DECISION AND DIRECTION OF ELECTION

On September 28, 2021, International Brotherhood of Electrical Workers, Local 160 (“Petitioner”) filed a representation petition under Section 9(c) of the National Labor Relations Act (“Act”) seeking to represent all control room supervisors and nuclear ops program managers employed by Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy (“Employer”) out of the Monticello Nuclear Generating Plant in Monticello, Minnesota. There are approximately 18 control room supervisors (“CRSs”) and one nuclear ops program manager in the petitioned-for unit.

A videoconference hearing on the petition was held on October 20 and 21, 2021, before a hearing officer of the National Labor Relations Board (“Board”). The parties stipulated to the following issues:

1) Whether CRSs are supervisors as defined by Section 2(11) of the Act;

2) If CRSs are found not to be statutory supervisors, then do they share a community of interest with the one nuclear ops program manager that Petitioner seeks to also include in the bargaining unit.

At the outset of the hearing, the hearing officer set forth the burden for proving supervisory status, including the Board’s standard of specific detailed evidence, and the parties were provided with an opportunity to call, examine, and cross-examine witnesses, to introduce into the record evidence of the significant facts that support their contentions, and to orally argue their respective positions and submit post-hearing briefs.

The Employer asserts CRSs must be excluded from any appropriate unit because they are statutory supervisors and, if not, the nuclear ops program manager must be excluded from a unit with CRSs because the position does not share the necessary community of interest. Petitioner maintains CRSs do not possess any of the primary indicia required for a supervisory finding and
the nuclear ops program manager shares a community of interest with the other petitioned-for employees.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Based on the entire record in this proceeding, including the parties’ post-hearing briefs, and relevant Board law, I find that the Employer failed to meet its burden of showing CRSs are statutory supervisors by specific detailed uncontroverted evidence and that the evidence establishes a community of interest between CRSs and the nuclear ops program manager. Accordingly, I shall order a mail-ballot election in the petitioned-for unit.

I. RECORD EVIDENCE

The record evidence consists of exhibits that were introduced and accepted at the pre-election hearing and sworn testimony from witnesses. Because many of the witnesses have held several potentially relevant positions with the Employer, I have listed them below for easy reference, along with the approximate years they held each position as indicated in the record.

Paul Albares has been employed by the Employer for about 31 years. He began as a design engineer then transitioned to a maintenance engineer and eventually a maintenance supervisor. He was an engineering manager (2000-2003) until he took the two-year initial license training (“ILT”) to become a reactor operator (2003-2005). He has held the positions of senior reactor operator (“SRO”) and CRS (2005-2007), and Shift Manager (2009-2011). He was also the Assistant Operations Manager (“AOM”) for about two years, and the Operations Director for about two years. He is currently the Training Manager.

Nathan Pieper has been employed by the Employer for seven years. He began as a CRS (2014-2019), then became a Shift Manager (2019-2021). He recently became the Acting AOM (although he still holds the title of Shift Manager).

Quinten Kovannen has been employed by the Employer for about 12 years. He began as a non-licensed operator (“NLO”) (2009-2013), then completed his ILT (2013-2015) and became a reactor operator (2015-2018). He attended ILT a second time (2018-2019) and became a CRS (2019-2021). He recently became a Shift Manager.

Matthew Plautz has been employed by the Employer for about 13 years. He began as an electrical design engineer (2008-2009), and then completed ILT (2009-2011) and became a CRS (2011-2013), then Shift Manager (2013-2016). Next, he spent about 1½ years in a rotational program as a Nuclear Oversight Assessor. He then became the Operations Support Manager (2016-2019), and AOM (2019-2021). He transitioned to a career development assignment as AOM of Training in September 2021.

1 The parties stipulated to the appropriateness of a mail-ballot election.
2 The Training Manager is not listed on any of the organization charts in the record.
3 The transcript incorrectly lists the spelling of his last name as Kovanen. The correct spelling is Kovannen.
Gary Minlschmidt has been employed by the Employer for about 17 years. He began as the Human Resource Manager for the Monticello Plant (2004-2007), and then became the Lead Workforce Relations Consultant for the Employer (2007-present).

A current 10-year CRS has been employed by the Employer for about 15 years. He began as an engineer “for a couple of years,” then completed the two-year ILT and received his senior reactor operator (“SRO”) license. The record does not indicate the department in which he worked as an engineer or a specific engineering job title.

A current 3-year CRS has been employed by the Employer for about five years. He began in the two-year ILT program, received his SRO license, and has been a CRS since about 2018.

The nuclear ops program manager (“NOPM”) has been employed by the Employer since about 2008. He began as a fire protection coordinator at the Monticello Plant (2008-2013), completed the two-year ILT (2013-2015), and then was a Work Execution Center SRO (“WEC SRO”) and CRS (2015-2020). He was assigned to the NOPM role as a six-month special project and became the full-time NOPM in 2021, when the Employer made it a permanent position.

A. THE EMPLOYER’S OPERATIONS AND THE MONTICELLO PLANT

The Employer is engaged in the generation, sale, and distribution of electricity and natural gas. Among the Employer’s operations are two nuclear powerplants licensed by the Nuclear Regulatory Commission (“NRC”)—the Prairie Island Nuclear Generating Plant in Red Wing, Minnesota, and the Monticello Nuclear Generating Plant (“Monticello Plant”) in Monticello, Minnesota, alongside the Mississippi River.

The Monticello Plant has a single nuclear reactor that generates electricity through controlled nuclear fission, which heats water into steam that spins a turbine to generate electricity that is transmitted to the Employer’s customers. It operates on a two-year refueling cycle, which means there is a planned outage approximately every 24 months. The Employer employs approximately 515 workers at the Monticello Plant, an unknown number of which are currently represented by Petitioner.

The Monticello Plant consists of three main structures surrounded by several outbuildings. The Turbine Building houses the turbine that generates electricity; the Reactor Building holds the reactor core where nuclear fission takes place; and the Administrative Building is located between the Turbine Building and the Reactor Building and provides access to both. The Control Room is located in the Administrative Building.

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4 The record does not contain the collective-bargaining agreement between the Employer and Petitioner for Monticello Plant employees or a description of the existing bargaining unit. Business Representative Kurt Zimmerman testified that Petitioner represents the following groups of employees employed by the Employer: operators, workweek coordinators/schedulers, planners, senior chemists, radiation protection and chemistry department, T-week integrated planners (“T-WIPs”), and quality control inspectors. The record is not clear on whether these employees are all employed at the Monticello Plant or whether they constitute separate bargaining units.
As noted above, the NRC licenses and regulates nuclear powerplants in the United States due to the potential harm to public health and safety and the environment. Thus, the Employer seeks to maximize normal operations at the Monticello Plant while reducing emergent events that place it in an abnormal condition or an emergency condition. To meet those regulations and maintain safe operations, the Employer has adopted and codified many of the Monticello Plant’s operating procedures in Fleet Procedures, Administrative Work Instructions (“AWIs”), Operations Work Instructions (“OWIs”), and other company manuals, policies, and specifications. Fleet Procedures apply throughout the Employer’s nuclear division, including the Monticello Plant and Prairie Island Nuclear Generating Plant while OWIs pertain to the Operations Group. Generally, AWIs apply to multiple work groups up to the Employer’s entire organization. Albares testified that the Employer’s goal is to provide as much guidance as possible so that issues are responded to consistently. Given the nature of their work and the potential hazardous consequences, all employees of the Employer have the “stop work authority” to raise a safety concern if they believe an instruction is dangerous.

B. THE OPERATIONS GROUP AND OPERATING CREWS

The control room supervisors (“CRSs”), including CRSs working on special projects, and the nuclear ops program manager (“NOPM”) sought by the instant petition are part of the Operations Group at the Monticello Plant. Nathan French is the Director of Nuclear Fleet Operations, who oversees several managers at the Monticello Plant including the Assistant Operations Manager (“AOM”), Operations Support Manager, Operations Outage Manager,

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5 The record also references “transient condition” and “transients,” both which appear to be used interchangeably with abnormal condition, emergency condition, and emergent event.

6 The record contains six OWIs, seven AWIs, three Fleet Procedures, three manuals, two trainings, and various forms, which is a sampling of the Employer’s documentation detailing various operating and related procedures. Specifically, OWI-01.01 (Operations Group Organization and Responsibility Assignments); OWI-01.03 (OperationsCommunications Standards); OWI-01.05 (Conduct of Training); OWI-01.06 (Duty Operations Personnel Requirements and Responsibilities); OWI-02.03 (Operator Rounds); OWI-02.07 (Operations Work Control); 4 AWI-04.04.02 (Equipment Positioning, Independent and Concurrent Verification Methods); 4 AWI-04.04.03 (Bypass Control); 4 AWI-04.04.06 (Transmission Work Request); 4 AWI-04.04.09 (Equipment Control); 4 AWI-04.05.01 (General Work Controls); 4 AWI-08.16.01 (Monticello Emergency Operating Procedure and Beyond-Design-Basis Guideline Maintenance Program; FP-WM-WOE-01 (Work Order Execution Process); FP-WM-PLA-01 (Work Order Planning Process); FLEET Initial Licensed Training (“ILT”) FL-ILT Training Program Description; M-8100-02I-QM (Monticello Instant Control Room Supervisor Qualification Manual); M-8100-02U-QM (Monticello Upgrade Control Room Supervisor Qualification Manual); FP -T-SAT-20 (Monticello Nuclear Generating Plant Shift Technical Advisor (“STA”) M-9500 Training Program Description); FP-PA-HU-05 (Decision Making). See Petitioner Exhs. 1-21. See also, Employer Exhs. 2-22 (Nuclear Leadership Development Program – Front Line Supervisors program description and lesson plans), 28, and 33. However, the record evidence contains references to other policies, procedures, and documents not in the record. For example, the OWIs reference a Technical Requirements Manual and Technical Specifications (“Tech Specs”); the Positive Discipline Module of the Nuclear Leadership Development Training for Front-Line Supervisors (FL-LDP-INI-044L) references Policy 9.2 (“Discipline Guidelines/Positive Discipline”), CP0087 (“Employment Review Program”), FP-EC-ERB-01 (“Employment Review Board”), and the Workforce Relations Webpage on XpressNet. Albares also references a C4 General Guidance document in his testimony, but it was not introduced as evidence.

7 Also referred to in the record as command-and-control SROs.

8 The record indicates this position was previously referred to as the Operations Manager.
Fix-It-Now (“FIN”) Manager, and the AOM of Training. There are approximately 90 employees in the Operations Group.

There are generally three categories of workers in the Operations Group—senior reactor operators ("SROs"), reactor operators,10 and non-licensed operators ("NLOs").11 Reactor operators and SROs are both licensed operators,12 possessing licenses from the NRC, while NLOs do not hold an NRC license. Licensed operators work primarily in the Control Room while NLOs generally work in the Reactor Building, Turbine Building, and outplant buildings. Petitioner currently represents NLOs and reactor operators as part of its existing bargaining unit. To become an SRO, an individual must complete a two-year initial license training ("ILT").13

Section 4.3 of OWI-01.01 (Operations Group Organization and Responsibility Assignments) sets forth the responsibilities of the various employees and supervisors in the Operations Group.

The Monticello Plant uses six operating crews for manipulating controls, switches, and equipment for its operation. Each crew works a 12-hour duty shift and only one crew is considered on duty at a time. A typical operating crew consists of three SROs; three reactor operators, including one lead operator; at least three NLOs; two reactor protection individuals; and a shift chemist.14 One SRO is the Shift Manager, who has overall responsibility for the Monticello Plant including oversight of the Control Room and other work groups on site,15 while on duty. The AOM oversees all six Shift Managers and has ultimate responsibility for the shifts. Pieper testified that approximately 10 percent of his time as a Shift Manager was spent in the Control Room. The 10-year CRS, who has worked on multiple operating crews, testified that his current Shift Manager “pops in 3-4-5 times an hour” but another Shift Manager may only come to the Control Room three to five times in a 12-hour shift. A second SRO is stationed outside the Control Room in the Work Execution Center ("WEC") and is known as the WEC SRO. The third SRO is the CRS inside the Control Room.

9 The record contains two organizational charts for the Operations Group. Employer Exh. 1 appears to be a document that was created for the preelection hearing while Figure 5.1 “Organizational Diagram” is found in revision 50 of the Employer’s undated Operational Work Instructions 01.01 ("OWI-01.01"). See Union Exh. 1.

10 Also referred to in the record as control operators.

11 Also referred to in the record as outplant operators.

12 Multiple witnesses appear to use licensed operator and reactor operator interchangeably at times in the record, rather than licensed operator encompassing both SROs and reactor operators. Throughout this decision, the term reactor operator is limited to only reactor operators while the term licensed operator refers to both SROs and reactor operators, inclusive.

13 Albares testified that the SRO license is a “higher standard” than the reactor operator license and includes more knowledge of overall plant operations, execution of the emergency procedures, and a command-type function. The record is unclear on the length of federally-mandated or Employer-required training to obtain a reactor operator license and does not contain further detail regarding the differences between SROs’ and reactor operators’ training for NRC licensure.

14 The record contains no information on the reactor protection individuals or shift chemist. I note the record contains several references to “radiation protection” but also lacks details about whether those positions are part of an operating crew.

15 The record references the maintenance group, engineering group, security group, radiation protection group, and chemistry group but does not describe how the groups interact or overall management structure or supervisory hierarchy at the Monticello Plant.
Operating crews work on a six-week cycle. During each cycle, they work seven 12-hour night shifts (6:00 p.m. to 6:00 a.m.), seven 12-hour day shifts (6:00 a.m. to 6:00 p.m.), and four 8-hour relief days (7:00 a.m. to 3:00 p.m.), and five 8-hour training days. The schedule is detailed in Section 4.5 of OWI.01-01. Licensed operators—SROs and reactor operators—are required to have 40 hours of training every six to seven weeks to maintain their NRC licenses. Albares testified that each operating crew receives the training, which takes place in a separate building about one mile from main facility and consists of classroom hours with instructors and laboratory hours in a fully operational Control Room simulator, including mock outplant buildings. Albares further testified that simulator training involves the operating crew, including the CRS, performing their jobs in various normal, abnormal, and emergency conditions. He gave the examples of simulating an earthquake, a flood on the Mississippi River, or a drought, or pipe breaks or power loss at the plant. During simulations, the CRS observes the reactor operators as they normally would but are themselves observed by instructors and their Shift Manager.

The CRS and WEC SRO rotate positions every six-week cycle to ensure they have the necessary time in the Control Room required by NRC regulations. Thus, there are 12 CRSs, two on each crew, rotating between the CRS and WEC SRO positions. The remaining six CRSs employed by the Employer currently work on special projects, as discussed below.

C. THE CONTROL ROOM AND CONTROL ROOM SUPERVISOR (“CRS”)

The Control Room measures approximately 30 feet by 30 feet and is located in a corner of the Administrative Building, with an adjacent kitchenette and restroom and a door for direct access to the Turbine Building. There is no direct access from the Control Room to the Reactor Building. The Shift Manager has an office located off the Control Room through a vestibule. The Control Room contains panels, switches, safety systems, and auxiliary systems for displaying information and alarms necessary for operating the Monticello Plant, including the reactor core and electrical generation and transmission. The CRS is stationed at a desk about 8 feet away, overlooking the panels and switches, so they can monitor the status of the Monticello Plant and the activities of the reactor operators. The on-duty CRS and three reactor operators, including the lead operator, generally work in the Control Room. The lead operator is stationed in the middle. On the right is the operator at the controls (“OATC”), who is responsible for the reactor core, and on the left is the balance of plant operator (“BOP”), which involves support and auxiliary systems. The record indicates the reactor operators “manipulate” the panels, switches, and systems, but provides no further detail. No current reactor operators testified at the hearing.

Federal regulations require an SRO, which the Employer typically designates as the CRS to be present in the Control Room at all times and two reactor operators must be present at most times. The NRC defines an SRO, including a CRS, as “any individual licensed … to manipulate the controls of a facility and to direct the licensed activities of licensed operators.” 10 C.F.R. § 55.4. If the CRS needs to leave the Control Room during their shift, they may temporarily turn it over to the WEC SRO. Albares gave the examples of the on-duty CRS going into the plant to inspect equipment or interact with the NLOs as they do rounds. Albares testified that such instances typically last a “really short duration, an hour” during a 12-hour shift. Similarly, the WEC SRO will come into the Control Room during abnormal or emergency conditions and act as the shift technical advisor (“STA”), which independently analyzes the technical condition of the Monticello Plant and provides recommendations to the CRS if something is not being
appropriately addressed. The 10-year CRS testified that the STA only reports conditions and
recommendations to the CRS and is not allowed to direct members of the operating crew. The
record does not indicate the frequency or regularity with which either of these situations occur.

The Employer requires CRSs to complete its leadership development program for first-
line supervisors (“LDP-FLS”), a training program required for all its first-line supervisors. The
initial LDP-FLS training program contains approximately 17 modules, consisting of about 31½
classroom hours and 7½ hours of computer-based training, and is followed by continuing
training on a quarterly basis. As part of the LDP-FLS training program, a CRS must also
complete a Job Familiarization Guide with multiple components. The record contains only the
LDP-FLS program description and lesson plans for the modules; it does not include the initial
training materials, except for a PowerPoint presentation on Positive Discipline and a presentation
on Coaching in the Moment.

