I. INTRODUCTION

Metropolitan Security Services, Inc. d/b/a Walden Security ("the Employer") is engaged in the business of providing armed and unarmed security services to commercial and government clients, including the Social Security Administration ("SSA") located in Woodlawn, Maryland ("the SSA complex"). On December 15, 2021, the Federal Contract Guards of America (FCGOA) ("the Petitioner") filed the instant petition with the National Labor Relations Board ("the Board") under Section 9(c) of the National Labor Relations Act ("the Act"), seeking to represent approximately 21 full-time and regular part-time lieutenants employed by the Employer at the SSA complex. The sole issue in this case is whether the lieutenants, as the Employer contends, are supervisors within the meaning of Section 2(11) of the Act.

A hearing officer of the Board held a hearing in this matter by videoconference on January 14, 2022, at which time the parties were given the opportunity to present evidence and to file briefs. Based on the record and applicable Board law, I find that the Employer has not met its burden of establishing that the lieutenants are supervisors within the meaning of Section 2(11) of the Act. Accordingly, I am directing a mail ballot election in the petitioned-for unit. To provide a context for my discussion of these issues, I will first provide an overview of the Employer’s operations. I will then present the relevant facts and reasoning to support my conclusions.

II. FACTS

A. Overview of the Employer’s Operations

In or about 2018, the Employer was awarded the contract to provide security services to the SSA. The Employer provides armed security services for the SSA’s headquarters, including patrolling the grounds and buildings of the SSA complex. The SSA complex is comprised of

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1 The Employer’s name appears as stipulated to by the parties.
2 Unless otherwise noted, all dates are in 2022.
several buildings and exterior grounds. There are three main buildings in the SSA complex: the Main Complex; the Perimeter East Building (“PEB”); and Security West. The Employer’s contract with the SSA requires that the Employer follow a Statement of Work (“SOW”) that is governed by guidelines created by the Federal Protective Service (“FPS”). These guidelines are set forth in the FPS SMART Book, which is a guidebook for security officers. Under the SOW, the Employer must also follow more than 120 post orders, which set forth standard operating procedures governing the Employer’s operations at the SSA complex during security related incidents. In addition, the Employer must follow a myriad of other written directives, including emergency response checklists, supplemental security memoranda, and a SMART manual. All of the Employer’s employees, including supervisors, must be familiar with the guidelines set forth in these materials. A contracting officer representative (“COR”) employed by the SSA is the Employer’s point of contact for the contract.

The Employer maintains a federal services division and a commercial services division. Fin Johnson is the Executive Vice President, and is responsible for the SSA contract; he works at the Employer’s headquarters, located in Chattanooga, Tennessee. Julie Chase is the Employer’s Director of Human Resources. It appears that the day-to-day operations for the SSA complex are handled by five individuals: Robert McKenney, Project Manager; Zachary Graf, Deputy Program Manager/Quality Control Manager; and three (3) site managers. Each site manager is responsible for the Main Complex, PEB, and Security West, respectively, and they report directly to Project Manager McKenney. The lieutenants at issue in this case report directly to the site managers. The Employer also employs 235 protective security officers (“PSOs”). The PSOs are currently represented by the International Union, Security, Police and Fire Professionals of America (SPFPA) and Its Local 555. The Employer and the SPFPA have a current collective-bargaining agreement that is effective, by its terms, from February 24, 2020 to February 23, 2023.

B. Job Duties and Functions of PSOs

As set forth in the SOW, PSOs must have a high school diploma or general equivalency diploma, armed security experience, military experience, and law enforcement or police officer training. Aside from these general requirements, some posts at the SSA complex may require that a PSO have computer access or a particular certification. PSOs are trained by the Employer’s training department, which is supervised by a training manager. PSOs also receive on-the-job training by lieutenants and/or more experienced PSOs. PSOs perform their duties at their assigned posts, which may include a roving patrol of the SSA’s grounds. Among other things, a PSO’s duties include “access control” which involves issues such as identifying and

3 The Employer took over the SSA contract from MVM, the prior contractor for the SSA.
4 When the Employer began operations, it also employed sergeants. In the fall of 2020, the Employer eliminated the job classification of sergeant, and the Employer allowed those in the classification to return to the PSO job classification or become lieutenants.
addressing suspicious items and individuals. PSOs also screen visitors to the SSA complex, monitor security and utility systems, and respond to emergency conditions.

C. Job Duties and Functions of Lieutenants

The SOW requires that lieutenants have the same qualifications as PSOs. In addition, lieutenants must have experience in “supervisory/leadership” in the security field, which is not required for PSOs. Before they are hired, lieutenants and PSOs undergo the same suitability assessment to receive clearance to perform work at the SSA complex. However, the Employer and the SSA designate lieutenants as supervisors. As such, under the SOW, lieutenants, along with the project manager and site manager, are also considered “key personnel” whose qualifications must be submitted to the COR for approval before the Employer can hire a lieutenant. Among other things, lieutenants are responsible for making sure that PSOs have the proper equipment; for ensuring that PSOs are familiar with the Employer’s policies and procedures; for passing on critical information to other lieutenants and PSOs; for making sure that posts are staffed by PSOs; for conducting post inspections; and for handling certain paperwork. Lieutenants may also take a lead role during emergencies, such as weather conditions and evacuations. However, such situations are typically governed by post orders and other directives established by the Employer.

