UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ALLIED POWER SERVICES, LLC
Employer

and Case 13-RC-252563

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCALS 145, 146, 176, 364, AND 601
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]

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[1] The Board has exercised its discretion under Sec. 102.67(e) of the Board's Rules and Regulations to examine the entire record. Based on careful review of the record and the Regional Director's decision, we reject the Employer's unsubstantiated claim that "one can only assume that the Region was inclined to reiterate its prior conclusions without regard to any of the new evidence."

In agreeing with the Regional Director's conclusion that the Employer did not establish that Lead Electrical Planners are Sec. 2(11) supervisors, we note that "supervisory status is not proven where the record evidence 'is in conflict or otherwise inconclusive.'" *The Arc of South Norfolk*, 368 NLRB No. 32, slip op. at 3 (2019) (quoting *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989)). Here, the Employer did not establish that Work Planner Lead Edward Meyer is, has been, or has observed the work of, a Lead Electrical Planner; thus, his testimony is not probative with regard to Lead Electrical Planners' duties. Even assuming the Employer is correct that the transcript of the 2018 hearing that also concerned the supervisory status of the classifications in the petitioned-for unit supports the Employer's contention that it has used different terms for the Lead Electrical Planner position, the evidence is still ambiguous with respect to the extent to which Meyer's position conforms with the Lead Electrical Planner position. We also find that the 2018 hearing testimony upon which the Employer relies is insufficient to satisfy the Employer's burden, even in conjunction with Meyer's testimony. In particular, we note that the Employer's two 2018 witnesses have not worked as Lead Electrical Planners for the Employer and neither directly oversaw the work of the Lead Electrical Planners. See, e.g., *G4S Regulated Security Solutions*, 362 NLRB 1072, 1073–1074 (2015), enfd. 670 Fed. Appx. 697 (11th Cir. 2016).

In denying review of the Regional Director's determination that Superintendents do not assign work to or responsibly direct crew members, we disavow any implication that employees in certain positions or with certain titles (such as foremen and lead persons) are, categorically, not Sec. 2(11) supervisors. We also do not rely on the Regional Director's statement that the "evidence indicates" that reviews that Lead Superintendents complete for Superintendents "affect" Superintendents' "ability to receive merit increases and future assignments." The evidence is inconclusive, at best, in this regard. With respect to the discipline of Superintendent Alex Boehmke, the evidence does not support the Regional Director's apparent conclusion (or

MARVIN E. KAPLAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

JOHN F. RING, MEMBER

Dated, Washington, D.C., April 23, 2021.

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the Employer's assertion) that Lead Superintendent John Francimore attended Boehmke's disciplinary hearing. But we agree with the Regional Director that the evidence concerning the written warning issued to Boehmke does not establish responsible direction. The evidence is inconclusive and ambiguous with respect to whether the Employer disciplined Boehmke for his own error in performing his job or, instead, because the Employer was holding him responsible for the crew's error in performing their own work. See, e.g., *Frenchtown Acquisition Co. v. NLRB*, 683 F.3d 298, 314–315 (6th Cir. 2012). And, finally, the Employer did not establish that Superintendents use independent judgment in directing crew members.