1. Assignment of Work and Responsibly to Direct

Section 4.3.4 of OWI-01.01 gives the general responsibilities of the CRS position,
including the CRS “shall supervise Control Room activities and watchstanders, and provides
[sic] the supervision and leadership to the Panel Operators” (emphasis omitted). Multiple
witnesses testified that the CRS implements the work schedule and addresses emergent events,
abnormal conditions, and emergency conditions. The record indicates typical Control Room
workflow involves the CRS initiating scheduled procedures that are then executed by reactor
operators, including the lead operator, and NLOs. The reactor operators’ and NLOs’ performance
is monitored and reviewed by the CRS. The lead operator may designate certain procedures or
tasks to the other reactor operators or NLOs. Albares testified that the “CRS directs the lead
operator to execute the schedule as defined.” He further testified that CRSs “have oversight
authority and responsibility” to ensure the Monticello Plant is run safely.

The record does not indicate the CRS plays a role in the initial assignment of reactor
operators to a particular panel or their role as lead operator, OATC, or BOP. Section 4.1 of
OWI-01.06 (Duty Operations Personnel Requirements and Responsibilities) sets forth staffing
procedures and the “selection criteria for crew alignments.” The process requires input from
Operations Manager, AOM, Operations Support Manager, AOM of Training, and “incumbent
Shift Managers;” recommends input from the Plant Manager, Assistant Plant Manager, Site
Vice President, and Operations ILT Liaison; and lists CRSs, reactor operators, and “other plant
management” as additional personnel who may be asked for input on crew alignment and
rotation assignments.

The three NLOs work outside the Control Room but only in an area where they are
formally qualified. There are three areas of qualification—the Reactor Building, the Turbine
Building, and “outside.” One NLO is responsible for performing rounds and managing and

16 Albares testified that maintenance supervisors, engineering supervisors, chemistry supervisors, and radiation
protection supervisors all attend the same LDP-FLS classes as CRSs.
17 See OWI-01.01, Sec. 4.3.4.B.3.
18 As noted above, NLOs generally work in outplant buildings, manipulating and monitoring smaller equipment that
has less of an impact on operations. Albares gave the examples of gathering oil and doing vibration checks.
maintaining the operations in the Turbine Building. Another NLO is similarly responsible for the Reactor Building. The third NLO, called the outside operator, is responsible for performing rounds and maintaining the equipment outside of the Turbine and Reactor Buildings. According to the 10-year CRS, there is a typical progression to NLOs’ qualifications. An NLO usually qualifies as an outside operator, then turbine building operator, then reactor building operator. He testified that if the NLOs on an operating crew have multiple qualifications then they develop a rotating schedule among themselves and that CRSs are not involved in assigning NLOs to a particular area. He further testified that he has never changed an NLO assignment and does not know if he possesses the authority to do so. Kovannen testified that, when he was an NLO from 2009 to 2013, he was “sometimes chosen [by the CRS] to support specific activities to gain experience to work with another knowledgeable individual to gain proficiency at a task,” even though that “might not otherwise have been [his] task to perform.” He did not indicate any factors other than proficiency (or lack thereof) considered by a CRS, the frequency with which such proficiency-based assignments occurred, or how initial assignments were determined. The 10-year CRS also explained that rounds generally consist of NLOs recording measurements for equipment that does not have electronic readings or is otherwise not connected to the panels or alarms in the Control Room, and then uploading the data into a computer program for the CRS to review for normal or abnormal conditions.

No current NLOs were called as witnesses at the hearing.

a. Scheduled Work and Work under Normal Conditions

To better ensure consistency of operations, the Employer uses a T-week schedule for planned work such as maintenance and surveillance testing. The Scheduling Group begins planning the scheduled activities for a particular week approximately 16 to 21 weeks (T16 to T21) prior to execution. According to the 10-year CRS, the WEC SRO begins reviewing the schedule with the workweek coordinator around T6 and a scheduling meeting takes place at about T3. The record does not contain any details about the interaction of the WEC SRO and the workweek coordinator or what transpires at, or who attends, the scheduling meeting. The 10-year CRS testified that the schedule specifies only the planned work activities, not who is to perform the work, and the Scheduling Group determines the priorities for planned activities—Alpha tasks should be completed within the hour, Bravo tasks within the day, Charlie tasks within the week, and Delta tasks are completed as time permits. He further testified that the WEC SRO raises any workload issues with management, who determines whether to postpone certain work or have employees work overtime. Albares testified that the WEC SRO’s name is published on their particular workweek schedule and they have overall responsibility for plant risk and determining what activities take place during their week, and that a risk monitoring tool verifies that the scheduled activities keep operations at an acceptable level of risk. The record does not disclose how the WEC SRO develops or alters the work schedule to mitigate plant risk, including the factors they consider, or whether the risk monitoring tool accomplishes this task.

19 Also referred to in the record as the Planning and Scheduling Department.

20 According to Business Representative Zimmerman, workweek coordinators are represented by Petitioner. No workweek coordinators testified at the preelection hearing, and the record contains no further information regarding the position.
The typical operating crew shift begins with “turnover,” where the outgoing operating crew updates the incoming crew on the status of the Monticello Plant, including major and minor issues they encountered during their shift. At the beginning of the shift, each crewmember has time to review the schedule for the day and assesses their responsibilities. Next, the CRS leads the beginning shift brief with the entire crew—reactor operators and NLOs—by updating them with the turnover information and reviewing the schedule, aligning with the lead operator and Shift Manager regarding the priorities for the day, and reviewing the day’s schedule. Section 4.5 of OWI-01.03 (Operations Communications Standards) details how a beginning shift brief is conducted. Following the shift brief, the 10-year CRS testified that union-represented operators perform rounds, which is monitoring all equipment for which they are responsible, and the crew executes the tasks on the schedule for the shift, addressing any issues that arise throughout the shift. The shift concludes with an end-of-shift brief, where the on-duty CRS reviews the work completed, any issues that occurred during the shift, and communicates these during turnover to the incoming operating crew.

The CRS must also conduct a crew brief. Section 4.7 of OWI-01.03 (Operations Communications Standards) states the purpose of a crew brief is to keep crewmembers informed of “planned activities, relevant plant status information, and changing conditions arising during plant events.” The OWI details the process and information to be relayed to crewmembers and includes a checklist and template for crew briefs. The OWI further specifies that a crew update should be used when time does not permit a full crew brief, and it details the crew update procedure.

Albares testified that a CRS “can identify what specific operator they want” to perform a specific procedure” and “that could be based on their experience or proficiency.” Plautz testified that CRSs consider “factors … availability obviously; but beyond that, experience levels, proficiency … [and] they are teaming up the right people for a job.” The record does not contain any specific examples of scheduled work during normal conditions or how that work is performed, including the CRS’s role. The 10-year CRS testified that day-to-day plant conditions are monitored and managed by the reactor operators, including the lead operator, in the Control Room. He further testified that he could instruct them to use a particular procedure based on the conditions and gave the example of a parameter trending in the wrong direction. According to the 10-year CRS, the reactor operator performing the procedure is the one assigned to the particular area or panel where the issue is occurring or, if that operator is not in the Control Room, any other qualified operator. The record does not contain further details regarding how the CRS chooses the procedure, what factors are considered or how they are balanced.

If an operating crew is not able to perform all steps in a scheduled work procedure, either skipping steps or stopping before completion, the CRS uses a Determination for the Use of Not Applicable form ("NA form"). Pieper testified that these are “the standards on how [to] process not performing the rest of the procedure.” He gave the example of a component part of the system being in a “deficient condition” so the work could not continue. The NA form can be used prior to initiating a procedure based on known conditions or may be performed in the moment if a condition emerges. According to Pieper, the NA form is a process CRSs use to identify what remaining steps may be performed or how to back out of a procedure that cannot

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21 Employer Exh. 30.
be completed. He further testified that CRSs use “knowledge and ability, skills performing that evolution that they are documenting the reasons” and “judgment and discretion are involved.” The record does not indicate any factors, other than equipment in a deficient condition, a CRS considers when using an NA form, nor does it describe how a deficient condition is determined.

As noted above, the reactor at the Monticello Plant is shutdown for refueling every two years. During this time, the Employer’s workforce swells to complete projects better accomplished when the reactor is not active. The 10-year CRS testified that SROs and reactor operators form “super crews” rather than operating crews and “a group works days and a group works nights.” The Control Room contains at least one extra CRS and one extra lead operator, the latter which makes ad hoc assignments based off a list of available operators and NLOs. He further testified that planned outage work is “very scripted as far as scheduled.” The record does not contain any specific detailed examples of work performed during planned outages or the role CRSs play.

The record contains minimal evidence regarding specific scheduled work, work performed under normal conditions, or work during planned outages; instead, testimony focuses work during abnormal and emergency conditions.

b. Specific Manipulations, including Work under Abnormal or Emergency Conditions

Albares testified that the Operational Focus module from the LDP-FLS training program covers “risk management decision-making skills.” Specifically, “if there is an abnormal condition in equipment or weather or whatnot, how to effectively manage that risk, either mitigate it or reduce it or eliminate it so the plants run safely so that include[s] the decision-making aspects.” The Employer also maintains a 50-page Fleet Procedure on Decision Making (FP-PA-HU-05). Albares further testified that the Employer has an abnormal operating procedures general guidance document called C4 General Guidance, which “specifically defines the requirements for [CRSs] in those procedures and it gives them the latitude, the guidance to use their knowledge, skills and abilities and discretion on what steps in each one of those procedures are performed.” The C4 General Guidance was not introduced as evidence at the hearing. Albares further testified that it is a CRS’s responsibility to determine which operator gets a specific direction, which they base off their understanding of “that operator’s knowledge, skills and abilities, their experience levels, their operating experience.” According to Albares, the Employer’s procedures typically require that two operators are assigned to a task for peer checking, and CRSs look at the operators’ “levels of experience and their personalities for that matter to ensure that they work good together.” Peer checking involves a second individual qualified on the equipment, which can be another reactor operator, to verify the particular manipulation step-by-step. The first employee touches each part of the equipment, explaining the precise manipulation to be performed and the expected results, while the peer checker confirms the manipulation and expected results. The record shows peer checking is used for most manipulations that involve more than monitoring and peer checks must be used when the

22 See Employer Exh. 17 for the Operational Focus (FL-LDP-INI-108F) lesson plan.

23 See Petitioner Exh. 21.
equipment needs to remain operable, as defined in the Tech Specs. The record contains the following examples of manipulations involving abnormal or emergency conditions.

Albares gave the example of water not being properly maintained in the reactor, noting the CRS would use their knowledge, skills and abilities, and judgment and discretion to determine which system to use for water injection based on the availability and necessary capacity. He further testified that “a procedure will apply and … in that procedure there is even lists of which systems could be used to add additional water and the CRS will use their knowledge and judgment to pick the right list to assign a crew to go start whatever system to start injecting water.” Albares also testified that the CRS must maximize resources when implementing the above procedure, which involves judgment and discretion based on the availability of operators and their proficiency with the procedure, specifically mixing experienced and inexperienced operators. Section 4.1 and 4.7 of OWI-01.06 (Duty Operations Personnel Requirements and Responsibilities) provides for crew alignments and peer checking, specifically “leveling of reactor operators,” which means mixing experienced and inexperienced operators, and “concurrent verification.” Albares did not further describe or detail CRSs’ use of judgment and discretion.

Kovannen provided examples of “[water] filter cleaning or fuel oil delivery or a water treatment chemical receipt” that are not scheduled activities. Because these activities cannot be forecasted more than about 24 hours ahead of time, a CRS must determine which resources should be used in conjunction with completing the scheduled tasks. Kovannen further testified that the CRS must look at what operators are available, including relief operators if the work occurs during an 8-hour relief shift, and potentially flipflopping the on-shift operators with relief operators. Kovannen did not indicate factors other than availability that CRSs consider, and the record does not further describe or detail the use of judgment or discretion in determining worker availability.

The two current CRSs testified that various Employer policies and procedures control deviations from the approved work schedule. The 10-year CRS testified that when an alarm triggers, he follows the procedure for that particular alarm, which may include subsequent procedures. He gave the example of Employer procedures governing what to do “if a pump were to drip or a fan were to drip.” He gave another example of a fuse blowing, which is a condition listed in a general procedure that points to a specific procedure on how to deal with the failed fuse. He further testified that all his work is proceduralized in this manner. The record does not contain the general or specific procedures involving a failed fuse, and there is no further testimony regarding the CRS’s discretion or judgment in determining the alarm or resultant procedures.

The 10-year CRS also testified that emergency operating procedures (“EOPs”) “have to be followed” and are “prescriptive based on plant symptoms.” He gave the example symptoms of low reactor water level and containment at high pressure and testified that the Employer’s EOPs set forth specific steps to take to address those symptoms. The record does not contain any EOPs or describe the steps for addressing those or other symptoms. He further testified that, if the

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24 As noted above, the record does not contain any Tech Specs. Further, the record is unclear as to whether employees regularly use peer checking during normal conditions.
EOPs do not address the symptoms, the plant transitions to the procedures in the Employer’s severe accident management guidelines. Similarly, the Employer’s extensive damage mitigation guidelines (“EDMG”) prescribe what happens in the event the plant cannot be manipulated from the Control Room (e.g., a terrorist attack) while the FLEX Support Guidelines specify what to do in the case of catastrophic equipment failure (e.g., Fukushima).

Accountability

The record also contains an example of a CRS, who was not the on-duty CRS in the Control Room, failing to follow proper procedure. In that example from 2019, the CRS was the “Reactor Building SRO” and orally instructed an apprentice operator to open primary containment valves without a written procedure. While a Fleet Procedure (FP-OP-COO-17) allows for manipulation of valves without written instructions, it requires that the manipulation be formally tracked and any non-duty personnel receive Control Room approval. The CRS did not formally track the manipulation or receive Control Room approval and received an “oral reminder – performance.” The oral reminder notes the CRS’s actions did not meet the expectations of the Shift Manager, his “lack of attention to procedure use and adherence” was “a serious error in judgement” and his “decision making” was “troublesome” and reduced the Shift Manager’s confidence in the CRS’s “ability to lead the Operations Department and other site staff on the correct way to operate and manipulate plant equipment.” Plautz testified that the apprentice operator did not receive formal discipline “because they followed the direction” of the CRS.

2. Discipline and Performance Management

About six years ago, the Employer mostly transitioned away from a formal disciplinary system to a performance management system based on proactive interventions, which allows the Employer to develop and improve employee performance before it requires formal discipline. As multiple witnesses testified, any incident at a nuclear powerplant has the potential to jeopardize public safety and personnel safety. So, the Employer seeks to prevent employees’ actions reaching the point of requiring discipline, as that would mean an event with the potential to harm the public or employees has already occurred. Plautz testified that formal discipline is “an absolute last resort” and the Employer has “a lot of tools and processes … to avoid this altogether.” According to Albares, the “culture here has transitioned since [to] where we actually don’t utilize the discipline process.” Pieper testified that the Employer’s philosophy is “to create a better culture, a more of a teamwork culture is we don’t go into discipline space.”

a. Positive Discipline

The Employer still maintains a formal disciplinary procedure called Positive Discipline, and the record contains the 2-page lesson plan for the “Positive Discipline” module (FL-LDP-INI-044L) that is part of the LDP-FLS training program CRSs must complete. The record reveals only one instance of positive discipline in the Operations Group from 2020 through the time of the hearing, but it does not disclose what position was disciplined or whether a CRS

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25 See Employer Exh. 7.
issued the discipline. Pieper testified that there have been only five instances of discipline since 2014, when he began working at the Monticello Plant.

The record indicates three types of formal discipline—oral reminder, written reminder, and decision-making leave. The PowerPoint presentation for the Positive Discipline module recommends to start with counseling and move progressively through the formal discipline process, but recommends formal discipline for serious attendance, performance, or conduct issues. The presentation on positive discipline contains the following slide regarding the disciplinary process (emphasis in original):

What are the steps before considering discipline?

- Identify issues
- Conduct fact finding (investigation) and document it
- Consult with Workforce Relations or Human Resources*
- Write a report and submit to Workforce Relations or Human Resources* (DML or higher)
- Determine appropriate action
- Implement action
- Include a union representative in the process if applicable

Another slide indicates oral reminders have an “approval level” of “immediate supe[rvisor],” written reminders have an approval level of “immediate and next level supervisor (WFR recommended),” and decision-making leave has an approval level of “immediate supervisor, next 2 levels of management, and WFR.” The presentation also notes: “Management reserves the right to determine if Positive Discipline is needed / what level is appropriate.” Albares testified that CRSs are “told they have the responsibility to issue discipline in accordance with this policy … write-up your facts, your report, and then you consult with workforce relations and then you would execute it.” The record does not contain “Policy 9.2, Discipline Guidelines/Positive Discipline” referenced in both the Positive Discipline lesson plan and PowerPoint presentation, nor does it indicate how an employee moves through the different levels of positive discipline or whether an employee may receive multiple disciplines at the same level.