Under the contract, the Employer provides armed services 24 hours per day, seven days a week, and 365 days a year at the SSA complex. PSOs and lieutenants work different shifts to provide this coverage. The Employer maintains an approximate ratio of one (1) lieutenant to ten (10) PSOs. For example, if there are five (5) lieutenants stationed at the Main Complex, there may be 50-60 PSOs assigned to that building. During overnight hours, weekends, and holidays, the Employer assigns one lieutenant to each of the three buildings. The project manager, deputy project manager, and site managers (collectively called “the managers”) generally work at the SSA complex from Monday to Friday, from approximately 6:00 a.m. and 6:00 p.m. Managers are not scheduled to work during the evening shifts, weekends or holidays. Executive Vice President Johnson testified that, during those periods, the lieutenants are the highest ranking individuals at the SSA complex. Johnson also generally testified that when the managers are offsite, the lieutenants are expected to make decisions independently but are required to call the managers, as needed, to keep them abreast of the operations.

D. Scheduling and Staffing Posts

PSOs bid on work days and hours of work based on their seniority, a process which is set forth in the collective-bargaining agreement. Posts are established by the SSA in the SOW, and PSOs do not bid to work a particular post. Since the Employer was awarded the SSA contract, the Employer and the SPFPA have conducted two rounds of bids. Site managers are responsible for the bidding process, but a lieutenant has participated in that process by recording the PSOs’ bids when they submit their selections. After the bidding process, site managers assign PSOs to their posts. A lieutenant may assist a site manager to assign the posts. The lieutenants work in
the supervisor’s office to create a master schedule for the PSOs, but much of this information is pre-determined by the posts, post assignments, and bids. The lieutenants must submit the master schedule to the site manager for approval two weeks prior to posting the schedule. Some lieutenants are assigned as “schedulers,” and they are responsible for the master schedule during their shift.

In order to ensure sufficient coverage or staff a vacant post, lieutenants may also make changes to a PSO’s post during a shift and can do so without a manager’s approval. As such, lieutenants can change a PSO’s post for breaks, emergencies, training, absences from work or lateness. Posts cannot remain vacant, and the Employer is subject to a $100 per hour fine by the SSA if a post is not staffed. While the lieutenants are responsible for making sure that PSOs take their breaks, the frequency of these breaks is determined by the Employer. The Employer also assigns PSOs to work as “breakers,” whose job function is to cover posts when PSOs are on a break.

Executive Vice President Johnson testified that lieutenants independently assess whether a PSO is the “right person” to staff a vacant post, but, aside from a required certification or computer access, the record does not show what such an assessment entails. Moreover, the Employer maintains a list on the computer for such coverage; the lieutenants use this list for staffing purposes, but the details of which are not on the record. To staff a vacant post, the Employer’s practice is for lieutenants to first seek volunteers among part-time PSOs, and then seek volunteers from full-time PSOs. In the event that a lieutenant cannot secure a part-time or full-time employee to staff a post, Executive Vice President Johnson testified that a lieutenant can “holdover,” or require that a PSO work overtime, but there is no specific evidence on the record regarding the frequency of such overtime work. In this regard, it appears that the Employer’s policy is to limit overtime work because the Employer receives a fixed price from the SSA regardless of the number of hours worked by PSOs. Moreover, a PSO’s ability to work overtime is constrained by the fact that a PSO cannot work more than 12 hours in a shift.

In addition, the Employer’s assignment of overtime is limited by the collective-bargaining agreement. As such, Article 6.5(A) states, in part, that if the Employer has less than 48 hours’ notice of a need for overtime, the Employer can, but is not required to, consider the PSO’s seniority to assign overtime. However, under Article 6.5(B), if the Employer has more than 48 hours’ notice of the need for overtime, the Employer is required to assign overtime based on the following order: volunteers, part-time employees, and full-time employees. Furthermore, overtime will be assigned based on a PSO’s seniority within each category. Article 6.5 (C) states

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5 PSOs must notify lieutenants if they will be absent or tardy.
6 As reflected by the Employer’s daily timesheets, PSOs are required to take a 30-minute meal break and two (2) ten (10) minute paid breaks for a shift that is longer than seven (7) hours. The timesheet states that PSOs may be subject to discipline for failing to take such breaks, but there is no evidence PSOs have received such discipline or that a lieutenant has disciplined a PSO or effectively recommended such discipline.
that employees who are not excused from overtime work will be subject to discipline, but there is no evidence that PSOs have been disciplined for refusing to work overtime.

E. Timesheets

When PSOs check in for work, they must sign the Employer’s “Daily Timesheet” and sign a SSA 4072 form called the “Contract Guard Duty Register,” a separate timesheet required by the SSA. Lieutenants must also sign the SSA 4072 when they visit a post. Lieutenants are responsible for putting together the daily timesheets, reviewing them for accuracy, and submitting the timesheets to the site managers for payroll processing purposes. In addition, lieutenants periodically create a packet of SSA 4072 timesheets and review them for accuracy before they are sent to the COR. Project Manager McKenney testified that if there is an error or omission in a daily timesheet or SSA 4072, a site manager may have a “conversation” with the lieutenant about the lieutenant’s failure to correct the discrepancy. However, there is no evidence in the record that any such timesheet discrepancies or “conversations” have occurred, and there is no evidence that a lieutenant has been disciplined for failing to correct an inaccurate timesheet.

F. Leave Requests

As set forth in Article 8, Section 8.5 of the collective-bargaining agreement, full-time PSOs receive eight (8) sick days and four (4) personal days each year. During post inspections, lieutenants pick up leave request forms submitted by the PSOs. Project Manager McKenney testified that the lieutenants are responsible for approving and denying these requests by making sure that coverage can be provided for the time off requested by the PSO. McKenney further testified that a site manager signs the leave form but does not review the lieutenant’s decision to approve or deny the time off request because the lieutenant is in the best position to determine whether coverage is available for the time off requested by the PSO. However, there is no testimony from a site manager on the record to explain the leave approval process. McKenney also testified that lieutenants have denied time off requests, but there are no examples on the record of such denials.

