

23 Q As a superintendent, if you notice something like
24 that, you would tell the foreman or the general foreman?

25 A You could tell the foreman and the foreman might

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1 Q So there are other aspects of the operations that
2 are still within the big office space?

3 A Cost control sits right next to me --

4 Q Okay.

5 A -- so right over my divider physically. We call it
6 prairie dogging, you know, pop up and I want to talk to
7 this person over here, so you just pop up and say what
8 you gotta say, or that person pops up and, you know, you
9 get to see their head.

10 Q When you're putting together a work package do you
11 know who's going to be implementing it?

12 A No, I wouldn't.

13 Q So how does that --

14 A You mean as a particular individual?

15 Q Yes.

16 A No.

17 Q Okay. How does that influence how you put a work
18 package together if at all?

19 A The work packages are written from a -- they're
20 written so that anybody could execute the work package.
21 So Exelon has specific training that they give their
22 permanent plant employees, and they're deeply trained.
23 We have the same -- we can call it skill of the craft
24 level, but Exelon takes theirs deeper because they can
25 afford to do that. They're day-in, day-out employees.

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1 And we have a transient work force that doesn't
2 necessarily know, I'll call the ins and outs of working
3 at a nuclear facility, which has -- there's just a lot
4 of precautionary measures.

5 So when we write the work packages that's part of
6 the instruction set. In fact, I believe it's
7 preduralized, too. I'm not going to use -- it's not
8 dumb it down, because I'd hate to -- you know, it's not
9 like we're dealing with stupid people. But we want to
10 simplify the work steps so they're plainly
11 understandable. So we break a big task down to small,
12 consumable pieces.

13 So it would be like, uhm, you know, how do you eat
14 an elephant?

15 Q One bite at a time.

16 A One bite at a time. And the work steps are broken
17 out one bite at a time to the size that's, you know,
18 consumable, step by step until you reach the, you know,
19 final product at the end.

20 And one of the other things in a work package is
21 that procedurally driven from Allied's perspective are
22 whole points that are put into the package so there's
23 expectations from Allied Power that, depending on the
24 type of work package, whether it's safety related or
25 non-safety related package, what the expectation is for

1 don't have, that helps breaks the work out and make it
2 more executable. By making it executable, it makes the
3 company look better, makes them more efficient, and help
4 to make money.

5 Q It sounds like you're almost taking the same bumper
6 approach to your planning.

7 A Absolutely.

8 Q Making sure that you have enough detail in there to
9 be able to help the package be successful without any
10 redirection.

11 A Yeah.

12 Q Okay.

13 MS. KALIS: Give me just a few minutes?

14 HEARING OFFICER MILLER: Off the record.

15 *[Off the record]*

16 HEARING OFFICER MILLER: On the record.

17 MS. KALIS: No other questions.

18 HEARING OFFICER MILLER: I have two questions and
19 then I'll let you ask questions.

20 **COURT EXAMINATION**

21 HEARING OFFICER MILLER: Who tells the crew their
22 start time, their start and end time?

23 WITNESS: That is set by the production
24 superintendent.

25 HEARING OFFICER MILLER: Okay.

1 WITNESS: There's three people in the company that
2 are the core group. You have a site manager like Dirk
3 is a site manager. At Quad Cities, there was a
4 production superintendent. The crafts have contractual
5 start times. That starts a shift. This agreement may
6 be working on a maintenance agreement that's different
7 than a standard practice. They set the times.

8 HEARING OFFICER MILLER: Okay. Can you --

9 WITNESS: Production superintendent.

10 HEARING OFFICER MILLER: Does the superintendent
11 have the authority to change the time?

12 WITNESS: No.

13 HEARING OFFICER MILLER: Okay. What about --

14 WITNESS: That changes contract obligations.

15 HEARING OFFICER MILLER: What about lunch breaks?

16 WITNESS: We have a one-hour contractual flexible
17 lunch break. It's smart to have a contract working that
18 way because you can break the work at an appropriate
19 spot. If you have a fixed contract, it says you'll take
20 your lunch at 12:00 and you're in the middle of
21 something. They're either going to try pull and work
22 through lunch or they're going to get paid extra, which
23 is a permission that you can get.

24 But if you're allowed that flexibility, you can
25 break your tasks at a proper place and then pick it up.

1 HEARING OFFICER MILLER: How can you get permission
2 to work your lunch?

3 WITNESS: That's a level above mine, that's the
4 production superintendent has to authorize that one.

5 HEARING OFFICER MILLER: Has that ever happened to
6 you?

7 WITNESS: Sure.

8 HEARING OFFICER MILLER: Okay.

9 WITNESS: But not for Allied.

10 HEARING OFFICER MILLER: Okay. How is the change
11 in lunch breaks -- how do you determine the lunch break
12 is going to be for the day? Who determines that? If
13 you're working and you're working on a package, they're
14 doing their job, etc., etc., how do you decide and who
15 decides when to go on lunch?

16 WITNESS: You're talking about during that flexible
17 time of --

18 HEARING OFFICER MILLER: Yeah.

19 WITNESS: I'd say between the foreman and myself, we
20 would find this natural break, and that's it.

21 HEARING OFFICER MILLER: Do you actually tell the
22 guys, "Hey, go to lunch," as the superintendent?

23 WITNESS: I would say if we hit lunchtime, yes, you
24 know, hey, let's go.

25 HEARING OFFICER MILLER: So you're all going to