Current acknowledged supervisors and managers, along with Lead Workforce Relations Consultant Minlschmidt, testified that CRSs had the authority to issue positive discipline and the consultation with Workforce Relations provides guidance for consistency but cannot force a CRS to change the level of discipline. The two current CRSs testified that they did not recall being

26 The record is not clear as to whether this is the above-mentioned incident of a CRS receiving an “oral reminder – performance” in 2019.
27 Employer Exh. 38 shows 17 instances of discipline in the Operations Group since 2014.
28 See Employer Exh. 8. The slides also reference “suspension with pay,” “last chance agreement (limited),” and “Performance Improvement Plan (PIP),” but the record contains no further detail regarding these adverse actions or decision-making leave.
29 As noted above, the record does not contain the actual training materials in the LDP-FLS beyond the 2-page lesson plan and the Positive Discipline PowerPoint presentation.
given the authority to independently issue discipline and neither has ever issued any discipline. The 3-year CRS testified that if he “recogniz[ed] an event or something negative” he would “notify Workforce Relations and the Shift Manager, participate in any interviews and investigation as necessary.” For “significant misconduct,” he would “contact security, contact control room, contact the shift manager, get that individual escorted off site by security, make sure they don’t damage anything on the way out; and then do an investigation where it would be determined if discipline would be done or not.” The current NOPM testified that he was involved with one instance of formal discipline when he was a CRS from 2015 through 2020. He further testified that he attended various meetings related to the discipline, but it was primarily handled by the Shift Manager. He was not sure who had the decisional authority regarding the discipline. The record does not indicate that he issued the discipline, whether he recommended a certain level of discipline, or what level of discipline ultimately issued.

The Employer introduced as evidence seven items issued by CRSs to reactor operators and NLOs since 2009. Six of the items involved incidents that occurred from 2009 to 2011, and one occurred in 2020. Of the earlier incidents, three are letters to the same employee’s file involving failure to timely perform work, which Plautz testified were not formal discipline but “could be a contributor or a data point to support a decision to use positive discipline down the road,” but did not indicate who would use the letters as contributors or data points. Two are 2011 oral reprimands to different employees for the same incident of incorrectly performing a task. The oral reprimands include a cover letter to Petitioner as the bargaining representative of the employees because Petitioner must receive a copy of positive disciplines under the collective-bargaining agreement. As noted above, the record does not contain a copy of the parties’ collective-bargaining agreement. A third 2011 oral reminder involves another employee for a security incident. Plautz testified that this oral reminder did not contain a cover letter because he retrieved it from his “personal state records,” but he “fully expect[ed]” that Workforce Relations forwarded the oral reminder with a cover letter because it was, in fact, positive discipline.

The 2020 document identified by the Employer as discipline is an e-mail from the 10-year CRS to three managers and the other shift CRS. The e-mail documents incidents with a lead operator and states that the CRSs, along with union and non-union operators, “have serious concerns about his capabilities and competence.” Plautz characterized the e-mail as a recommendation from the CRSs that the operator “no longer be allowed to take duty,” and testified that everyone worked with workforce relations to have the operator’s license removed and transition him into another position. The 3-year CRS, who was the reactor operator’s CRS at the time of the e-mail, testified that the 10-year CRS and Shift Manager raised concerns about the operator’s performance but that he was not aware the issue would be escalated. He further testified that Employer initiated a Performance Review Committee (“PRC”) but that he was not formally invited to participate, and did not participate, in the PRC. The 10-year CRS who wrote the e-mail testified that the e-mail raised concerns but did not make any recommendation regarding discipline or other actions towards the reactor operator. He further testified that he “did sit in on some meetings with both management and the Union” but was not part of the PRC or the decision to remove the reactor operator’s license or transfer him to another position, and that he was not sure if such actions were even considered discipline.

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30 See Employer Exh. 37.
Plautz testified that he could not find any other examples of discipline issued by CRSs.

b. Performance Management Programs

“All Operations Department personnel are responsible for continuously striving to improve performance, acknowledging areas for improvement, and providing input to the Shift Manager for use in the Crew MRM [management review meeting].” Sec. 3.4 of Fleet Procedure Operations Crew Performance Management (FP-OP-PERF-01). To facilitate its approach to continuous improvement, the Employer has implemented numerous performance management programs at the Monticello Plant.

Coaching and Feedback

The record indicates coaching and feedback are the primary human performance tools in use by the Employer. It contains a presentation from the LDP-FLS training program presentation on “Coaching in the Moment.” According to the 10-year CRS, “everyone is involved in coaching,” and Albares testified that effective coaching and feedback is provided as quickly as possible. Any time an employee notices someone not meeting the Employer’s standards, they should be coaching the person, including “coaching up,” which is when an employee coaches a superior where there is “a deviation from the standard.” Feedback also includes positive feedback and providing employee recognition within crews, at meetings, or even a plantwide meeting. The record does not disclose whether recognition could be something more than an oral remark.

The record does not indicate that coaching and feedback are discipline or can result in discipline; rather, they are continuously used by all employees with all their coworkers.

Observations

The Employer uses an “Observations” process whereby managers, trainers, and first-line supervisors identify deficiencies in performance, commonly referred to as “gaps,” and formally record them in a program called DevonWay. Multiple witnesses described Observations as monitoring employee activities, identifying areas that need improvement, and documenting the observations in DevonWay. The LDP-FLS training program contains a module on Observations (FL-LDP-INI-025L) that includes techniques for observing employee activities in the Control

31 Employer Exh. 33.
32 Albares testified that coaching and feedback is covered in the LDP-FLS module on the Performance Management Process (FL-LDP-INI-009L). The module indicates “Coaching and Feedback” was removed in order not to duplicate the LDP-FLS Coaching in the Moment training. See Employer Exhs. 4 & 9.
33 The record contains two data files of approximately 9060 observations documented by CRSs in 2020 and 2021. Approximately 200 observations are rated Needs Improvement, 8925 Meets Expectations, and 162 Exceeds Expectations. The record does not contain data regarding observations made by anyone other than CRSs or indicate how many total observations were made, including the observations of the same crews or same employees. See Employer Exhs. 24 & 25 (the spreadsheet’s filter must be cleared to view all entries in the latter).
Room and outplant buildings. The two current CRSs testified that the Employer specifies when some Observations must be performed, including Observations during training weeks. They further testified that in-the-moment coaching and feedback can be done before documenting the Observation.

Pieper testified that DevonWay allows the Employer to analyze large amounts of observations and identify trends at the department level, crew level, and individual employee level, which are then used for corrective actions like excellence plans. Albares testified that Observations are “not intended to be punitive,” and Pieper testified that they are “not discipline.” The record contains no evidence of an employee receiving discipline or reward based on documented Observations.

The most recent continuing quarterly training for the LDP-FLS training program was a module on Observations (FL-LDP-CNT-101L).

4.0 Critiques

Although DevonWay can aggregate Observations for a crew, Observations typically document individual employee performance. To document shift or crew performance, the Employer uses 4.0 Critiques. The record contains one screenshot showing a list of 35 separate 4.0 Critiques from February 26 through October 16, 2021, but it does not show the content of the 4.0 Critique other than a short title (e.g., “Shift 1 Weekend Days”) and date. Pieper testified that 4.0 Critiques are “very similar in nature” to Observations. He further testified that, when he was a Shift Manager over the past two years, the CRSS on Crew 1 completed 4.0 Critiques for events. The record does not indicate who completed 4.0 critiques that were not for Crew 1. The 10-year CRS, who has worked on three different crews, testified that his Shift Managers have typically completed 4.0 Critiques and that he has “maybe done one or two when directed” by someone else. The 3-year CRS testified that he has “written a handful” of 4.0 Critiques. He explained that his Shift Manager instructed him to write up some but others he chose to complete, although those were “rare.” He gave the example of writing a 4.0 Critique as a WEC SRO, documenting anything that “was good about the week, bad about the week.” The record contains no further detailed testimony regarding 4.0 Critiques.

Clock Resets and Human Performance Event Investigation

The Employer uses a form (QF0428) called a Human Performance Event Investigation Tool to investigate and document an “event/error/near miss/learning opportunity.” Pieper testified that CRSS typically follow the “WHY staircase” in the form to determine the underlying causes of the event and whether it qualifies as a clock reset. The Employer recognizes four levels of clock reset. The site clock reset, department clock reset, and crew clock reset are

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34 Employer Exh. 6. As noted above, the record contains the 2-page lesson plan but does not contain the actual training materials, and it contains only one of the referenced Fleet Procedures. See Employer Exh. 28.

35 Employer Exh. 22. The record contains 17 pages of lesson plan and lesson outline but does not contain the referenced PowerPoint presentation.

36 The QF0428 form specifically notes a 4.0 Critique (QF1144) “or QF0444, Performance Analysis, may be completed to assist with the evaluation” of the event.
“defined by industry standards,” according to Pieper, while the learning clock reset was developed by the Employer. Pieper further testified that learning clock resets are at the discretion of the individual completing the form to determine whether they want to share what they learned. Higher-level clock resets are required to be shared. According to Pieper, clock resets are “positive learnings” “a lot of the times” and can result in changes to procedure.

The record contains a screenshot showing a list of 27 total clock resets from 2020 through the hearing—24 learning clock resets and three crew clock resets. It also contains two completed QF0428 forms, one for a crew clock reset and the other for a learning clock reset. Pieper testified that the crew clock reset involved a WEC SRO who authorized a test on air compressors at an inappropriate time. The record does not indicate whether the CRS who completed the form was the same person as the WEC SRO at issue, as the QF0428 form does not identify anyone by name, including the person who completed the form. The learning clock reset involved an NLO or reactor operator (the form does not specify) failing to secure a security barrier. According to Pieper, a CRS interviewed the employee at issue and used the QF0428 form to investigate the event.

The 10-year CRS testified that he has never completed a QF0428 form on his own but has been directed to by his Shift Manager. The 3-year CRS testified that he completes QF0428 forms when a corrective action plan (“CAP”) issues but he does not recall independently initiating them for other reasons.

Pieper testified that the Employer tracks clock resets to identify trends and develop corrective actions for crew or individual excellence plans. He further testified that clock resets are “a coaching tool to document behavior gaps,” “formalized documentation of an event,” but “not formal discipline,” although they could lead to formal discipline. The record contains no details about how clock resets lead to discipline, including what level of discipline could result, and does not disclose any discipline that has resulted from clock resets.

**Excellence Plans**

The Employer uses individual excellence plans and crew excellence plans to identify and document gaps to excellence, or areas of weakness, and action plans to improve performance. Individual excellence plans are kept confidential within a crew. Kovannen testified that, when he was a CRS from 2019 to 2021, he helped operators on his crew complete individual action plans. He further testified that “self-reflection is a key in trying to determine performance improvement” so individuals complete their own individual action plans with his help. He described a collaborative process where he helped identify or clarify gaps to excellence or helped develop or define the success metrics and action items or deliverables on the form. As

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37 See Employer Exh. 27.

38 Also referred to in the record as a corrective action document.

39 As noted above, the record contains only one recent example of potential discipline in 2020, and none of the events documented therein correspond to any of the listed clock resets.

40 The record contains no details regarding the crew excellence plan beyond that they are kept in the Crew Notebook.
a Shift Manager, Kovannen reviews the individual excellence plans of crewmembers but expects his CRSs to assist employees in completing them.

The 10-year CRS testified that he has only ever filled out his own individual excellence plan and never helped someone complete theirs, never written in someone else’s excellence plan, and never told someone to complete an excellence plan. The 3-year CRS testified that he has never completed an individual excellence plan for someone else and was not aware that it was an expectation for CRSs. Both current CRSs testified that Shift Managers typically tell crewmembers to complete their own individual excellence plans during the training week by identifying three gaps to excellence.

Kovannen testified that in his view, excellence plans are “a proactive tool to be used to prevent … having to utilize the formal discipline process.” He further testified that “continued failure to meet the individual excellence plan could lead to a condition where formal discipline would be considered.” Pieper also testified that if an individual’s performance is not improving “it may warrant the decision to implement some type of positive discipline.” The record does not indicate under what conditions discipline would issue, who would decide the level of discipline, or who would issue the discipline. It also does not disclose any discipline that has resulted from a failure to meet the success metrics in an excellence plan.

**Training Critiques**

Albares testified the CRSs lead “critiques” after the operating crew completes a simulation. The CRS, with support from instructors, recounts the scenario and the issues experienced by the crew and individual crewmembers, highlighting performance gaps and providing coaching and feedback about how they could perform more positively. Albares further testified that, at the end of the critique, the CRS enters each crewmembers’ performance gaps in a database, along with a plan to correct the shortfalls, and the CRS monitors the gaps and closes it out once performance improves. According to the 10-year CRS, he performs critiques following simulator scenarios, but he did not testify regarding if or how crewmembers’ simulator performance is logged or tracked. The record contains no further details regarding this database, including whether it is part of DevonWay or Excellence Plans or another Employer system. The record also does not indicate positive discipline can result, or has ever resulted, from simulator scenarios.

**Quarterly Apprentice Performance Reviews**

The Employer reviews the performance of its apprentice NLOs on a quarterly basis. Quarterly Apprentice Performance Reviews (“QAPRs”) are conducted by the lead operator or trainer and then reviewed and signed off on by the CRS. Kovannen testified that, as a CRS, he

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41 I note that Albares’s testimony that “at the end of the critique” performance gap information is “entered into a database,” “the gaps are assigned to [] different licensed operators,” “reactor operators [] come up with a plan, how they are going to correct shortfalls, and then [the CRS will] provide monitoring of that shortfall and then when they are successful, [the CRS will] close that gap” appears to describe the Excellence Plan, above, which both CRSs testified typically occurs during training week.

42 The Employer hires new NLOs through a Joint Apprenticeship Committee recognized by the State of Minnesota.
ensured the appropriate people completed the QAPR and that if he noticed inaccurate information in a QAPR he would have had the lead operator correct it; however, there was never inaccurate information in the QAPRs he reviewed. He further testified that if a QAPR identified “below standard” performance the CRS may perform more Observations on the apprentice or change the training environment from two-on-one to one-on-one. The record does not disclose any instances of a CRS conducting more Observations or changing the training environment for an apprentice, nor does it indicate an apprentice has been disciplined, suspended, or terminated based on a QAPR. No current CRSs testified about QAPRs.

3. Suspend

The record reveals two different types of suspension—unpaid suspension and “Crisis Suspension.” According to the Employer’s Positive Discipline PowerPoint presentation, which is a part of its LDP-FLS training program, unpaid suspension requires the Employment Review Board and is governed by Fleet Procedure FP-EC-ERB-01. The record does not contain this document. Witness testimony focuses almost exclusively on CRSs’ ability to use “Crisis Suspension” to remove an employee from the Monticello Plant. A slide in the Employer’s Positive Discipline presentation describes Crisis Suspension as follows (bold in original):

Crisis Suspension is NOT part of Positive Discipline. Paid “time out” for management to:
- Properly investigate situation & determine appropriate action(s)
- Minimizes risk of damage to safety/security of employees or company assets
- Allow "cooling off period" to perform an objective investigation

Consult with Human Resources / Workforce Relations / EEO & Employee Relations before initiating a Crisis Suspension.

Albares described Crisis Suspension as a way to remove someone from a potentially a hazardous situation and testified that he sees it as “formal discipline.” According to Albares and Pieper, a CRS does not need to check with anyone before sending an employee home on Crisis Suspension. The 10-year CRS testified that he did not know if he had the authority to independently put someone on Crisis Suspension, that he did not believe it is “within his prerogative to make that call,” and that he would definitely get “management or a Shift Manager involved before taking those actions.” He further testified that he did have the authority to ensure that individuals are “removed from [their] abilities … to be a hazard to nuclear safety,” although the record is not clear that such removal is limited to his role as a CRS.43

The only specific example of potential Crisis Suspension in the record comes from Albares’s experience as CRS approximately 12 to 14 years ago. He testified that, in his position as CRS, he considered placing an employee on Crisis Suspension for refusing to perform a task because it was “someone else’s responsibility.” Albares left and “grabbed the WEC SRO at the time and approached the individual again,” but ultimately did not place the employee on Crisis

43 As noted above, the 3-year CRS testified that his response to “significant misconduct,” such as stealing, “would be contact security, contact control room, contact the shift manager, get that individual escorted off site by security, make sure they don’t damage anything on the way out; and then do an investigation where it would be determined if discipline would be done or not,” which aligns with other record evidence describing Crisis Suspension.
Suspension because another individual had already performed the task by the time Albares returned. The record does not indicate whether the second “supervisor,” in this instance the WEC SRO, would have acted solely as a witness or played a role in the Crisis Suspension. The record indicates the employee at issue did not receive positive discipline but does not disclose whether he received any other type of performance management.

The record does not disclose any instances of Crisis Suspension being used at the Monticello Plant.