In contrast, Lieutenant Eric Rose testified that the lieutenants sign leave forms received by PSOs only to show that they have received the document. The lieutenant or scheduler then gives a copy of the leave form to the site manager for approval or denial of the leave request. A site manager may ask a lieutenant to check the schedule in order to see if there will be coverage for the time off requested before the site manager approves or denies the leave request. There is one approved leave request form on the record, approved and signed by the lieutenant and site manager on January 3 and 4, 2022, respectively, but the form does not reflect who made the decision to approve the leave request.

G. Post Inspections and Reports

The lieutenants are required to perform post inspections and complete audit sheets for each post, showing any violations of the SOW, including whether PSOs are knowledgeable
regarding the contents of the duty book. A duty book is located at each post and, among other things, contains post orders, SOPs, emergency procedures, and the SMART Book. Lieutenants prepare a questionnaire, subject to the site manager’s approval, that must be completed by PSOs to show that they know the contents of the duty book. As a result of the audit sheet, a lieutenant may instruct a PSO regarding the correct responses to the questionnaire and/or recommend additional training, but such training recommendations are submitted to the site manager for approval. Aside from general testimony by Project Manager McKenney that such training recommendations are typically approved by the site manager, there is no specific evidence on the record regarding any such training recommendations. An audit worksheet completed by Lieutenant Echols on January 12, 2022, was also signed by the site manager. The audit worksheet also contains a signature line for the project manager.

As part of their responsibilities to inspect a post, lieutenants are responsible for observing whether PSOs are out of compliance with the SOW, such as uniform violations. For the most part, Executive Vice President Johnson and Project Manager McKenney testified regarding the lieutenants’ duties and responsibilities when they observe such violations, including references to the Employer’s training materials for lieutenants on the subject. In the event a lieutenant observes that a PSO is out of compliance with the SOW, the lieutenant’s role is to provide any training or assistance to the PSOs regarding how to correct the issue, and a lieutenant may report such violations to the Employer. Project Manager McKenney testified that, in such cases, a lieutenant may have a discussion with a PSO regarding such policy violations, but there is no specific evidence that such discussions have occurred. Moreover, the Employer’s training materials for lieutenants show that the Employer does not consider coaching, counseling, mentoring or training to be disciplinary measures.

McKenney further testified that the lieutenants have the authority to initiate an investigation regarding PSO misconduct, including the taking of statements from witnesses, but the record does not show that a lieutenant has ever initiated such an investigation. Although a lieutenant can also prepare a Form 1013 SSA, a personnel reporting form regarding their observations of a PSO’s misconduct, the Employer does not consider a Form 1013 SSA to constitute discipline. Moreover, the Employer’s own training materials show that after reporting and documenting “observations,” documentation is forwarded to the human resources department for “investigation.” If a lieutenant observes repeated violations by a PSO, a lieutenant completes a Form 1010 SSA, which may include information from a Form 1013 SSA or stand on its own for certain violations. Lieutenants submit a Form 1010 SSA to a manager for further action by the Employer’s corporate department.

The record does not contain any evidence regarding the specific role of the site manager, program manager, or deputy program manager, in this process. However, lieutenants do not make any recommendations on these forms regarding any disciplinary action that should be imposed on the PSO as a result of the Form 1013 SSA, and disciplinary decisions are made by
As such, lieutenants cannot issue discipline to a PSO. Moreover, there is no evidence on the record that a lieutenant has counseled or trained PSOs for violations of the Employer’s policies and procedures or that they have completed Form 1010s or Form 1013s. Project Manager McKenney testified that on one occasion, date unknown, McKenney observed a PSO out of uniform while McKenney was conducting a site inspection at Security West. McKenney testified that a lieutenant may have received a letter of reprimand for not correcting the violation during a post inspection. However, there is no evidence that a lieutenant has received a letter of reprimand or any other discipline for failing to correct any violations of the Employer’s policies and procedures.

Lieutenants are responsible for collecting radios and keys provided by the government that are used by PSOs during their shift, and lieutenants are also responsible for securing such equipment overnight. Project Manager McKenney testified that if equipment is missing, the Employer will investigate the issue and that he may have a “conversation” about missing equipment with the lieutenant to prevent the issue from occurring. While McKenney testified that he was sure such conversations have occurred, he could not think of any specific examples nor is there evidence that a lieutenant has received discipline for missing equipment.

H. Suspension Pending Investigation of a PSO

There is contradictory evidence regarding whether or not a lieutenant can remove a PSO from the jobsite for violations of the SOW without approval from the site manager. Executive Vice President Johnson, who does not work at the SSA complex, testified that lieutenants have such authority to immediately remove PSOs from the job site (akin to a suspension pending investigation) in the event that a PSO violates the SOW, such as insubordination, not having their firearm, or being out of uniform. After removing the PSO, the lieutenant prepares a Form 1010 SSA and may conduct an investigation by gathering statements from the PSO and any other witnesses. There is no evidence that a lieutenant has actually performed such an investigation. A PSO can be suspended with or without pay, a determination that is made by the Employer’s corporate department and/or managers. Johnson further testified that lieutenants make such decisions independently and inform the site manager of such decisions after the fact. Project Manager McKenney also testified that if a PSO is intoxicated or argumentative, lieutenants are expected to make the decision to send the PSO home immediately.

However, Lieutenant Rose testified that the site manager specifically instructed lieutenants that they do not have the authority to remove a PSO from the jobsite without authorization from the site manager. Rather, Rose testified that current policy is for the

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7 The Employer’s training documents for lieutenants show that the Employer considers disciplinary measures to include letters of reprimand, suspension (without pay), reduction in rank and/or reassignment and separation from service.

8 Likewise, lieutenants cannot adjust employee grievances and are not part of the grievance procedure set forth under Article 13.1 of the collective bargaining agreement.
lieutenant to relieve the PSO and to bring the PSO to the site manager’s office for an
investigatory interview conducted by the site manager. Rose testified that the site manager
determines whether to send the PSO home or return the PSO to the post. Rose further testified
that if such an incident occurs when the site manager is not present, lieutenants must also call the
site manager for the site manager’s determination regarding the incident. In either situation,
Rose testified that while a lieutenant may provide a recommendation regarding whether or not to
remove a PSO from the post, it is the site manager’s decision whether to remove a PSO. During
his employment, Rose has not made any recommendations to remove a PSO from a post.

The Employer’s witnesses provided the following instances where lieutenants have
purportedly removed PSOs from the SSA complex without approval from a manager. Executive
Vice President Johnson testified that on November 25, 2021, Thanksgiving Day, a lieutenant,
without approval, sent a PSO home due to behavioral issues. In addition, Project Manager
McKenney testified that on two occasions, dates unknown, lieutenants sent PSOs home, without
approval, for a failing to comply with directives. Neither Johnson nor McKenney provided more
specific details, including the identities of the lieutenants or PSOs in question. Moreover, the
Employer did not provide documentary evidence regarding these incidents. In addition, the
record does not show whether or not the PSOs were suspended with or without pay; what type of
investigation (if any) was conducted by the Employer; or if the PSOs were ultimately disciplined
regarding the incidents or simply returned to their posts.

I. Spot Awards

The Employer does not maintain a formal performance evaluation process for lieutenants
or PSOs, nor is there evidence that an informal process exists. The Employer has a policy of
giving PSOs spot awards, a monetary award for good performance. Although the Employer
solicits lieutenants to provide a written report on a monthly basis if they believe a PSO should
receive a spot award, the Employer has not issued any spot awards to PSOs working under the
SSA contract. It is the discretion of the Employer’s corporate department to decide if a PSO
will receive a spot award, and the record does not show what criteria the corporate department
uses to grant the award.

J. Additional Secondary Indicia of Supervisory Status

Lieutenants wear grey uniforms with an insignia signifying their lieutenant status, and
PSOs wear black uniforms without such insignia. Lieutenants attend certain training sessions,
including a “management and leadership training program” that are not required for PSOs, and
lieutenants also attend weekly meetings with site managers. The COR may communicate with
lieutenants regarding a special detail, such as a delivery, but only after the situation has been
discussed by the COR and a manager. Lieutenants are paid $31.60 per hour. PSOs are paid
$29.20 per hour, as set forth in the collective-bargaining agreement. Lieutenants and PSOs are
eligible to participate in a health insurance plan provided by the Employer, while PSOs can
participate in the SPFPA’s health and welfare fund.
III. ANALYSIS

A. Board Law regarding Supervisory Status

The Act expressly excludes supervisors from its protection. Section 2(11) of the Act defines a supervisor as:

any 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 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 three requirements to establish supervisory status are that the putative supervisor possesses one or more of the above supervisory functions; the putative supervisor uses independent, rather than routine or clerical, judgment in exercising that authority; and the putative supervisor holds that authority in the interest of the Employer. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 712-713 (2001) (citing NLRB v Health Care & Retirement Corp. of America, 511 U.S. 571, 573–574 (1994)).

Supervisory status may be shown if the putative supervisor has the authority either to perform a supervisory function or to effectively recommend the same. The statutory definition of a supervisor is read in the disjunctive. Possession of any one of the enumerated powers, if accompanied by independent judgment and exercised in the interest of the employer, is sufficient to confer supervisory status. Kentucky River, 532 U.S. at 713. Supervisory status may likewise be established if the individual in question has the authority to effectively recommend one of the powers, but effective recommendation requires the absence of an independent investigation by superiors, and not simply that the recommendation be followed. Children’s Farm Home, 324 NLRB 61, 65 (1997).

If such authority is used sporadically, the putative supervisor will not be deemed a statutory supervisor. Coral Harbor Rehabilitation and Nursing Center, 366 NLRB No. 75, slip op. at 17 (2018). The supervisor has to at least act or effectively recommend such action “without control of others and form an opinion or evaluation by discerning and comparing data.” Oakwood Healthcare, Inc., 348 NLRB 686, 692-693 (2006). Judgment is not independent when the putative supervisor follows detailed instructions (e.g., policies, rules, collective-bargaining agreement requirements). Id. at 693. To be independent, “the judgment must involve a degree of discretion that rises above the ‘routine or clerical.’” Id. at 693 (citing J.C. Brock Corp., 314 NLRB 157, 158 (1994)) (quoting Bowne of Houston, 280 NLRB 1222, 1223 (1986), finding that “the exercise of some ‘supervisory authority’ in a routine, clerical, perfunctory, or sporadic manner does not confer supervisory status”). If a choice is obvious, the judgment is not independent. Oakwood, supra, at 693. 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 that are protected under the Act. *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006); *Oakwood*, supra, at 687.