4. Reward

a. XCelebrate

For at least the past six to seven years, the Employer has maintained a rewards program called XCelebrate, where any individual may nominate any other individual for an award worth points that may be spent at an associated webstore. According to Kovannen, points can be exchanged for things like gloves, sunglasses, tools, and gift cards. The record indicates that 10 points translates to approximately $1 in monetary value and references the following XCelebrate award levels: Ecard (0 points), Bravo (150 points), Applause (250 points), Cheers (500 points), and Encore (1000 points). Kovannen also testified to a $250-value (2500 points) XCelebrate award. Nominations for XCelebrate awards at the Cheers level or lower are approved by the proposed recipient’s “direct reports supervisor,” which may be a CRS. Kovannen testified that XCelebrate awards over the Cheers level are approved by management “all the way up to possibly the Site Vice President.” When CRSs initiate an award for a direct report, the system automatically approves the award. Thus, CRSs are able to give a Cheers level award or lower to their direct reports. The 3-year CRS testified that he had initiated and approved XCelebrate awards for his direct reports on “multiple occasions.” The record does not detail when or how many awards the 3-year CRS gave to his direct reports.

The 10-year CRS testified that direct reports for the purpose of XCelebrate awards (and timesheet approval) are based on the Employer’s organization chart “as laid out on the company website.” Specifically, about six or seven years ago, the Employer allowed Shift Managers to place reactor operators and NLOs underneath CRSs on the organization chart. Prior to this change, CRSs, reactor operators, and NLOs had all been listed together directly under their Shift Manager. Each Shift Manager determined whether and how reactor operators and NLOs were moved. For example, a CRS on one crew has all three reactor operators while a CRS on another crew has a mix of NLOs and reactor operators. For the reactor operators and NLOs who were moved underneath a CRS, the CRS took over the approving function for timesheets and XCelebrate awards. The 10-year CRS further testified that at least one Shift Manager did not move employees under the CRSs, so the Shift Manager for Crew 5 is responsible for approving the XCelebrate awards for the Crew 5 employees and the CRSs on Crew 5 do not approve XCelebrate awards. He also testified that he personally approves “maybe one [XCelebrate award] every month or two.” The current nuclear ops program manager (“NOPM”), who was a CRS from 2015 to 2020, testified that he worked on three different crews but never received XCelebrate awards to approve because his Shift Managers never assigned him direct reports.
Kovannen and the 10-year CRS testified that CRSs also have the ability to modify the level of award or deny the award; however, the 10-year CRS further testified that he had never changed or denied an award, and the record does not disclose any instances where an XCelebrate award was changed by a CRS, Shift Manager, or other supervisor or manager. The 10-year CRS testified that he would “challenge” or “probably … deny” an XCelebrate nomination that contained either no description or a “superfluous” description of the nominating event because it would appear that “somebody was just trying to get in the system.” The 3-year CRS testified that he had denied two XCelebrate awards. One was a duplicate for the same event and the other contained a “sarcastic” description. The latter was subsequently resubmitted with a new description, which he approved.

Around 2017, the Employer instructed CRSs not to approve XCelebrate awards for several months. The 10-year CRS testified that “it was believed that the XCelebrate system process was being abused.” He further testified that “the nuclear part of the company had used far more XCelebrates than the balance of the company,” which he believed was due to the increased staffing and workload of outage work at the time. The record does not contain further details regarding this hiatus in XCelebrate or how CRSs returned to approving XCelebrate awards.

The record contains a spreadsheet with 125 entries where a CRS initiated an XCelebrate award to another person at the Monticello Plant between January 13 and September 29, 2021. The entries also list the level of the award and the name and job title of the recipient. The spreadsheet does not list who approved each award and the record is limited to the testimony of the 3-year CRS that he initiated three 500-point Cheers awards on July 26, 2021, one of which applied to a direct report and was automatically approved. He played no role in the approval of the other nominated employees’ awards.

The record does not indicate the wage rates or annual earnings for employees whose XCelebrate awards CRSs have the ability approve.

b. Time Off with Pay

The CRS has the ability to send employees home early on training days once employees have completed training. According to the 10-year CRS, his Shift Manager has told him that he can send employees home once training is completed, and it is “common practice” to do so. The 3-year CRS testified that he has received permission from his Shift Manager to send employees home after they complete training, so he no longer checks every time before sending them home. The record does not indicate any factors a CRS considers other than the completion of training. The record does not disclose any instances where a CRS did not send employees home once they completed training.

The 10-year CRS also testified that, after the start of the COVID-19 pandemic, the Employer gave CRSs the ability to send employees home early with pay on relief days once all the relief work is completed to mitigate employees’ exposure to one another. The 3-year CRS further testified that he checks with the lead operator to make sure all relief work is completed.

Employer Exh. 35.
before he sends employees home early on a relief day. The record does not indicate any factors a CRS considers other than the completion of the relief work. The record does not disclose any instances where a CRS did not send employees home once the relief work was completed.

The CRS also approves vacation requests by their crew that are made within 30 days of the proposed time off. According to Kovannen and the 10-year CRS, vacations requests made with more than 30 days’ advanced notice are automatically approved under the collective-bargaining agreement between the Employer and Petitioner.45 The 10-year CRS testified that he has never denied a vacation request, but that Shift Managers have denied them, and that he did not know if he could make the decision to deny vacation on his own. He further testified that if the schedule showed the employee was needed on the day they were requesting off, he would “look at” and “look at seeing” if the work could be moved. The record does not contain any examples of work being moved to accommodate an employee’s vacation request, nor does it indicate the process by which such accommodation is made—whether the CRS moves work without higher-level consultation or approval, if a CRS recommends moving work and whether that recommendation is followed, or something else. The record contains no further testimony regarding the vacation approval (or denial) process.

5. Hire

Due to the two-year ILT, the Employer generally hires new Operations Group employees for the Monticello Plant on a two-year cycle, with the two most recent occurring in spring 2018 and autumn 2020. According to Plautz, Human Resources approves a staffing plan that results in the posting of open positions. Next, Human Resources screens initial applicants and those who pass “ultimately reach the interview process.” Plautz testified that he was directly involved with the hiring process when he was AOM of the Monticello Plant from about 2019 to 2021 and that he wanted CRSs “heavily involved” in the interviews; however, it was challenging to align the availability of CRSs and applicants. The 10-year CRS testified that he has never participated in interviews and the 3-year CRS testified that he volunteered to participate in interviews for professional development to help his future career opportunities but that the Employer never solicited him to participate in the interviews. The 10-year CRS further testified that he had recommended an applicant to HR, his Shift Manager, and the AOM, but the applicant did not even make interview stage.

Applicants are interviewed by a “quorum” of existing Monticello Plant personnel. Plautz testified that, when he was AOM from 2019 to 2021, the Employer’s hiring policies required a quorum of at least two people, one of whom had to be the hiring manager—either the AOM or the OM. Plautz further testified that the Employer changed the number people required for a quorum “within the past half year” and that he does not know the new number.

The record contains seven interview templates completed by three CRSs, as a member of the quorum. Four templates are labelled “individual contributor,” which generally corresponds to reactor operator and NLO positions, and three are labelled “leadership expectations,” which

45 As noted above, the record does not contain the parties’ collective-bargaining agreement.
reflect CRS applicants. The templates contain scripted questions with an area for interviewer comments and rating the response from 1 to 5. The 3-year CRS testified that Plautz, as hiring manager, chose the scripted questions to ask during an interview he participated in. The record is not clear on whether interview templates are completed by each member of the quorum or how the ratings are determined. The record indicates the Employer held other interviews where CRSs were not part of the quorum but does not contain even an estimate of the total number of interviews for a particular position or hiring cycle. The record does not contain any of the Employer’s written hiring policies or procedures, including those regarding the quorum or interview templates.

Plautz and the 3-year CRS both testified specifically about interviewing a current Monticello Plant chemistry technician for an open CRS position in 2020. The interview template lists “Plautz, Tygum, Lapp,” and the 3-year CRS as the interviewer, with a strikethrough of Plautz’s, Tygum’s, and Lapp’s names. Plautz recalled only that he and the 3-year CRS conducted the interview and that he had an initial favorable impression of the candidate while the CRS said other CRSs had a “not favorable” perception based on his past interactions with operating crews. According to Plautz, his decision not to hire the candidate as a CRS was based on the 3-year CRS’s comments. According to the 3-year CRS, the interview quorum consisted of himself, Plautz, then-AOM of Training Jessie Tygum, and then-ILT Training Supervisor Judd Lapp. He noted that he filled out the interview template, which is why the other names were crossed out in the blank for interviewer. Plautz chose the scripted interview questions that the candidate answered and, following the interview, the quorum held a “debrief” discussion. The 3-year CRS had an overall “positive view” of the candidate and “thought he would be good for the job,” although he noted that the candidate only had individual contributor experience. The CRS testified that he had not worked with the candidate prior to the interview while Tygum had previously been the candidate’s Shift Manager on Crew 5. The CRS further testified that Tygum “brought up the personality conflicts and ‘inside scoop’” information.

Plautz testified about another interview he conducted with the 3-year CRS in 2020 for the open CRS position. According to Plautz, the interview was a “cold interview” because the 3-year CRS did not have the “inside scoop” and the rankings in the interview template reflect that neither Plautz nor the CRS “felt very strongly about the candidate.” This interview template lists Plautz, Miller, and Thomas as the interview, with a strike through Plautz’s and Miller’s names.

Plautz testified about a third interview he conducted in 2020 with a then-CRS for an open CRS position. According to Plautz, the candidate already worked at the Monticello Plant and the then-CRS “voiced some serious concerns about how [the candidate’s] interactions may be with the crew.” Plautz took this “feedback” as a “recommendation not to [hire]” the candidate, and these “pointed concerns” were “one of the driving things” behind Plautz’s decision not to hire the candidate as a CRS. This interview template lists Plautz, the candidate, and the then-CRS as the interviewer with the candidate’s name crossed out and the then-CRS circled.

Three of the individual contributor templates were completed by the CRS in the special project role of field supervisor, discussed below, with then-AOM Chris Stalpes.
Plautz also testified that he would not extend an offer to a candidate where the CRS said “you cannot hire this individual,” and he would hire someone where the CRS said “we need this person.” He further testified that the hiring manager makes the ultimate decision.

Around September 2021, Plautz transitioned to a career development assignment as AOM of Training. The record does not indicate that the AOM of Training position or Plautz currently play any role in the hiring process, how long Plautz will be on career development assignment, or whether he will return to AOM once the assignment is complete.

6. Other Supervisory Indicia

There is no evidence, nor does the Employer assert, that CRSs have the authority to discharge or effectively recommend the discharge of other employees; to promote, lay off, or recall employees; or to adjust their grievances.

7. Secondary Supervisory Indicia

The Employer requires CRSs to complete its Front-Line Supervisor Training Program, which is a requirement for all the Employer’s first-line supervisors. The training consists of approximately 17 modules, consisting of 31½ classroom hours, 7½ hours of scheduled computer-based training, and some self-paced computer-based training, along with ongoing quarterly training. The most recent trainings covered accountability, observations and feedback. According to Albares, the Employer also requires all CRSs to complete a one-week First-Line Leadership Essentials training conducted by the Institute of Nuclear Power Operations (“INPO”), a nonprofit organization whose mission is to promote excellence in nuclear industries.

Plautz testified that CRSs earn in the range of $100,000 to $130,000 per year not including licensing premiums.47 Union-represented employees are paid hourly, but the record does not disclose their pay rates or ranges.

The CRSs are eligible for the Employer’s incentive pay and award program known as I Deliver, which is a way to earn a defined percentage incentive. The 10-year CRS testified that prior to the I Deliver program, he received a 15-percent incentive. The record does not disclose the metrics under which CRSs receive incentive, beyond an unspecified amount for maintaining their senior reactor operator license. He further testified that when the Employer implemented the I Deliver Program, it placed 3 percent of his incentive pay in a discretionary I Deliver fund, where he can “attempt to gain it back” by performing “some activity above and beyond.” The record does not detail the types of activities for which I Deliver awards are nominated and approved. The 3-year CRS stated he has received an I Deliver award of $3000 and believes they can go to $5000 or higher. Union-represented employees are not eligible for I Deliver awards. The CRSs are not involved in awarding or approving I Deliver Awards.

Plautz further testified that CRSs approve or disapprove of timesheets. Two current CRSs testified that their approval consists of asking the lead operator or the employee at issue if their

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47 The CRS job description lists a salary range of $100,000 to $163,000.
hours and work codes are correct. The CRSs also testified that they can approve the timesheets of any crew’s reactor operators and NLOs.

Kovannen testified that CRSs attend management review meetings (“MRMs”), where “selected upper operations management individuals” and the operating crew discuss overall crew performance and emerging trends from the 4.0 Critique and DevonWay Observations databases and determine actions for improving performance. The CRS, WEC SRO, or Shift Manager typically leads the MRM.

D. SPECIAL PROJECTS CRSs

Six CRSs currently work on special projects, which are temporary assignments. Albares testified that the temporary assignments vary in length but have lasted from two years up to six or eight years. Most CRSs on special projects work 8-hour shifts, Monday through Friday, and do not regularly interface with the operating crews, although they may support them. They also must complete the initial LDP-FLS training program and continuing quarterly training modules. The CRSs on special projects maintain their SRO license, which means 40 hours of training every six weeks, typically in the onsite simulator, and they could rotate into a standard CRS position after a separate 40-hour proficiency watch with a current CRS. The record does not disclose the Employer ever having recalled a CRS to the Control Room before the end of their special project. It also does not indicate how long any of the CRSs have been on their special project or when their special projects are scheduled to terminate. Record evidence regarding the special project CRS positions is limited almost exclusively to the testimony of Albares.

1. Fix-It-Now (“FIN”) Supervisor

According to the Employer’s organization chart, the FIN supervisor is overseen by FIN Manager Greg Rask. Albares testified that the FIN supervisor supports the FIN Team, which fixes equipment that requires a minimal amount of time and resources to repair. Albares further testified that two reactor operators report to the FIN supervisor. Work orders come to the FIN supervisor from a meeting between the Operations Group and the Maintenance Group. A work planner then turns the order into step-by-step instructions that specify the actions needed to return the affected equipment to normal operating condition. According to Albares, the FIN supervisor uses “his licensed experience, his plant experience” to “provide briefings and oversight and implementation of that work” to the two licensed operators. Albares also testified that the FIN supervisor ensures the operating crew understands the risk of the work being performed by FIN operators. Albares further testified that the FIN supervisor uses “decision-making skills” and “oversight responsibilities” to safely execute the work. The record does not contain any specific examples of FIN work or details of how the work is assigned to FIN operators, including whether it is assigned by the FIN supervisor or the factors considered in assignment.

48 Albares’s testimony does not appear to give a lower range.

49 The totality of Albares’s testimony for these positions consists of 3 pages for the FIN supervisor; 2 pages for the field supervisor; 2 pages for outage planning; 6 pages for training; and ½ page for operations support.

50 The record is not clear whether the FIN Manager, FIN supervisor, and two reactor operators constitute the entirety of the FIN Team or if other employees (e.g., a work planner) are also part of the team.
2. Field Supervisor

According to the Employer’s organization chart, the field supervisor is overseen by Operations Support Manager Mike Miller. Albares testified that the field supervisor has two primary areas of responsibility—NLO continuity of operations and proper functioning of the radwaste system, which cleans the water at the Monticello Plant. Albares further testified that two reactor operators report to the field supervisor and that the field supervisor “directs oversight of them to make sure those activities are accomplished safely and reliably.” The record does not contain further detail regarding the field supervisor including, among other things, continuity of operations, the field supervisor’s or reactor operators’ interaction with NLOs, or the operation of the radwaste system.

3. Outage Planning

Two CRSs are currently assigned to outage planning. The record does not indicate a particular title for CRSs working in outage planning. According to the Employer’s organization chart, the outage planning CRSs are overseen by the Operations Outage Manager. Albares testified that the Outage Group and the Outage Planning Group51 “focus on plans” for the refueling and maintenance activities—isolating equipment, restoring equipment, testing equipment—that take place during the outage which occurs every 24 months at the Monticello Plant. The 10-year CRS testified that a total of three SROs—two CRSs and one Shift Manager—are currently assigned to outage planning for the outage set to occur in 2023. Albares testified that these two CRSs do not have much interaction with operating crews. The record contains no evidence of direct reports or any other details regarding the CRSs temporarily assigned to outage planning.

4. Training

According to the Employer’s organization chart, there is currently one CRS overseen directly by Albares. Albares testified that the CRS has an SRO license from the NRC but had a four-year lapse in his training requirements due to military deployments. The record does not indicate how long the CRS worked on a crew before his deployment. Albares testified that the CRS has knowledge loss due to changes at the Monticello plant, including new equipment, and lack of training. Albares further testified the Employer is “in the process of restoring the knowledge and skills” of this CRS by having him attend the current ILT program for about one year.52 Albares also testified that the CRS monitors his ILT class for study habits and “gaps in their studying” and “provides coaching, mentoring, [and] feedback.” According to Albares, the CRS would initiate any discipline or performance measures but there have been no issues with individuals in the current ILT class. The record does not indicate Albares ever told the CRS of this disciplinary authority, and it contains no further details regarding the CRS temporarily assigned to training.