Lastly, the party asserting supervisory status has the burden of proving supervisory authority and must establish it by a preponderance of the evidence. *Kentucky River*, 532 U.S. at 711; *Oakwood*, supra, at 687. The lack of evidence is construed against the party asserting supervisory status. *Dean & DeLuca New York, Inc.*, 338 NLRB 1046, 1047-1048 (2003). In addition, purely general and conclusory evidence is insufficient to establish supervisory status. *Oracle Elevator Holdco., Inc.*, Case 25-RC-248645, slip op. at 2, unpublished (September 30, 2020); *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006); *Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004). Similarly, supervisory status is not demonstrated when the evidence is in conflict or inconclusive. *Entergy Mississippi, Inc.*, 367 NLRB No. 109, slip op. at 2-3 (2019), affd. 973 F.3d 451 (5th Cir. 2020).

B. Lieutenants are not statutory supervisors

1. Lieutenants do not exercise independent judgment to assign work

In *Oakwood*, supra, at 689-690, the term “assign” is described as the “act of designating an employee to a place (such as a location, department or wing), appointing an employee to a time (such as a shift or overtime period) or giving significant overall duties, i.e., tasks, to an employee.” Assignment will support a finding of supervisory status only if the exercise of independent judgment is involved. Independent judgment will be found where the alleged supervisor acts free from the control of others, is required to form an opinion by discerning and comparing data, and makes a decision not dictated by circumstances or company policy. *Oakwood*, supra, at 693; *PPG Aerospace Industries, Inc.*, 353 NLRB 223, 223 (2008). Independent judgment requires that the decision “rise above the merely routine or clerical.” *Oakwood*, supra, at 693.

The record evidence shows that the SSA establishes posts, and PSOs bid on their shifts based on seniority, as set forth in the collective-bargaining agreement. Although lieutenants may participate in the bidding process with the SPFPA, their role is limited to recording the bids placed by the PSOs and assisting site managers to assign PSOs to posts. Likewise, lieutenants prepare the PSOs’ schedule based largely upon such bids and posts, and lieutenants must submit the schedule to the site manager for approval two weeks in advance prior to posting. Although lieutenants can change a PSO’s post during their shift or call a PSO to work to staff a vacant post, the record shows that such decisions are routine and do not require the use of independent judgement. Although Executive Vice President Finn provided conclusory testimony that lieutenants determine whether a PSO is the “right” employee to staff a vacant post, aside from specific computer access or a particular certification held by a PSO, there is no evidence that the skills and knowledge of the PSOs differ so as to require the use of independent judgment to create the schedule or staff a vacant post. *G4S Government Solutions, Inc.*, 363 NLRB 977 (2016), citing *Volair Contractors, Inc.*, supra, at 673, 675, fn. 10 (2004); see also *CNN America, Inc.*, 361 NLRB 439 (2014), enfd. denied, in part, 865 F.3d 740 (D.C. Cir. 2017); *Shaw, Inc.*, 350 NLRB 354, 356, fn. 9 (2007); Cf. *The Arc of South Norfolk*, 368 NLRB No. 32, slip op. at 4) (2019) (program coordinators who determined which employee had the best “fit” or “chemistry” with a client when
making assignments found to be Section 2(11) supervisors); *Entergy Mississippi*, supra, slip op. at 2 (dispatchers found to have exercised independent judgment by using their sole judgment to assign crews based on discretionary factors during emergency situations).

In addition, the lieutenants’ role in scheduling and staffing is constrained by the Employer’s practices and the collective-bargaining agreement covering the PSOs. As such, to staff a vacant post, lieutenants ask part-time and full-time PSOs, in that order, to volunteer for a vacant post before asking a PSO to perform overtime work. See *G4S*, supra, at 977; *Springfield Terrace LTD*, 355 NLRB 937, 943 (2010) (assignments based on employee availability do not involve the exercise of independent judgment). Moreover, overtime work is constrained by the fact that PSOs cannot work more than 12 hours in a shift, and the collective-bargaining agreement dictates certain procedures be followed in the event the Employer has more than 48 hours’ notice that overtime work will be needed. In addition, the Employer did not present any evidence showing the frequency of overtime, and there is no specific evidence to show that a lieutenant can compel a PSO to perform overtime work. The Board has held that calling in employees to volunteer to work without the authority to compel an employee to perform the work does not confer supervisory status. *Golden Crest Healthcare Center*, 348 NLRB 727, 729 (2006); *UPS Ground Freight Inc.*, 365 NLRB No. 113, slip op. at 1-2 (2017). Similarly, although lieutenants may remind PSOs when to take their breaks and staff vacant posts when PSOs are on a break, this appears to be a routine task, particularly given that the Employer determines the frequency of such breaks. The Employer also assigns PSOs, called “breakers”, who specifically cover open posts due to breaks. Moreover, reminding a PSO to take a break does not require the use of independent judgment.

With respect to the granting time off, there is contradictory evidence regarding whether or not the lieutenants sign time-off requests submitted by PSOs, subject to approval by the site manager, or make decisions to grant time off independently. Assuming that lieutenants independently grant time-off requests, the evidence shows that such decisions are made based solely on staffing inadequacies, a decision which is routine and does not require the use of independent judgement. *Modesto Radiology Imaging*, 361 NLRB 888, fn. 4 (2014); *Pacific Coast M.S. Industries, Co.*, 335 NLRB 1422, fn. 13 (2010); *Sam’s Club, Inc.*, 349 NLRB 1007, 1014 (2007). Moreover, granting time off is a secondary, rather than a primary indicia, of supervisory status. *Id.*

Accordingly, I find that the Employer has not met its burden to establish that lieutenants assign work using independent judgment within the meaning of Section 2(11) of the Act.