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51 Albares’s testimony appears to indicate two separate groups, but the record contains no further details and does not specify if the temporarily assigned CRSs work for one or the other or both groups.

52 According to Albares, the CRS returned to the Employer “this summer” and “the plan is he [will] continue with the class until next summer.” The record does not indicate at what point in the 2-year ILT program the current class was this summer when the CRS returned.
5. Operations Support

According to the Employer’s organization chart, there is currently one CRS overseen directly by Operations Support Manager Mike Miller. Albares testified that this CRS is no longer licensed by the NRC and cannot perform licensed operator work, including CRS functions, in the Control Room. The record does not indicate the individual has any plans to reacquire his SRO license. Albares further testified that this CRS “support[s] work execution and other activities that Mike Miller has assigned … like preparing work documents or working on … work planning documents.” This CRS does not have any direct reports.

E. NUCLEAR OPS PROGRAM MANAGER

The nuclear ops program manager (“NOPM”) position was created around January 2021 and is overseen by Operations Support Manager Mike Miller. It is primarily responsible for maintaining, revising, and creating the procedures employees use to run the Monticello Plant under normal conditions, abnormal conditions, and emergency conditions. Albares testified that NOPM responsibilities also include updating procedures due to changes in equipment, particularly standby emergency-type equipment. He gave the example of equipment changes that took place in response to the incident at Fukushima. Albares further testified that the NOPM supports internal assessments that the Employer conducts. The NOPM does not have any direct reports or subordinates, and the Employer does not contend the NOPM is a supervisor.

The NOPM role was developed throughout 2020 primarily by an engineer in the Operations Group, who was supposed to transition into the NOPM position once it was created. However, the engineer left the Monticello Plant prior to assuming the role, so the Employer initially created it as a rotational position in January 2021 and filled it with a CRS. In July 2021, the Employer made the NOPM a permanent nonrotational position, and the Employer changed the CRS’s title to NOPM. There is no requirement for the NOPM to be an SRO, and the NOPM testified that he was the only CRS who applied for the position.

Even though the NOPM position is not required to be an SRO, the current NOPM maintains his SRO license and attends training every six weeks. He can fill in as a WEC SRO, but the record does not disclose if this has ever happened. He cannot resume the CRS position until he completes 40 hours under instruction like the CRSs assigned to special projects. The NOPM testified that he had not filled in for a CRS since becoming the NOPM. He further testified that, because he maintains his SRO license, the Employer has tasked him with attending meetings or supporting inspections that require an SRO.

The NOPM generally works 8-hour shifts, Monday through Friday, but may flex his schedule to work extended hours. Depending on the work to be performed, the NOPM may work at the Monticello Plant, in a permanent office behind the WEC, or telework from home. He testified that he currently teleworks an average of two to three days per week.

53 The current NOPM began his career at the Monticello Plant working as a fire protection coordinator in the Operations Department. Then, he attended the two-year ILT and became an SRO in 2015. He then worked a few months as a WEC SRO, and then he spent five years as a CRS.
The NOPM attends morning meetings and interfaces with the special project CRSs, including the FIN supervisor. He works with CRSs about “once a week” on “equipment issues.”

The NOPM is a salary exempt position earning between $100,000 and $163,000, according to the job description. The incumbent NOPM currently earns 4 percent more than he did when he held the CRS position. As he is still an SRO, he receives a licensing premium. He is also eligible to receive I Deliver Awards.

The NOPM testified that he generally wears business casual clothing but wears a formal uniform when training.

II. SUPERVISORY STATUS

A. BOARD LAW

Section 2(3) of the Act excludes from the definition of the term “employee” “any individual employed as a supervisor.” Section 2(11) defines a “supervisor” as:

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

The above 12 statutory criteria (or “primary indicia”) for supervisory status are read in the disjunctive, making possession of any one of the indicia sufficient to establish an individual as a supervisor. Thus, the Act sets forth a three-part test determining supervisory status. Individuals are “statutory supervisors if: (1) they hold the authority to engage in any one of the 12 listed supervisory functions, (2) their ‘exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment,’ and (3) their ‘authority is held in the interest of the employer.’” NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 712–713 (2001) (quoting NLRB v. Health Care & Retirement Corp. of America, 511 U.S. 571, 573–574 (1994)). See also Shaw, Inc., 350 NLRB 354, 355 (2007).

The Board’s seminal decision in Oakwood Healthcare, Inc., 348 NLRB 686 (2006), sets forth the analysis to be applied in assessing supervisory status, including in the utility industry. See Entergy Mississippi, Inc., 357 NLRB 2150, 2152–2154 (2011) (Entergy I), affd. in relevant part 810 F.3d 287, 294 (5th Cir. 2015).

The Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions; between effective recommendation and forceful suggestions; and between the appearance of supervision and supervision in fact. The

54 The NOPM job posting lists an “anticipated starting base pay” (emphasis added) of $94,500 to $134,166.

55 In particular, the Board adopted specific definitions for “assign,” “responsibly to direct,” and “independent judgment.” On the same day, it also issued decisions in two companion cases applying its newly refined supervisory analysis—Croft Metals, Inc., 348 NLRB 717 (2006), and Golden Crest Healthcare Center, 348 NLRB 727 (2006). As such, Board decisions involving these terms that predate Oakwood may be of limited precedential value.
authority to effectively recommend an action means that the recommended action is taken without independent investigation by supervisors, not simply that the recommendation is ultimately followed. See DirecTV U.S. DirecTV Holdings LLC, 357 NLRB 1747, 1748–1749 (2011) (quoting Children’s Farm Home, 324 NLRB 61 (1997)). See also Veolia Transportation Services, Inc., 363 NLRB No. 98, slip op. at 5 (2016) (Veolia I); Ryder Truck Rental, Inc., 326 NLRB 1386 (1998). The exercise of some supervisory authority in a merely routine, clerical, or perfunctory manner does not confer supervisory status on an employee. See Oakwood, 348 NLRB at 693; J. C. Brock Corp., 314 NLRB 157, 158 (1994). “[T]o exercise ‘independent judgment,’ an individual must at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data. …[A] judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company rules or policies, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement.” Oakwood, above at 692–693. Testimony that decisions are collaborative also is insufficient to show independent judgment free from the control of others. CNN America, Inc., 361 NLRB 439, 460 (2014) (citing KGW-TV, 329 NLRB 378, 381–382 (1999)); see also Transportation, 363 NLRB No. 188, slip op. at 7–8 (2016) (Veolia II), 363 NLRB No. 188, slip op. at 7–8. Professional or technical judgments involving the use of independent judgment are supervisory only if they involve one of the 12 primary indicia. Entergy I, 357 NLRB at 2154 (quoting Oakwood, above at 692).

The Board has an obligation not to construe the statutory language too broadly because the individual found to be a supervisor is denied the employee rights protected by the Act. Avante at Wilson, Inc., 348 NLRB 1056, 1057 (2006); Oakwood, above at 687.

Nonstatutory indicia (or “secondary indicia”) can be used as background evidence to support a finding of supervisory status but are not dispositive without evidence demonstrating the existence of one of the primary or statutory indications of supervisory status. See DirecTV, 357 NLRB at 1750 (citing Ken-Crest Services, 335 NLRB 777, 779 (2001)); see also PowerBack Rehabilitation, 365 NLRB No. 119, slip op. at 2 (2017) (citing Modesto Radiology Imaging, Inc., 361 NLRB 888, 890 fn. 4 (2014); Northcrest Nursing Home, 313 NLRB 491, 499 (1993)). Compare K.G. Knitting Mills, Inc., 320 NLRB 374 (1995) (finding no primary indicia where individual opened facility in the morning, “watche[d] everything” before the manager arrived, and processed trucks arriving at plant). Secondary indicia of supervisory status typically include, but are not limited to, the individual’s designation as a supervisor; attendance at supervisory meetings; responsibility for a shift or phase of the employer’s operation; authority to grant time off to other employees; responsibility for inspecting the work of others; responsibility for reporting rule infractions; receipt of privileges exclusive to members of management; and compensation at a rate higher than the employees supervised. The ratio of putative supervisors to employees is also a secondary indicator of supervisory status.

**Burden of Proof and Weight of the Evidence**

The burden of establishing supervisory status rests on the party asserting that such status exists. NLRB v. Kentucky River, 532 U.S. at 711; Shaw, Inc., 350 NLRB at 355; Croft Metals, Inc., 348 NLRB 717, 721 (2006). The party seeking to prove supervisory status must establish it by a preponderance of the evidence. Croft Metals, above at 721; Oakwood, 348 NLRB at 687.
The fact that not all of the putative supervisors have actually exercised supervisory authority does not defeat a supervisory finding. See generally Fred Meyer Alaska, Inc., 334 NLRB 646, 649 fn. 8 (2001). However, the Act “requires … evidence of actual supervisory authority visibly translated into tangible examples demonstrating the existence of such authority.” G4S Regulated Security Solutions, 362 NLRB 1073 (2015) (quoting Oil Chemical & Atomic Workers v. NLRB, 445 F.2d 237, 243 (DC Cir. 1971), cert. denied 404 U.S. 1039 (1972)). See also Lynwood Manor, 350 NLRB 489, 490 (2007); Golden Crest, 348 NLRB at 731. “Purely conclusory evidence does not satisfy that burden. Lack of evidence is construed against the party asserting supervisory status.” Veolia II, 363 NLRB No. 188, slip op. at 7 (citing Lynwood Manor, above at 490; Dean & Deluca New York, Inc., 338 NLRB 1046, 1048 (2003)). Job titles, job descriptions, or similar documents are not given controlling weight and will be rejected as mere paper absent independent evidence of the possession of the described authority. Golden Crest, above at 731 (citing Training School at Vineland, 332 NLRB 1412, 1416 (2000)). See also CHI LakeWood Health, 365 NLRB No. 10, slip op. at 1 fn. 1 (2016) (cases cited therein).

In terms of meeting the evidentiary burden to establish supervisory authority, the Board’s post-Oakwood decisions emphasize the evidence must be detailed and specific, particularly with respect to the factors weighed or balanced in exercising putative supervisory authority, in order to establish independent judgment. WSI Savannah River Site, 363 NLRB No. 113, slip op. at 3 (2016); Pacific Coast M.S. Industries, 355 NLRB 1422 (2010); Network Dynamics Cabling, Inc., 351 NLRB 1423, 1425 & 1436 (2007); Lynwood Manor, 350 NLRB at 490; Austal USA, L.L.C., 349 NLRB 561, 561 fn. 6 (2007); Avante at Wilson, Inc., 348 NLRB 1056, 1057 (2006); Golden Crest, 348 NLRB at 731; Croft Metals, Inc., 348 NLRB at 722.

Where the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. Veolia II, 363 NLRB No. 188, slip op. at 7 (citing Phelps Community Medical Center, 295 NLRB 486, 490 (1989)); G4S, 362 NLRB at 1072–1073 (2015). See also Dole Fresh Vegetables, Inc., 339 NLRB 785, 792 (2003).

Finally, the sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. See Shaw, Inc., 350 NLRB at 357 fn. 21; Oakwood, 348 NLRB at 693; see also Kanawha Stone Co., Inc., 334 NLRB 235, 237 (2001); Commercial Fleet Wash, Inc., 190 NLRB 326 (1971).

Less weight has been given to evidence and testimony without an established foundation in the record. Similarly, the weight of record evidence is attenuated by the passage of time or where it concerns facts or circumstance predating organizational and procedural changes at the Monticello Plant. Conversely, I accord more weight to witness testimony where the record establishes direct knowledge of the facts.\footnote{For example, Plautz’s testimony acknowledges that current CRSs “know the job better than I do [because] they are actively doing it.” In addition, Albares noted there were “changes to the plant … like new equipment … or new procedures” over the past four years that necessitated a formerly licensed SRO to recomplete portions of the 2-year ILT in order to qualify as a CRS.} Affirmative responses to leading questions are devalued because they suffer the weakness of being the testimony of the questioner rather than the witness. See generally, H. C. Thomson, Inc., 230 NLRB 808, 809 fn. 2 (1977). Such
testimony typically does not constitute the specific detailed evidence necessary to establish putative supervisors possess primary indicia consistent with the concern expressed that it is the actual duties and actual accountability of the worker that count when determining supervisory status. *G4S*, 362 NLRB at 1072–1073.

**B. APPLICATION OF BOARD LAW TO THIS CASE**

Of the 12 primary indicia for supervisory status, the Employer does not contend, and the record contains no evidence, that CRSs promote, discharge, layoff, or adjust employee grievances, or effectively recommend such action, by virtue of their independent judgment. The Employer asserts the CRSs use independent judgment to assign and responsibly direct work and reward, discipline, suspend, and hire employees, along with effectively recommending “transfer (demotion),” using independent judgment. Petitioner asserts the evidence fails to establish independent judgment or responsible direction, along with the authority to reward, discipline, suspend, hire, or transfer employees, or effectively recommend such actions.\(^{57}\)

I am cognizant of the tension, as noted by some Circuits,\(^ {58}\) between the Board’s definition of statutory supervisor and the functions set forth by NRC regulations for licensed senior operators—the CRSs in this case. While the Board has acknowledged that certain positions in the electric utility industry have inherently complex duties with potentially adverse consequences to the well-being and safety of the public and employees,\(^ {59}\) the Board’s supervisory analysis looks at how an employer effectuates those regulations within its operations, as demonstrated by specific detailed record evidence. Not every employer will implement regulations through the same policies and procedures or in the same ways; nor, as is the case here, will every record reveal the requisite supervisory authority.

As explained in the sections below, the examples of purported supervisory authority in the record focus on CRSs’ ability and authority to alter standard operating procedures in response to abnormal conditions. However, the evidence contains minimal details of CRSs’ discretion, including the factors considered and how they are weighed. It also lacks specificity on how CRSs’ decisions or actions directly affect employees. Witness testimony regarding scheduled work and normal conditions is general, conclusory, and lacks examples. Thus, the uncontradicted evidence lacks the specificity and detail required by the Board to establish CRSs use independent judgment when exercising any primary indicia, including the effective recommendation of such, or are held responsible for the actions of direct reports. Accordingly, I find the Employer has not satisfied its burden to prove CRSs are statutory supervisors.

\(^{57}\) The Employer’s supervisory contentions regarding CRSs in the WEC SRO role are limited to scheduling and granting time off with pay. It does not contend that the shift technical advisor (“STA”) role, which is typically the WEC SRO during certain OWI-specified abnormal or emergency conditions, possesses or exercises any primary indicia.

\(^{58}\) See *STP Nuclear Operating Co. v. NLRB*, 975 F.3d 507 (5th Cir. 2020); *Maine Yankee Atomic Power Co. v. NLRB*, 624 F.2d 347 (1st Cir.1980).

\(^{59}\) See *Entergy I*, 357 NLRB at 2153.
1. Assign and Responsibly to Direct

Both the Employer and Petitioner address CRSs’ implementation of procedures and manipulations as the assignment of work to operators and NLOs and the responsible direction of operators’ and NLOs’ work. The Oakwood Board explained, by way of example, how assignment and responsible direction may arise from a single incident involving professional judgment. Specifically:

[I]n the case of assignment and direction, even if the charge nurse makes the professional judgment that a particular patient requires a certain degree of monitoring, the charge nurse is not a supervisor unless and until he or she assigns an employee to that patient or responsibly directs that employee in carrying out the monitoring at issue.

Id. at 694. I further note that the record evidence frequently fails to include details necessary to distinguish between a CRS’s assignment of significant overall duties and tasks to a particular employee and their direction of an individual to perform discrete tasks. Therefore, I have analyzed it under both primary indicia.

a. Assign

The Employer acknowledges that it maintains detailed procedures for many tasks and activities in order to minimize risk by providing instructions for consistent responses to abnormal and emergency conditions. However, it asserts that CRSs must identify emergent events and abnormal and emergency conditions and have latitude both within the procedures and to choose among procedures, along with the authority to deviate from procedures. It further contends CRSs are involved in creating the work schedule and certify the schedule. Petitioner maintains CRSs apply and follow established procedures and any decision making among manipulations and procedures involves routine, clerical, or obvious choices. It further argues that work schedules are created by the Scheduling Group weeks prior to execution.

The Board defines “assign” as referring “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, 348 NLRB at 689. Elaborating on this definition, the Board stated that “assignment of an employee to a certain department (e.g., housewares) or to a certain shift (e.g., night), or to certain significant overall tasks (e.g., restocking shelves) would generally qualify as ‘assign’ … However, choosing the order in which the employee will perform discrete tasks within those assignments (e.g., restocking toasters before coffeemakers) would not be indicative of” assignment authority. Ibid.

Assignments that are based on well-known employee skills do not involve independent judgment. CNN America, 361 NLRB at 460 (citing KGW-TV, 329 at 381–382, enfd. in relevant part 865 F.3d 740 (DC Cir. 2017)); see also S.D.I. Operating Partners, L.P., 321 NLRB 111 (1996). Similarly, basing an assignment on whether the employee is capable of performing the job does not involve independent judgment. See WSI Savannah River Site, 363 NLRB No. 113, slip op. at 3 (2016) (citing Volair Contractors, Inc., 341 NLRB 673, 675 fn. 10 (2004)); Cook Inlet Tug & Barge, Inc., 362 NLRB 1153, 1154 (2015) (citing Croft Metals, 348 NLRB at 722).
Nor is independent judgment established by the assignment of recurrent and predictable tasks. *Shaw, Inc.*, 350 NLRB 354 (2007); *Croft Metals*, above at 721 fn. 14 (2006) (citing *Franklin Home Health Agency*, 337 NLRB 826, 831 (2002); *Bowne of Houston*, 280 NLRB 1222, 1223 (1986)). As noted above, assignment of work in a merely routine, clerical, or perfunctory manner, where there is only one self-evident choice, or solely on the basis of equalizing workloads does not require independent judgment. *Oakwood*, 348 NLRB at 693.

Thus, for CRSs to be found statutory supervisors, the Employer must show through specific detailed evidence that they assign employees to a place, time, or significant overall duties and how such assignments are made, including the nonroutine or nonobvious factors they consider.\(^{60}\)

The record indicates the Employer maintains extensive work instructions that detail the level of staffing, the composition of a crew, and the procedures to be used in many circumstances. The majority of record evidence contains general and conclusory remarks that CRSs “supervise” and “monitor,” have “authority” and “oversight” of, and are “responsible” for the Monticello Plant’s safe operation, including procedures performed to maintain normal conditions and address abnormal and emergency conditions. Similarly, testimony regarding specific examples consists of vague statements that CRSs “identify” issues and use their “judgment, knowledge, skills and abilities” to mitigate risk. The record does not detail the process for identifying issues beyond noticing an alarm or reading an instrument nor does it indicate if or how issues requiring CRSs’ attention are not obvious. The evidence also lacks detail regarding the factors CRSs consider and how they impact the CRSs’ procedural decisions.

For normal operating conditions, the record lacks any detailed examples of CRSs using independent judgment to assign employees to a specific place, a specific time, or significant overall duties. It contains only overly broad references to a rotational system and crew composition controlled by OWIs, with no evidence that CRSs play a role in the crew to which an individual is assigned or which crew gets assigned to which shift. Rather, the evidence indicates work schedules are developed weeks in advance and provides no details regarding the involvement of CRSs, including WEC SROs. No actual work schedules were introduced as evidence. At different times, Albares testified generally that WEC SROs have overall responsibility for determining what tasks are performed during their week, that they are part of a Scheduling Group committee that makes the schedule, and that he did not know who makes the work schedules for individual employees. In contrast, a current CRS testified that the Planning and Scheduling Group produce the work schedule, that he has conversations with the workweek coordinator, who is an employee in Petitioner’s existing bargaining unit, around six weeks prior to work execution, and that he has been part of a scheduling meeting about three weeks prior to

\(^{60}\) The Employer’s argument borrows from another hospital example in *Oakwood*, where the Board wrote:

>[I]f the hospital has a policy that details how a charge nurse should respond in an emergency, but the charge nurse has the discretion to determine when an emergency exists or the authority to deviate from that policy based on the charge nurse’s assessment of the particular circumstances, those deviations, if material, would involve the exercise of independent judgment.

Id. at 693–694. However, the Employer must still show how a CRS determining an abnormal or emergency condition exists, or deviating from procedure, directly affects other employees—that is, how such determinations or deviations connect with at least 1 of the 12 primary indicia. Ibid.
work execution. However, the record does not indicate what role, if any, the CRS plays in the scheduling meetings or committees and fails to establish CRSs have authority over or effectively recommend scheduling. See, for example, *Pacific Coast M.S. Industries*, 355 NLRB at 1424; *Avante at Wilson*, 348 NLRB at 1057.

Similarly, there is no record evidence of CRS involvement with the initial assignment of reactor operators to a particular panel or their role as lead operator, OATC, or BOP. At most, the record contains mere paper indicating CRSs are among a list of “additional personnel who may be asked for input” on crew alignment and rotation assignments. Sec. 4.1 of OWI-01.06.61 No witness testified about actual crew alignment. Further, the limited record evidence regarding NLOs indicates their work is based on an area of qualification—Reactor Building, Turbine Building, outplant buildings—and they self-assign to a particular building when they are qualified in more than one area.

Accordingly, I find that the evidence is insufficient to show CRSs possess or exercise the authority to assign by virtue of scheduling employees or work within the meaning of Section 2(11) of the Act.

Testimony indicates the Planning and Scheduling Group prioritizes work based on when it needs to be completed and, on any given day, the CRS, lead operator, and Shift Manager meet to “align … on what the priorities for the day are.” As noted above, the record shows highly detailed step-by-step written instructions for tasks during normal conditions, and it contains minimal detail or examples of CRSs using judgment or discretion when initiating the work schedule and assigning the work to employees. Witness testimony is imprecise and lacking in detail, with acknowledged supervisors, including former CRSs, referring generally to factors of availability, experience, knowledge, and proficiency but failing to explain how these are not obvious or routine. And, there is no testimony regarding how a CRS may weigh any of these generic factors.

Regarding work under abnormal or emergency conditions,62 the record does not describe with any specificity the instrument readings, alarms, or other “symptoms” displayed on the panels, equipment, and systems. Nor does it detail any contemplative process used by CRSs in assessing these events or indicate how they are not self-evident. Similarly, record evidence fails to differentiate CRSs’ decisions to implement one procedure versus another from merely applying the systematic step-by-step process in its many work instructions. The record lacks detail regarding the factors CRSs consider and how they impact a CRS’s procedural decisions. As with work under normal conditions, the tangible examples of emergent work in the record indicate general factors of consideration, such as availability and proficiency, and the evidence fails to describe how these are not self-obvious choices. See, for example, *Austal USA*, 349 NLRB at 561 fn. 6.

In Albares’s example of water not being properly maintained in the reactor, Albares acknowledged a procedure list guides the CRS’s decision. He testified broadly that “the CRS will use their knowledge and judgment to pick the right list to assign crew to go start whatever

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61 Petitioner Exh. 4.

62 Also referred to as transient or emergent work.
system to start injecting water,” which may be as straightforward as choosing the system that has the correct capacity. He did not provide detailed evidence of nonobvious or nonroutine factors a CRS considers in such a situation or if, or how, the assignment is made to specific employees rather than simply to those who are available and capable of performing the work. Kovannen’s example of water filter cleaning similarly cites only to operator availability as a factor considered by a CRS and does not describe with any detail how “flipflopping” with relief workers is not an obvious choice of availability or equalizing workload. This lack of detail in record evidence fails to show CRSs utilizing independent professional judgment. Even assuming specific detailed evidence of independent judgment, including factors considered by CRSs, in discerning abnormal or emergency conditions, the record fails to connect procedures initiated by CRSs in response to abnormal or emergency with independent judgment in the assignment of work implementing the response to particular employees, or the direction of the employees’ work.

The lack of detail in the record evidence fails to establish CRSs assign employees to specific places, specific times, or significant overall duties with the degree of discretion required to reflect independent judgment under normal or abnormal or emergency conditions. See, for example, Avante at Wilson, 348 NLRB at 1057. Accordingly, I find that the evidence is insufficient for the Employer to carry its burden of establishing CRSs use independent judgment when choosing work procedures or assigning operators and fails to show they exercise or possess the authority to assign within the meaning of Section 2(11) of the Act.

b. Responsibly to Direct

The Employer asserts that CRSs use independent judgment when directing reactor operators and NLOs and bear the consequences of their performance.

Direction is established by showing that the putative supervisor determines “what job shall be undertaken next or who shall do it.” Oakwood, 348 NLRB at 691. Direction requires the record evidence “sho[w] that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary.” Ibid. “[T]he threshold of corrective action for purposes of demonstrating responsible direction falls below that of other Section 2(11) indicia, including disciplinary and promotion authority.” Community Education Centers, Inc., 360 NLRB 85 (2014) (citing CGLM, Inc., 350 NLRB 974, 974 fn. 2, 983-984 (2007), enf’d. mem. 280 Fed.Appx. 366 (5th Cir. 2008); Croft Metals, 348 NLRB at 722 fn. 13). Responsible direction means not only being able to take action to ensure tasks are performed correctly by an employee, but also that the alleged supervisor is “accountable for the performance of the task by the other.” Id. at 692; Golden Crest, 348 NLRB at 731, fn. 13. Accountability may be shown by either negative or positive consequences to the putative supervisor’s terms and conditions of employment as a result of the alleged subordinates’ directed actions. Golden Crest, above at 731; see also, Peacock Productions of NBC Universal Media, LLC, 364 NLRB No. 104, slip op. at 4 (2016).

Thus, in order to establish supervisory status by virtue of responsible direction, the Employer must show by specific detailed evidence that CRSs have authority to direct employees with corrective actions, using independent judgment, and have the prospect of consequences based on the quality of the work performed.
As discussed above, Albares’s and Kovannen’s examples demonstrate that CRSs initiate procedures delineating the manipulations reactor operators and NLOs must undertake in abnormal conditions. Their testimony further indicates CRSs have the ability to select who will perform the job. Accordingly, I find the record evidence establishes the initial aspect of direction.

Regarding the authority to take corrective action, it is uncontroverted that CRSs use the Employer’s various performance management tools to identify and document incorrect or suboptimal work, and then offer guidance and set goals to improve performance. Accordingly, I find this meets the threshold of corrective action.

Regarding the “responsible” aspect of direction, three of the four acknowledged supervisors and managers who testified at the hearing presented no specific detailed evidence of a CRS receiving positive or negative consequences as a result of the actions of the reactor operators, including lead operator, and NLOs working on their crew. Nor does the evidence indicate consequences for CRSs who fail to take corrective action or use the Employer’s performance management tools. The sole piece of evidence regarding potential accountability is an “Oral Reminder – Performance” issued to a CRS on June 27, 2019, 63 to which Plautz testified. However, the oral reminder deals entirely with the performance of the CRS when “not assigned to the Control Room” and not the performance of any subordinates. Specifically, the reminder details the CRS’s failure to follow a Fleet Procedure (FL-OP-COO-17) and notes the CRS’s “lack of attention to procedure use and adherence.” Specifically, the Shift Manager wrote:

Your decision making is [sic] this matter is troublesome and reduces my confidence in your ability to lead the Operations Department and other site staff on the correct way to operate and manipulate plant equipment.

This evidence shows that the CRS was disciplined for his own actions, including the failure to obtain the appropriate approval for the direction of the apprentice’s work. See, for example, Oakwood, above at 695 (finding discipline to putative supervisor for failing to make fair assignments to show only that they “are accountable for their own performance or lack thereof, not the performance of others” [emphasis in original]); Entergy I, 357 NLRB at 2155–2156 (finding coaching and counseling for allowing uncomfortable employee to proceed with work to be for putative supervisor’s own failure to recognize warning signs).

The Employer’s citation to the 10-year CRS’s testimony that he “would definitely be held accountable” for insisting a manipulation be made likewise fails to establish that any resulting discipline would be for something other than the CRS’s own error in judgment. This singular statement is general and conclusory and does not specify how the CRS would be held accountable. See, for example, Avante at Wilson, 348 NLRB at 1057. As such, the record fails to demonstrate that the accountability results in a negative consequence or that such a consequence affects the CRS.

Regarding independent judgment, as noted above, much of the testimony is general or conclusory and neither detailed nor specific regarding the use of independent judgment. The record evidence shows that much of the work at the Monticello Plant is highly regimented, and

63 Employer Exh. 38.
witness testimony fails to translate any of the paper authority broadly referenced in the Employer’s various procedural and training documents into tangible examples demonstrating the existence of such authority. Albares acknowledged OWIs instruct CRSs, reactor operators, and NLOs “how [to] perform some of their tasks, expected to perform and also define some of these other duties that are expected to be performed.” Albares further acknowledged the C4 General Guidance “specifically defines the requirements for [CRSs] in those procedures and it gives them the latitude, the guidance to use their knowledge, skills and abilities and discretion on what steps in each one of those procedures are performed.” However, the record evidence regarding CRSs’ latitude within that guidance consists of multiple witnesses’ generalized testimony that CRSs use “decision-making skills” involving “knowledge,” “skills,” “abilities,” judgment,” and “discretion.” The discipline of a CRS, discussed above, for failing to precisely follow the Employer’s procedures further supports a lack of independent judgment when directing reactor operators and NLOs. Accordingly, I find the record insufficient to establish CRSs use independent judgment when directing employees to follow a particular procedure.

2. Discipline

The Board has consistently held that asserted disciplinary authority “must lead to personnel action without independent investigation by upper management” to establish supervisory status. Veolia I, 363 NLRB No. 98, slip op. at 8 (citing Sheraton Universal Hotel, 350 NLRB 1114, 1116 (2007); Beverly Health & Rehabilitation Services, Inc., 335 NLRB 635, 669 (2001), enf’d. in pertinent part 317 F.3d 316 (D.C. Cir. 2003)). See also Lucky Cab Co., 360 NLRB 271 (2014) (quoting Franklin Home Health Agency, 337 NLRB 826, 830 (2002)); Pepsi-Cola Bottling Co., 154 NLRB 490, 493–494 (1965). “Warnings that simply bring the employer’s attention to substandard performance without recommendations for future discipline serve a limited reporting function, and do not establish that the disputed individual is exercising disciplinary authority. Similarly, authority to issue verbal reprimands is, without more, too minor a disciplinary function to constitute supervisory authority.” Republican Co., 361 NLRB 93, 97 (2014) (citations omitted). See also, Veolia II, 363 NLRB No. 188, slip op. at 7; Veolia I, 363 NLRB No. 98, slip op. at 8. Further, “the issuance of written warnings that do not alone affect job status or tenure do not constitute supervisory authority.” DirecTV, 357 NLRB at 1749 (citing Phelps Community Medical, 269 NLRB at 490). Where the evidence is in conflict as to whether a particular type of corrective action constitutes discipline, the Board will find that the party asserting supervisory status has not met its burden. See, for example, Veolia I, above, slip op. at 7–8 (finding conflicting testimony on whether mere issuance of “observation notice,” as well as coaching and counseling, constituted discipline).

64 I have also considered the authority referenced in NRC regulations. See generally, Cook Inlet, 362 NLRB at 1155 (finding evidence insufficient to show employer held putative supervisors responsible even assuming Coast Guard

65 See, for example, Republican Co., 361 NLRB at 96–97 (finding verbal warning did not establish supervisory status where there was no evidence it had effect on warned employee’s job status or tenure); see also Hausner Hard-Chrome of KY, Inc., 326 NLRB 426, 427 (1998) (finding written reprimand not disciplinary without evidence “job affecting discipline” resulted); Azusa Ranch Market, 321 NLRB 811, 812–813 (1996) (finding evidence did not show written warnings had any effect on employee’s employment status); Ten Broeck Commons, 320 NLRB at 812 (holding written warnings do not establish supervisory status where merely reportorial and not clearly linked to disciplinary action affecting job status).
“A warning may qualify as disciplinary within the meaning of Section 2(11) if it ‘automatically’ or ‘routinely’ leads to job-affecting discipline, by operation of a defined progressive disciplinary system.” Republico Co., above at 99 (citing Oak Park Nursing Care Center, 351 NLRB 27, 30 (2007); Ohio Masonic Home, 295 NLRB 390, 393–394 (1989)). “It is the [e]mployer’s burden to prove the existence of such a system, as well as the role warnings issued by putative supervisors play within it. If an ostensibly progressive system is not consistently applied, progressive discipline has not been established.” Veolia II, above, slip op. at 8 (citing Ken-Crest Services, 335 NLRB 777, 777–778 (2001); Republico Co., above at 99 fn. 8; Ten Broeck Commons, 320 NLRB at 809).

Thus, for CRSs to be found statutory supervisors, the Employer must show through specific detailed evidence that they take actions without independent review which affect employees’ job status or tenure, including the nonroutine and nonobvious factors they consider.

The record evidence is stale, contradictory, and inconclusive. Of the seven items introduced as potential discipline issued by CRSs,66 only one occurred within the past decade. See G4S, 362 NLRB at 1074 (finding evidence stale and failing to establish the authority to discipline where “all except one of the eight disciplinary notices were at least 2 years old”).

The only item within the past decade is a 2020 e-mail from a CRS to managers about a lead operator. While Plautz testified that he read the e-mail as a recommendation to remove the operator from duty, the face of the document contains no reference to employment actions or discipline and states only that it is documenting serious concerns. Further, the two CRSs involved with the e-mail testified that they made no recommendations regarding discipline at any time, and they were not on the Employer’s Performance Review Committee that investigated the operator’s performance. Even assuming the evidence showed more than mere reporting, it clearly indicates multiple layers of investigation above and beyond the CRSs.67

Regarding blanket authority to discipline, the record is in conflict and inconclusive. Employer witnesses testified that CRSs can independently issue discipline following a courtesy consultation with Workforce Relations, which cannot require a change in the level of recommended discipline. Testimony from Workforce Relations Lead Consultant Minlschmidt vacillates between the Workforce Relations being involved in the disciplinary process to the consultation with Workforce Relations being only a recommendation. On the other hand, the 10-year CRS and the 3-year CRS both testified that they had never been told they had the authority to issue discipline, and that they would always go to their superior regarding disciplinary matters. The Employer’s own PowerPoint on Positive Discipline shows a first-line supervisor must consult with Workforce Relations and write a report and submit it to Workforce Relations and then determine the appropriate action, all before issuing discipline. Importantly, it also makes

66 The Employer acknowledged that not all of the items were formal discipline.

67 The lead operator was ultimately transferred to an unlicensed position, which the Employer contends shows CRSs’ authority to effectively recommend transfer (demote) an employee; however, as discussed above, the language on the face of the e-mail is merely reportorial and the record contains no testimony of conversations where a CRS recommended any particular action be taken with regard to the lead operator. Further, the Employer cites to no Board decisions supporting its contention.
clear that “Management reserves the right to determine if Positive Discipline is needed / what level is appropriate.”