2. Lieutenants do not responsibly direct PSOs

In *Oakwood*, the Board explained “responsible direction,” as follows: “[i]f a person on the shop floor has ‘men under him,’ and if that person decides ‘what job shall be undertaken next or who shall do it,’ that person is a supervisor, provided that the direction is both ‘responsible’ . . . and carried out with independent judgment.” “Responsible direction,” in contrast to “assignment,” can involve the delegation of discrete tasks, as opposed to overall duties. *Id.* at 690-692. However, an individual will be found to have the authority to responsibly direct other employees only if the individual is *accountable* for the performance of the tasks by the other employee. Accountability means that the employer has delegated to the putative supervisor the authority to direct the work
and the authority to take corrective action if necessary, and the putative supervisor faces the prospect of adverse consequences if the employees under his or her command fail to perform their tasks correctly. \textit{Id.}; see also \textit{Community Education Centers, Inc.}, 360 NLRB 85 (2014).

Although lieutenants conduct post inspections to observe for any violations of the SOW, the PSOs must follow a myriad of policies and procedures for each post as set forth in the duty book. While a lieutenant may relay information to an incoming PSO or instruct them regarding the duty book, there is no evidence that these functions constitute responsible direction or require the use of independent judgment. Moreover, in the event that a lieutenant directs a PSO during an emergency, there is no evidence lieutenants have deviated in any significant manner from the pre-established guidelines established by the duty book or that such direction requires the use of independent judgment. In this regard, there is no evidence on the record that lieutenants have responded to any such emergencies at the SSA complex.

Moreover, there is insufficient evidence to support the Employer’s assertion that lieutenants are held personally accountable for the work performance of PSOs, an element which is required to establish responsible direction. Notably, the record is devoid of any evidence that the Employer evaluates the work performance of lieutenants or PSOs. Moreover, there is no specific evidence that a lieutenant has been disciplined or has otherwise been adversely impacted due to the work performance of a PSO. I consider Project Manager McKenney’s statement that a lieutenant “may have” received a letter of reprimand for failing to correct a PSO who was out of uniform to be insufficient to establish such accountability. Moreover, I consider that the general testimony by Project Manager McKenney that a manager may have “conversations” with a lieutenant for a PSO who fails to turn in equipment, or for payroll discrepancies, to be insufficient to establish responsible direction. \textit{G4S}, supra, at 977; see also \textit{Cook Inlet Tug & Barge, Inc.}, 362 NLRB 1153 (2015) (testimony lacking in specific examples regarding how captains were held accountable and hypothetical testimony insufficient to establish supervisory status).

Although lieutenants supply PSOs with questionnaires regarding their knowledge of the Employer’s policies during post inspection audits, site managers must approve the questionnaire. Moreover, if a PSO does not answer a questionnaire correctly, the record shows, at most, that lieutenants can instruct PSOs regarding the correct answers or suggest additional training. Such training must be approved by the site manager, and aside from a conclusory statement by Project Manager McKenney, there is no evidence that site managers automatically accept a lieutenant’s training recommendations. More importantly, the ability to train or recommend training does not establish supervisory status under the Act. \textit{Pacific Coast M.S. Industries, Co.}, 355 NLRB 1422, 1423, fn. 13 (2010); \textit{F.A. Bartlett Tree Expert Co.}, 325 NLRB 243, 244 (1997) (crew foremen who provided less experienced employees with on-the-job training are not statutory supervisors).

Accordingly, I find that the Employer has not met its burden of proving that lieutenants responsibly direct employees within the meaning of Section 2(11) of the Act.
3. Lieutenants do not reward or effectively reward PSOs

Although lieutenants are asked by the Employer’s corporate department to provide a monthly written recommendation of PSOs whom they believe deserve a monetary award called a “spot award,” a decision whether or not to grant a spot award is made by the Employer’s corporate department. Moreover, none of the PSOs who work at the SSA complex have received a spot award. Moreover, the record does not show what criteria the Employer’s corporate department uses to grant a spot award. Absent specific evidence that a superior’s recommendation directly correlates with the granting of a monetary award, a party cannot establish supervisory status under the Act. See *Elmhurst Extended Care Facilities, Inc.*, 329 NLRB 535 (1999). I consider *Bayou Manor Health Center*, 311 NLRB 955 (1993), cited by the Employer, to be inapposite. In that case, the Board found that LPNs were statutory supervisors because they completed evaluations that directly affected CNAs’ salaries, a fact not established in the present case.

Accordingly, I find that the Employer has not met its burden of establishing that lieutenants have the authority to reward employees, or effective recommend that employees receive a reward, within the meaning of Section 2(11) of the Act.

4. Lieutenants do not discipline or effectively discipline PSOs

Although Executive Vice President Johnson and Project Manager McKenney provided generalized testimony that lieutenants are required to correct PSOs if they violate the Employer’s policies and procedures, report continuing infractions, and conduct disciplinary investigations, there are no specific examples showing that lieutenants have engaged in such conduct. Moreover, there is no evidence that such authority directly leads to the discipline of a PSO or that a lieutenant can effectively recommend discipline. In addition, the Employer did not present a site manager, who is the lieutenants’ direct supervisor, to testify regarding the lieutenant’s obligations to observe and report violations of the SOW. Rather, the evidence shows that the Employer’s corporate department independently investigates and determines whether or not a PSO will receive discipline. The Board has held that merely observing and reporting substandard performance or misconduct that does not automatically lead to further discipline or adverse action against the employee does not establish supervisory authority. *Veolia Transportation Services*, 363 NLRB 902 (2016); *Modesto Radiology Imaging, Inc.*, 361 NLRB 888, 889 (2014); *Willamette Industries, Inc.*, 336 NLRB 743, 744 (2001). Rather, it is well-settled that the authority to discipline must be established by a showing that the putative supervisor’s participation in the disciplinary process leads to personnel action without independent review or investigation by other managerial or supervisory personnel. *Mountaineer Park, Inc.*, 343 NLRB 1473, 1474-75 (2004). Moreover, a lieutenant’s correction or instruction regarding the Employer’s policies and procedures is insufficient to establish supervisory status. *Los Angeles Water and Power Employees’ Ass’n*, 340 NLRB 1232, 1234 (2003).