Accordingly, I find that the evidence is insufficient to establish CRSs possess or exercise the authority to discipline, or effectively recommend discipline, within the meaning of Section 2(11) of the Act.

Performance Management

Although not specifically argued by the Employer, I address whether any of its performance management programs constitute the effective recommendation of discipline (or reward), using independent judgment.

Managing employees’ performance through formal documentation necessarily involves a degree of evaluation. While Section 2(11) of the Act does not include the authority to evaluate employees in its enumeration of supervisory functions, the Board analyzes a putative supervisor’s evaluation of subordinates to determine whether it is an effective recommendation of promotion, reward, or discipline. “If the evaluation does not, by itself, directly affect the wages and/or job status of the individual being evaluated, the Board will not find the individual performing the evaluation to be a statutory supervisor on that basis. There must be a direct correlation between the employee’s evaluation and their wage increases and/or job status.” Modesto Radiology Imaging, Inc., 361 NLRB 888, 889 (2014) (citing Williamette Industries, 336 NLRB at 743; Ten Broeck Commons, 320 NLRB at 813).

Evidence of the Employer’s performance management tools resulting in discipline or any action affecting employees’ job status or tenure is nonexistent. The record contains minimal evidence on 4.0 Critiques and training critiques and nothing about resultant discipline or employment actions. While Employer witnesses indicated that QAPRs could result in additional training and clock resets and excellence plans could result in formal discipline, the record similarly fails to establish a connection between CRSs repetitive reporting of substandard performance resulting in any adverse action. Albares and Pieper specifically testified that Observations are not punitive and not formal discipline.

To the extent CRSs use of the Employer’s performance management tools can be considered retraining, there is no record evidence that such retraining has affected the employees’ job status or tenure. See, for example, East End Bus Lines, Inc., 366 NLRB No. 180, slip op. 12–13 (2018) (analyzing retraining as a lesser form of discipline); Veolia II, 363 NLRB No. 188, slip op. 4 (analyzing as discipline the authority to effectively recommend retraining).

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68 Even assuming the record evidence was not in conflict and inconclusive, it still fails to establish oral reminders and written reminders are part of a defined progressive disciplinary system. The Employer’s Positive Discipline presentation and testimony of its witnesses, including one of the presenters, suggests CRSs may be able to issue oral reminders; however, nothing in the record establishes how oral (or written) reminders relate to later actual discipline, among other things, how many oral reminders it takes before a written reminder, decision making leave, or termination. See Veolia II, above, slip op. at 8, and cases cited therein.
Accordingly, I find that the Employer has failed to meet its burden to establish CRSs possessive or exercise the authority to discipline or effectively recommend discipline by managing the performance of reactor operators and NLOs.

3. **Suspend**

The Employer argues the CRSs’ ability to place employees on Crisis Suspension establishes supervisory authority under the Act.

The supervisory function of suspension is closely related to the authority to discipline, as suspension can be construed as a particular heightened form of discipline. As such, the authority to send an employee home for engaging in misconduct or poor performance is typically considered supervisory authority. Therefore, the suspension must occur without independent investigation. However, suspending employees for flagrant violations or egregious misconduct does not involve independent judgment. *Veolia I*, 363 NLRB No. 98, slip op. at 13 (citing *Phelps Community Medical*, 295 NLRB at 492). See also, *Bredero Shaw*, 345 NLRB 782, 783 (2005); *Northcrest Nursing Home*, 313 NLRB 491, 497 (1993).

Thus, for CRSs to be found statutory supervisors by issuing Crisis Suspension, the Employer must show by specific detailed evidence that Crisis Suspension is used for less than flagrant violations or egregious misconduct.

The record evidence is in conflict, stale, and inconclusive. While Albares stated he almost placed an employee on Crisis Suspension for refusing to perform a task over a decade ago, the record fails to indicate the insubordination was not egregious misconduct that raised a nuclear safety concern. The 10-year CRS and the 3-year CRS both testified that they did not believe they had the authority to issue Crisis Suspension without the involvement of a manager. Even assuming they had the authority, the current CRSs indicated Crisis Suspension is used for egregious misconduct and hazards to nuclear safety.

The Employer cites *Warner Co. v. NLRB*, 365 F.2d 435, 439 (3rd Cir. 1966) in support of its contention that sending someone home for even flagrant violations constitutes suspension, using independent judgment. First, *Warner* was decided 40 years before the Board adopted its current definition of “independent judgment,” and that Circuit has not yet passed on its application to egregious misconduct. Second, other Circuits have upheld the Board’s interpretation that flagrant violations do not involve independent judgment. See, for example, *Frenchtown Acquisition Co. v. NLRB*, 683 F.3d 298, 309 (6th Cir. 2012); *Jochims v. NLRB*, 480 F.3d 1161, 1171–1172 (DC Cir. 2007). More importantly, and for this reason, the Board generally adheres to its “nonacquiescence policy” with respect to appellate court decisions that conflict with Board law, unless the Board precedent is reversed by the Supreme Court. See, for example, *D.L. Baker, Inc.*, 351 NLRB 515, 529 fn. 42 (2007); *Northcrest Nursing*, above at 496, fn. 24. Therefore, I faithfully apply Board precedent.

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69 I also note that the employee in question suffered no disciplinary action.
Accordingly, I find that the evidence is insufficient to establish CRSs possess or exercise the authority to suspend, or effectively recommend suspension, within the meaning of Section 2(11) of the Act.

4. Reward

The Employer asserts CRSs ability to approve, modify, or deny XCelebrate awards for their direct reports, particularly the fact that a CRS-initiated award for a direct report is automatically approved, shows CRSs reward employees using independent judgment. It also argues CRSs ability to send employees home early establishes statutory supervisory authority. Petitioner contends XCelebrate awards do not constitute a “reward” as defined in the Act and the role of the CRS in approving such awards is routine or clerical.

The Board will find the authority to reward where putative supervisors use independent judgment in granting merit wage increases or otherwise substantially impacting the earnings of other employees, for example, awarding bonuses. It has also found the granting of time off as a result of good performance to constitute a reward. Newspaper Guild, Local 47 (Pulitzer Publishing), 272 NLRB 1195, 1200 (1984); Taylor-O-Brien Corp., 112 NLRB 1, 12–13 (1955). More commonly, the Board analyzes whether a putative supervisor effectively recommends rewarding employees by virtue of evaluating their performance. However, neither party asserts CRSs effectively recommend rewarding employees in the instant case.

Thus, for CRSs to be found statutory supervisors by rewarding employees, the Employer must show by specific detailed evidence that XCelebrate awards and sending employees home early with pay constitute rewards and that CRSs have the ultimate authority to approve the rewards, including the nonroutine or nonobvious factors they consider when doing so.

As detailed above, anyone may nominate an individual for an XCelebrate award, and CRSs can approve awards for their direct reports for up to 500 points (worth $50), with higher-level awards requiring approval by an acknowledged supervisor or manager. The record evidence shows only that two CRSs have three direct reports each. Some CRSs have no direct reports and, therefore, do not approve XCelebrate awards. The 10-year CRS indicated he approves “maybe one [award] every month or two,” although it is unclear whether this award is at the 500-point level or simply an Ecard with no monetary value. The record reveals a single specific instance of a CRS-approved award in 2021—the 3-year CRS testified that a 500-point award for his direct report was automatically approved when he made the nomination.70

While Kovannen and the 3-year CRS both testified that a CRS had the technical ability to change an initiated XCelebrate award, the CRS indicated that he had never done so, and the record contains no instances of an award being modified by a CRS or any acknowledged supervisors or managers. The record contains two instances where a CRS denied an XCelebrate award—a duplicate nomination and what appeared to be a disingenuous nomination. In the latter

70 As discussed above, the spreadsheet of XCelebrate awards (Employer Exh. 35) lists only CRS-initiated XCelebrate awards and, thus, appears to contain incomplete information based on testimony from multiple witnesses that anyone at the Monticello Plant can nominate anyone else for an XCelebrate award. Neither Employer Exh. 35 or other record evidence indicate any CRS-approved awards other than the instance described above.
In the instant case, XCelebrate awards do not result from CRSs ranking or rating employee performance, nor do they result in merit or other wage increases. I find the Employer’s spreadsheet of XCelebrate awards to be of little evidentiary value. As noted above, the data is limited to those awards nominated by CRSs and does not indicate who approved the award. Rather, as noted above, record testimony reveals a singular instance of a CRS initiating an automatically approved 500-point (worth $50) award during a nine-month period in 2021. The two instances where a CRS denied award nominations were for obvious deficiencies, and the record is unclear whether either of the denials occurred in 2021 or earlier. Thus, the totality of specific detailed record evidence shows, at most, three instances of approval or denial by a CRS in 2021.

Where there is no evidence that CRSs more than sporadically approve or deny XCelebrate awards with a monetary value, where the evidence shows the denials were ministerial, where the record fails to show CRSs have ever modified the value of an award, and where the awards are more of a novelty than a factor in employee compensation, I cannot conclude that CRSs involvement with XCelebrate awards confers supervisory status under Section 2(11) of the Act. See Veolia II, 363 NLRB No. 188, slip op. at 9–10 (assuming distribution of $25 gift cards could constitute reward, evidence did not establish this was more than sporadic or involved independent judgment); Veolia I, 363 NLRB No. 98, slip op. at 11 (assuming one-time $100 award is sufficient to establish authority to reward, supervisory status not shown due to lack of evidence regarding the reward system).

Regarding the ability to send employees home early, the record shows that both CRSs received initial approval from their Shift Manager. Importantly, the record does not indicate that the Shift Managers’ approval was not ongoing or that the CRSs needed to obtain approval for

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71 I further note that the Employer’s citations all predate the Board’s refined supervisory analysis established in Oakwood.
early dismissal again in the same circumstances. Moreover, nothing in the record suggests CRSs consider any factor other than the completion of training or relief work when sending employees home early or that CRSs have ever not sent employees home early after their Shift Manager’s initial approval. As such, the evidence does not support the early release of employees by CRSs is done as a reward or with independent judgment. See, for example, *Azusa Ranch Market*, 321 NLRB 811, 812 (1996). Cases highlighted by the Employer are easily distinguishable. In both *Taylor-O-Brien Corp.*, 112 NLRB at 12–13, and *Pulitzer Publishing*, 272 NLRB at 1200, the Employer cites to the underlying decisions of the administrative law judges (“ALJs”), who found individuals to be a statutory supervisor based, in part, on the authority to “reward with time off” and “send[] home early with pay as a reward for good performance,” respectively. While the Board affirmed the rulings of the ALJs, there is no indication the respondent excepted to the ALJ’s supervisory finding. In the absence of relevant exceptions, a decision has no precedential value on the unexcepted issue. See, for example, *WR Reserve*, 370 NLRB No. 74, slip op. at 1 fn. 3 (2021) (citing *Watsonville Register-Pajaronian*, 327 NLRB 957, 959 fn. 4 (1999)).

Regarding CRSs’ ability to approve vacation requests, the authority to grant time off is a secondary indicium of supervisory status. *Modesto Radiology Imaging, Inc.*, 361 NLRB 888, 890 fn. 4 (2014) (citing *Sam’s Club*, 349 NLRB 1007, 1014 (2007)); see also, *BluePearl Specialty & Emergency Pet Hospital*, 19-UC-239832 (Apr. 10, 2020) (unpublished) (“approving leave requests is a secondary indicium of supervisory status,” citing *Pacific Coast M.S. Industries*, 355 NLRB at 1423 fn. 12). To the extent that CRSs approve vacation requests, there is no record evidence that such approval is done as a reward for employee performance.22

Accordingly, I find that the evidence is insufficient to establish CRSs possess or exercise the authority to reward, or effectively recommend rewards, within the meaning of Section 2(11) of the Act.

5. Hire

The Employer posits Plautz’s testimony that, as a hiring manager, he would not hire someone a CRS quorum member said he cannot hire and he would hire someone that a CRS said the Employer needed, along with the seven interview templates completed by CRSs, establishes that CRSs effectively recommend hiring using independent judgment. Petitioner maintains CRSs only sporadically participate in interviews and the evidence fails to show the Employer’s hiring managers rely on CRSs’ hiring recommendations without conducting their own assessments.

The Board will find the authority to hire where putative supervisors determine which applicant will fill a vacancy based on their independent assessment of the applicant. More often, Board decisions involve whether a putative supervisor effectively recommends hiring. The Board has also held that the authority to effectively recommend against hiring a job applicant can establish supervisory authority. *Sheraton Universal Hotel*, 350 NLRB at 1118 (citing *HS Lordships*, 274 NLRB 1167, 1173 (1985); *Berger Transfer & Storage, Inc.*, 253 NLRB 5, 10 (1980), enf’d. 678 F.2d 679 (7th Cir. 1982), supplemented by 281 NLRB 1157 (1986)).

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22 In its post-hearing brief, the Employer lists approval of vacation time as showing CRSs exercise “performance management responsibilities” over their crews but does not explicitly contend it constitutes authority to reward employees, and the Employer has never contended the CRSs are managers.

As with all supervisory functions, a hiring recommendation is not effective in the absence of a contention or finding that such recommendation is relied on without further inquiries. *Republican Co.*, 361 NLRB at 97 (citing *Waverly-Cedar Falls Health Care*, 297 NLRB 390, 392 (1989)); see also *Adco Electric Inc.*, 307 NLRB 1113, 1124 (1992), enf’d. 6 F.3d 1110 (5th Cir. 1993). Thus, without additional evidence, a putative supervisor does not effectively recommend hiring where acknowledged supervisors also interview candidates. *Republican Co.*, above at 98 (citing *J.C. Penney Corp., Inc.*, 347 NLRB 127, 128–129 (2006); *Ryder Truck Rental*, 326 NLRB at 1387 fn. 9, 1388; *Waverly-Cedar Falls*, above). Likewise, a hiring recommendation has not been shown to be effective where the influence of the recommendation on the ultimate decisionmaker is not known. *Pacific Coast M.S. Industries Co., Ltd.*, 355 NLRB 1422, 1425–1426 (2010); see also *Third Coast Emergency Physicians, P.A.*, 330 NLRB 756, 759 (2000); *F. A. Bartlett Tree Expert Co.*, 325 NLRB 243, 245 (1997). Compatibility recommendations are insufficient to support a finding of hiring authority. *Tree-Free Fiber Co.*, 328 NLRB 389, 391 (1999) (citing *Anamag*, 284 NLRB 621, 623 (1987)); *Marymount College*, 280 NLRB 486, 489 (1986); *U.S. Pollution Control*, 278 NLRB 274 (1986); *Kenosha News Publishing Corp.*, 264 NLRB 270, 271 (1982); *Willis Shaw Frozen Food Express, Inc.*, 173 NLRB 487, 488 (1968). Similarly, effective recommendation to hire will not be found where the role of a putative supervisors is limited to assessing the technical qualifications or skills of an applicant. *Republican Co.*, above at 98 (citing *Aardvark Post*, 331 NLRB 320, 320-321 (2000); *The Door*, 297 NLRB 601, 601–602 (1990)).

Thus, for CRSs to be found statutory supervisors by effectively recommending for or against hiring, the Employer must show by specific detailed evidence that their recommendations stem from independent judgment and are followed without further inquiry an overwhelming majority of the time.

The record evidence is contradictory, vague, and inconclusive. As discussed below, it shows that CRSs participation in the hiring process is limited to an interview panel—the quorum—and the evidence is limited to a three-year period from April 2018 to February 2021, during which Plautz was AOM. While Plautz testified that he sought to involve CRSs in the hiring process, he also acknowledged that the hiring manager—the OM or AOM—is the final decision maker. The two current CRSs testified that they were never solicited to participate in the hiring process, with one testifying that he had never been involved in hiring during his 10-year tenure with the Employer and the other indicating his participation on the quorum was due to his seeking opportunities for career development. Importantly, the record unequivocally shows the interview process has changed since February 2021, particularly the quorum, and that Plautz is no longer the AOM. The record fails to establish that the CRSs’ role in the quorum did not change or that they even still participate. It also does not disclose whether Plautz has any current involvement in the hiring process.

Even during the three-year period where it is known that CRSs participated in the quorum, the record contains minimal details. The Employer introduced only interview templates completed by CRSs, of which there were seven, but acknowledged an unspecified number of
Of the seven interviews in the record, the record contains no details regarding four, specifically the three 2018 templates for NLO positions and the 2021 template for the NOPM position. For the remaining three 2020 CRS templates, the record contains no specific evidence regarding how they were completed beyond the 3-year CRS testifying that the hiring manager selected the scripted questions to ask the candidate. Of the remaining three interviews, Plautz asserts he followed the CRS recommendations in only two, both for the 2020 CRS position.

The evidence for one interview is contradictory, with Plautz testifying that the 3-year CRS’s “not favorable” “perception” of the candidate “definitely guided” his decision not to hire them while the 3-year CRS testified that the interview concluded with a four-person debrief, where he “gave an overall positive opinion” of the candidate and the candidate’s former Shift Manager “brought up the personality conflicts and ‘inside scoop.’” Conflicting evidence cannot be used to establish supervisory authority.

The second interview involved a CRS expressing concerns about a candidate’s potential interactions with the operating crew if hired as a CRS. Plautz characterized this as “feedback.” Specifically, in response to the question of whether the CRS made a recommendation to hire the candidate, Plautz responded:

I took [the CRS]’s feedback to mean to be after recommendation not to is how I took what [the CRS] had fed back to me.

This single example is too vague and conclusory to support a supervisory finding. Given the lack of further detail, the CRS’s “feedback” is, at most, a compatibility recommendation, which the Board does not find to be an effective recommendation for hiring.

All the cases cited by the Employer involve specific and unequivocal evidence showing the putative supervisors’ recommendations against hiring candidates were followed. Where, as here, the evidence regarding historical incidents is in conflict or lacking in detail regarding CRSs’ current role, if any, in the quorum portion of the hiring process, I cannot conclude that they effectively recommend hiring using independent judgment.

Accordingly, I find that the evidence is insufficient to establish CRSs possess or exercise the authority to effectively recommend for or against hiring, within the meaning of Section 2(11) of the Act.

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73 When asked on cross-examination how many other interviews for operations positions took place where CRSs were not involved, Plautz answered: “I don’t know if I could quantify a number for you.”

74 The template lists the job title as “operations program owner,” but Plautz testified that it was the NOPM position and also that he was an applicant for this position.

75 Plautz’s testimony regarding the third interview was simply that neither he nor the 3-year CRS “felt very strong about the candidate.” He did not testify that the CRS’s feelings influenced his decision, as hiring manager, not to hire the candidate.
6. Secondary Indicia

As explained above, secondary indicia can support a finding of supervisory status but only where evidence indicates the existence of at least one of the primary indicia. The record reveals the existence of several secondary indicia. Specifically, the Employer designates CRSs as supervisors by providing them with front-line supervisor (LDP-FLS) training. The CRSs are generally responsible for the Control Room during their shift and have the responsibility to monitor, coach, and report on other employees’ work. Similarly, CRSs are paid a salary and eligible for the Employer’s I Deliver awards whereas reactor operators and NLOs are not.

As the record does not contain compensation information for reactor operators and NLOs, it is unknown whether CRSs have significantly different annual earnings despite being salary exempt employees.

7. Special Project CRSs

The totality of record evidence regarding CRSs operating in special project roles is general and conclusory, consisting entirely of statements that the putative supervisors use “experience” and “decision-making skills,” have “oversight responsibilities,” and that one of the six provides “coaching, mentoring, [and] feedback” to employees in training. The record contains no detail regarding how CRSs perform these functions or any factors they consider when doing so.

Accordingly, I find that the Employer has failed to meet its burden to establish any primary indicia through specific detailed evidence for CRSs working on special projects.

III. APPROPRIATE UNIT

A. BOARD LAW

When determining an appropriate unit, the Board delineates the grouping of employees in which freedom of choice may be given collective expression. At the same time, it creates the context in which the process of collective bargaining must function. Therefore, each unit determination must foster efficient and stable collective bargaining. Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962). On the other hand, the Board has also made clear that the unit sought for collective bargaining need only be an appropriate unit and need not be the ultimate, or the only, or even the most appropriate unit. Overnite Transportation Co., 322 NLRB 723, 723 (1996); P. J. Dick Contracting, Inc., 290 NLRB 150 (1988). More than one appropriate bargaining unit usually can be defined from any particular factual setting. Bergdorf Goodman, 361 NLRB 50, 51 (2014).

In determining an appropriate bargaining unit, the Board first looks to the unit sought by the petition. If the unit is appropriate, the inquiry ends. Boeing Co., 337 NLRB 152, 153 (2001). If, however, the petitioned-for unit is inappropriate, the Board will scrutinize alternative units proposed by the parties but may also select an appropriate unit that is different from those proposals. Ibid. See also Dezcon, Inc., 295 NLRB 109, 111 (1989). Absent a stipulated agreement, presumption, or rule, the record evidence must indicate the proposed unit is an

In deciding whether a unit is appropriate, the Board uses a multifactor analysis to determine whether the employees sought by a petition share a community of interest. The Board considers whether the petitioned-for employees: (1) are organized into a separate department; (2) have distinct skills and training; (3) have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; (4) are functionally integrated with the employer’s other employees; (5) have frequent contact with other employees; (6) interchange with other employees; (7) have distinct terms and conditions of employment; and (8) are separately supervised. *United Operations, Inc.*, 338 NLRB 123, 123 (2002). The Board has also long considered bargaining history and the extent of organizing, although the latter “shall not be controlling.” Sec. 9(c)(5) of the Act. Regarding the organization of the plant, the Board has made clear that it will not approve of fractured units—that is, combinations of employees that are too narrow in scope or that have no rational basis. *Seaboard Marine, Ltd.*, 327 NLRB 556 (1999). Particularly important in considering whether the unit sought is appropriate are the organization of the plant and the utilization of skills. *Gustave Fisher, Inc.*, 256 NLRB 1069, 1069 fn. 5 (quoting *International Paper Co.*, 96 NLRB 295, 298, fn. 7 (1951)). However, all relevant factors must be weighed in determining community of interest. 76

**B. APPLICATION OF BOARD LAW TO THIS CASE**

The Employer argues against a community of interest between the CRSs and the NOPM because he works from home most of the time, has a different supervisor than the CRSs.

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76 In *Boeing Co.*, 368 NLRB No. 67 (2019), the Board clarified *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), and set forth a 3-step process for examination where a party seeks to enlarge the petitioned-for unit: (1) internal shared interests within the unit sought, (2) shared interests of the petitioned-for unit compared to shared and distinct interests of the excluded employees, and (3) the Board’s decisions on units in the industry involved. *Boeing*, above, slip op. at 3. Although the Board in *Boeing* used broad language in describing its return to a “traditional community of interest test,” it subsequently disavowed that the 3-step process in *Boeing* applies generally to the community-of-interest analysis and, instead, further clarified that *Boeing* and *PCC Structural* apply only where a party asserts job classifications must be added to the petitioned-for unit to make it appropriate. See *Macy’s West Stores, Inc.*, Case 32-RC-246415, fn. 1 (May 27, 2020) (unpublished) (clarifying “that, where no party asserts that the smallest appropriate unit must include employees excluded from the petitioned-for unit, it is unnecessary to apply the three-step analysis set forth in *Boeing*”); see also *AT&T Mobility Services, LLC*, 371 NLRB No. 14 (2021) (“*PCC Structural* applies when a non-petitioning party contends that the petitioned-for unit is inappropriate unless the unit includes certain additional employee classifications” [emphasis omitted]). Further, I know of no case where the Board has applied the *Boeing* 3-step process where, as here, a non-petitioning party sought to *decrease* the size of the petitioned-for unit.

77 Although the Employer has not argued to the contrary, I find that the CRSs, including special project CRSs, share an internal community of interest and constitute an appropriate unit. The record evidence indicates all CRSs have similar terms and conditions of employment and similar skills and training. Despite some different direct supervision due to their special projects, they all work in the Operations Group and receive the same 40-hour simulator training every six weeks, along with the same 1-week INPO training course and the Employer’s initial and quarterly LDP-FLS training. The Employer also emphasizes special project CRSs’ ability to return to normal duty after 40 hours of Control Room observation, although the record does not disclose the frequency of interchange between normal and special project CRSs (and one special project CRS cannot return to normal duty because he does not possess an SRO license).
on duty or special projects, does not have any duties related to operating the plant, has limited interaction with the CRSs, and does not supervise any employees nor does he assign work or direct the work of other employees. Petitioner maintains the NOPM is within the same job category and administrative grouping as CRSs, with similar terms and conditions of employment, has frequent contact with, and is functionally integrated with, CRSs.

Assessing all relevant community-of-interest factors, I find that factors in favor of the CRSs and NOPM sharing a community of interest far outweigh those showing the NOPM has a community of interest separate and distinct from the CRSs. Specifically, only interchange weighs strongly against a shared community of interest, with the NOPM being a permanent one-way transfer from CRS\textsuperscript{78}. The current NOPM transitioned to the NOPM position through a special project in NOPM role. However, since taking the NOPM position the incumbent has not substituted for a shift CRS or a different special project CRS.

The factors of job functions and work and terms and conditions of employment slightly favor finding community of interest between CRSs and the NOPM. As discussed above, the petitioned-for employees contribute to the safe operation of the Monticello Plant. The shift CRSs monitor and oversee operating crews. Similarly, the field supervisor and FIN supervisor oversee small teams that work on equipment or other plant systems. The outage planning CRSs develop work plans for when the reactor is shutdown and refueled and the operations support CRS prepares work and work planning documents while the NOPM creates, maintains, revises, and updates work procedures used at the Monticello Plant. While all the job functions appear to be within the same family, there are fundamental differences in the work performed. The NOPM and CRSs are all salaried employees within a similar wage range and with the same licensing incentive pay and I Deliver program. Although the NOPM currently works from home about 50 percent of the time, while CRSs must work on site, the NOPM may spend weeks on site, for example, with a big inspection. His permanent office is directly behind the WEC, where the WEC SRO (who is also a CRS) is stationed.

The remaining factors of administrative grouping and supervision, skills and training, functional integration and employee contact, and terms and conditions of employment, all weigh in favor of a shared community of interest. Both the CRSs and the NOPM work in the Operations Group at the Monticello Plant and, although the Employer contends the NOPM is separately supervised, its own organization chart\textsuperscript{79} and testimony from Albares indicate the NOPM shares a direct supervisor—Operations Support Manager Miller—with the special project CRSs in the roles field supervisor and operations support. The NOPM completes the same 40-hour classroom and simulator training every six weeks as the CRSs and maintains the same SRO license from the NRC.\textsuperscript{80} Although the NOPM currently has no direct reports, by

\textsuperscript{78} I note the Employer considered applicants from other job classifications and there is no requirement that the NOPM be a CRS.

\textsuperscript{79} Employer Exh. 1.

\textsuperscript{80} The Employer argues the NOPM position does not require an SRO license; however, the job description and job posting state the position requires “SRO license/CERT.” The record does not define the term CERT.
virtue of being a former CRS, he has completed the LDP-FLS training program. Record evidence shows a high degree of functional integration inasmuch as the primary role of the NOPM is to create, maintain, and update the work procedures used by CRSs, reactor operators, and NLOs. The NOPM is involved with inspections of the equipment monitored and overseen by CRSs and has weekly contact with them regarding equipment issues. He attends morning meetings with the special project CRSs and attends other meetings as an SRO—the same licensure held by CRSs and Shift Managers.

Regarding bargaining history, the record reveals that Petitioner represents multiple classifications of employees at the Monticello Plant, although it does not indicate the number of bargaining units or whether the unit(s) is limited to only Monticello Plant employees. I take administrative notice of the Decision and Direction of Election in Case 18-RC-017509 that issued on July 11, 2007, and involved the Employer’s predecessor, Nuclear Management Company, LLC. In that case, Petitioner sought to add the senior engineering analyst at the Monticello Plant to its existing unit of chemistry and radiation protection technicians. Thus, that decision shows a bargaining history limited to the Monticello Plant. There is no bargaining history for the CRSs or the NOPM.

Accordingly, I find that the evidence demonstrates CRSs, including special project CRSs, and the NOPM share a community of interest and constitute a unit appropriate for collective bargaining.

81 The record is silent on whether the NOPM completes the continuing quarterly training or completed the one-week INPO training course.

82 The record indicates only two unrepresented employees other than those being sought in the instant petition. The NOPM testified that “there is a couple individuals, nonunion, that are the individuals that prepare the isolations that are assigned to [Operations Support Manager] Miller,” with a job title like “operations isolation coordinator.” There are no further details in the record regarding isolations or the unrepresented employees.

83 The Board has long found a systemwide unit to be the optimal appropriate unit for collective bargaining in the public utility industry. Baltimore Gas & Electric Co., 206 NLRB 199, 201 (1973); Colorado Interstate Gas Co., 202 NLRB 847, 848 (1973). See also Deposit Telephone Co. Inc., 328 NLRB 1029, 1030 (1999) (“Although the Board has considered systemwide units to be ‘optimal’ in the utilities industry, this policy has not required multidepartmental units in all instances, particularly where no other labor organization seeks to represent a more comprehensive unit”). In at least one case, which did not involve a public utility employer, the Board expressed this systemwide preference as a “rebuttable presumption.” Alyeska Pipeline Service Co., 348 NLRB 808, 809–810 (2006). However, in NV Energy, Inc., 362 NLRB 14 (2015), the Board subsequently returned to its historical description of a “systemwide preference” and specifically highlighted that, where there is no danger that a labor stoppage or dispute at one part of the utility will threaten the ability of the whole to serve the public good, there is “no basis for limiting the organizational rights of employees by requiring them to organize only in comprehensive units.” Id. at 19 (quoting Verizon Wireless, 341 NLRB 483, 484 (2004)). In the instant case, neither party raised the systemwide presumption or preference, nor was it specified as an issue to be decided by me pursuant to the parties’ stipulation. I further find nothing in the record suggests a labor stoppage or dispute at the Monticello Plant threatens the Employer’s ability to provide electricity to its customers using its dozens of other generating facilities throughout the Upper Midwest. Therefore, I find the systemwide preference does not preclude the appropriateness of a smaller unit in this case. See “Energy Portfolio” (Wind, Hydro, Natural Gas, Nuclear, and Biomass pages, and facilities linked therein). Xcel Energy. https://my.xcelenergy.com/s/energy-portfolio (accessed Dec. 20, 2021).
IV. 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.\(^{84}\)

3. The Petitioner is a labor organization which 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 purpose of collective bargaining within the meaning of Section 9(b) of the Act:

   Included: All full-time and regular part-time Control Room Supervisors and Nuclear Ops Program Managers employed by the Employer at the Monticello Nuclear Generating Plant.

   Excluded: All managers, confidential employees, and guards and supervisors as defined by 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 160.

A. ELECTION DETAILS

I direct that the election be conducted by mail ballot, in accordance with the stipulation of the parties.

The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit by personnel of the National Labor Relations Board, Region 18, on

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\(^{84}\) Northern States Power Company, a Minnesota corporation, d/b/a Xcel Energy is a Minnesota public utility company with an office and place of business located in Monticello, Minnesota where it is engaged in the business of providing electrical power. During the past year, a representative period, in the course and conduct of its above-described business, the Employer purchased and received goods valued in excess of $50,000 directly from points located outside the State of Minnesota.
December 29, 2021, at 4:30 p.m. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

If any eligible voter does not receive a mail ballot or otherwise requires a duplicate mail ballot kit, he or she should contact the Region 18 office by January 6, 2022, in order to arrange for another mail ballot kit to be sent to that employee.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 18, by close of business, 4:30 p.m., on January 14, 2022.

The mail ballots will be commingled and counted at the Region 18 office located at 212 Third Avenue South, Suite 200, in Minneapolis, Minnesota at 2:00 p.m. on January 18, 2022. The parties will be permitted to participate in the ballot count, which may be held by videoconference. If the ballot count is held by videoconference, a meeting invitation for the videoconference will be sent to the parties’ representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

B. VOTING ELIGIBILITY

Eligible to vote are those in the unit who were employed during the payroll period ending December 15, 2021, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

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

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

C. VOTER LIST

As required by Section 102.67(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.

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85 Petitioner waived all ten days of the 10-day voter list period.
To be timely filed and served, the list must be received by the regional director and the parties by **December 23, 2021**. 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.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlrb.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.nlrb.gov](http://www.nlrb.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

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

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

**D. POSTING OF NOTICES OF ELECTION**

Pursuant to Section 102.67(k) of the Board’s Rules, the Employer must post copies of the Notice of Election 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 10 business 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.

Pursuant to Section 102.5(c) of the Board’s Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency’s web site (www.nlrb.gov), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden. A request for review may be E-Filed through the Agency’s website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. 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.

Although 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, all ballots will be impounded where a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision, if the Board has not already ruled on the request and therefore the issue under review remains unresolved. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: December 21, 2021

/s/ Jennifer A. Hadsall
Jennifer A. Hadsall, Regional Director
National Labor Relations Board, Region 18
Federal Office Building
212 Third Avenue South, Suite 200
Minneapolis, Minnesota 55401-2657

Attachment