Although the Employer’s witnesses provided general and conclusory testimony that a lieutenant has the authority to remove a PSO from their post without approval from the site
manager, there is contradictory and inconclusive testimony regarding this issue. Executive Vice President Johnson and Project Manager McKenney testified regarding three occasions that lieutenants removed PSOs from their post without approval from a manager. However, the Employer did not provide any documentary evidence or specific details regarding the PSO’s removal; moreover, there is no evidence to show whether or not the PSO in question was suspended without pay or whether the PSO was ultimately disciplined regarding the incident in question. In contrast, Lieutenant Rose testified that lieutenants were instructed by site managers that a PSO cannot be removed from a post without authorization from a manager. Project Manager McKenney testified that since PSOs are armed, a lieutenant must have the authority to immediately remove a PSO from the SSA if a PSO is intoxicated or argumentative when a manager is offsite. However, assuming that a lieutenant can independently remove a PSO under these circumstances, the Board has held that such decisions are so obvious that they do not require the use of independent judgment. *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995) (authority to order intoxicated employees to leave does not establish supervisory status).

Accordingly, I find that the Employer has not met its burden to establish that the lieutenants have the authority to discipline PSOs, or effectively recommend discipline, under Section 2(11) of the Act.

### 5. Secondary Indicia is Insufficient to Establish Section 2(11) Status

The Employer relies in large part upon secondary indicia to support its contention that the lieutenants are statutory supervisors. However, secondary indicia of supervisory authority may lend support to a conclusion regarding supervisory status when, at least one of the primary indicia set forth in Section 2(11) is present, but do not themselves establish supervisory status. *McClatchy Newspapers, Inc.*, 307 NLRB 773 (1992); See also *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1048 (2003). In this case, I find that the Employer has not met its burden of establishing that any primary indicia of supervisory status under Section 2(11) of the Act is present; as such, I find that the Employer cannot rely upon secondary indica to support its assertion of supervisory status.

The lieutenants are responsible for the routine and clerical function of reviewing timesheets for accuracy, a function that does not require the use of independent judgment. See

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9 Although the Employer argues that Rose is not a reliable witness, credibility is not assessed in pre-election hearings, which are merely fact-finding. *Marian Manor for the Aged and Infirm, Inc.*, 333 NLRB 1084 (2001).
10 The Employer cites to a number of cases in support of its argument regarding the lieutenants’ role in reviewing timesheets and requests for time off that are distinguishable from the facts herein. In *SAIA Motor Freight, Inc.*, 334 NLRB 979 (2001), the Board did not pass on whether or not the dock foreman in question was a statutory supervisor finding that the dock foreman was the employer’s agent in the context of a Section 8(a)(1) violation of the Act. Moreover, the Employer cites to unreviewed decisions from Regional Directors finding supervisory status where there was evidence of primary indicia, in addition of secondary indicia of supervisory status. *Asplundh Tree Expert Co.*, 11-RC-071606 (February 8, 2012) (finding crew forepersons,
Pacific Coast M.S. Industries, Co., supra at fn. 13. Although the Employer and the SSA designate lieutenants as supervisors, actual authority, rather than job descriptions or titles, determines supervisory status. Western Union Telegraph Co., 242 NLRB 825, 826 (1979).\(^{11}\)

Likewise, although the Employer cannot hire a lieutenant without approval from the SSA, the record does not show what type of scrutiny, if any, is performed by the SSA, nor is such review sufficient to establish supervisory status. While lieutenants may attend lieutenant-only trainings or meetings with site managers, attending a management or supervisory meeting, standing alone, does not establish supervisory authority. Dean & Deluca, supra, at 1048.\(^{12}\)

The lieutenants and PSOs receive different benefits. However, these differences appear to be due to the fact the PSOs are covered by a collective-bargaining agreement, and such differences are alone insufficient to establish supervisory status. Cf. American River Transportation, Co., 347 NLRB 925, 927 (2007) and Burns, supra, at 570. In addition, lieutenants are responsible for a significant amount of clerical work and other responsibilities that appear to account for the additional $2.40 per hour received by lieutenants. Moreover, the fact that lieutenants and PSOs wear different uniforms, or that lieutenants use an office for routine clerical work is insufficient to establish supervisory status. Cf. McClatchy, supra, at 773 (press operators with access to supervisory offices who exercised independent judgment to assign work and responsibly directed employees were statutory supervisors).

With respect to the Employer’s argument that the lieutenants are the highest-ranking officials at the SSA complex when managers are offsite, the PSOs’ job duties are routine and governed by the Employer’s extensive and detailed policies and procedures.\(^{13}\) In addition, when managers are offsite, lieutenants can contact them by telephone. Moreover, managers, rather than lieutenants, are the point of contact with the COR, the representative of the SSA. The Employer also overstates the significance of the ratio of lieutenants to statutory supervisors. The Employer contends that if lieutenants were not determined to be statutory supervisors, that would

who maintained timesheets, were statutory supervisors because they disciplined employees); National Association of County and City Health Officials (NACCHO), 05-RC-269817 (May 27, 2021) (finding SPAs, who approved timecards and time off, were statutory supervisors because they rewarded employees).

\(^{11}\) In G4S Regulated Security Solutions, 362 NLRB 1072, 1078 (2015), enf’d. 670 Fed Appx. 697 (11th Cir. 2016), cited by the Employer, the Board held that “paper authority” and job titles, without more, does not establish supervisory status.

\(^{12}\) The cases cited by the Employer, which are unreviewed decisions by Regional Directors, do not warrant a contrary result. See Burns International Security Services, Inc., 278 NLRB 565, 570 (1986) (finding that sergeants, who attended management meetings, exercised authority to evaluate and discipline employees and were statutory supervisors); Medicwest Ambulance, Inc., 28-RC-006536 (September 11, 2007) (finding Section 2(11) status where supervisors, who attended management meetings, issued discipline).

\(^{13}\) In Millard Refrigerated Services, Inc., 326 NLRB 1437 (1998) and Mary’s Home, Inc., 255 NLRB 1139 (1981), enf’d. denied, 690 F. 2d 1062 (4th Cir. 1982), cited by the Employer, in addition to evidence that the putative supervisor was the highest ranking official at certain times, there was also primary indicia to establish supervisory status.
increase the employee-to-supervisor ratio. That point, however, exists in any case in which the supervisory status of individuals is at issue. Furthermore, I consider *Formco, Inc.*, 245 NLRB 127, 128 (1979), cited by the Employer, to be distinguishable. In that case, aside from the ratio of supervisors to rank-and-file employees, the Board found that foreman were statutory supervisors because they had the authority to adjust grievances, a primary indicia of supervisory status. Moreover, in that case, it appears that aside from the foreman, the plant superintendent was the only individual responsible for supervising the rank-and-file employees. In this case, there are site managers, the Deputy Program Manager, and the Project Manager. Finally, although the Employer contends that its evidence supporting supervisory status is “unrebutted” by the Petitioner, it is the Employer’s burden to establish that the lieutenants meet the criteria necessary to establish that the lieutenants are supervisors under the Act.

Accordingly, I find that the Employer has not met its burden of establishing that the lieutenants are statutory supervisors under Section 2(11) of the Act, and that the petitioned-for unit is appropriate.

IV. CONCLUSIONS

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 herein.\(^{14}\)

3. The parties stipulated, and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. The parties stipulated, and I find that the Petitioner is qualified to represent the petitioned-for unit, which is exclusively composed of individuals employed as guards, within the meaning of Section 9(b)(3) of the Act.

\(^{14}\) The parties stipulated, and I find, that the Employer, Metropolitan Security Services, Inc. d/b/a Walden Security, a corporation with an office and principal place of business in Chattanooga, Tennessee, is engaged in the business of providing armed and unarmed security services to commercial and government clients, including at the Social Security Administration facility currently located in Woodlawn, Maryland, the only location involved in this proceeding. In conducting its operations during the 12-month period ending December 31, 2021, the Employer performed services valued in excess of $50,000 in states other than the State of Tennessee. Additionally, the parties stipulated, and I find, that the Employer is an employer engaged in commerce within the meaning of Sections 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.
5. There is no collective-bargaining agreement covering any of the employees in the unit, and there is no contract bar or other bar to an election in this matter.

6. 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.

7. 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 lieutenants employed by the Employer at the Social Security Administration facility located in Woodlawn, Maryland.

   **Excluded:** All other employees, office clerical employees, managerial employees, professional employees, and supervisors as defined in the Act.\(^{15}\)

**V. 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 they wish to be represented for purposes of collective bargaining by the Federal Contract Guards of America (FCGOA).

**A. Election Details**

The election will be conducted by United States mail.\(^{16}\) The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. Accordingly, on Thursday, March 17, 2022, at 3:00 p.m., ballots will be mailed to voters by National Labor Relations Board, Region 05, from its office at 100 S. Charles Street, Bank of America Center, Tower II, Ste. 600, Baltimore, MD 21201. Voters must sign the outside of the envelope in which the ballots returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by March 24, 2022, should communicate immediately with the National Labor Relations Board by either calling the Region 05 Office at (410) 962-2822 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

All ballots will be commingled and counted at the Baltimore Regional Office on Thursday, April 7, 2022 at 3:00 p.m. In order to be valid and counted, the returned ballots must be received in the Baltimore Regional Office prior to the counting of the ballots. Due to the extraordinary circumstances of COVID-19 and the directions of state or local authorities, I

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\(^{15}\) The parties stipulated to the exclusions from the unit.

\(^{16}\) The parties stipulated at the hearing to a mail ballot election, and I find that it is appropriate in this case.
further direct that the ballot count will take place virtually, on a videoconference platform (such as WebEx, Skype, etc.) to be determined by the Regional Director. Each party will be allowed to have one observer attend the virtual ballot count.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending February 26, 2022, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board’s designated office.

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 and, in a mail ballot election, before they mail in their ballots to the Board’s designated office; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

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

To be timely filed and served, the list must be received by the Regional Director and the parties by Monday, March 14, 2022. The list must be accompanied by a certificate of service showing service on all parties. The Region will no longer serve the voter list.\(^{17}\)

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

\(^{17}\) The Petitioner agreed to waive the 10-day period that they are permitted to receive the voter list prior to the opening of the polling period.
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.

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

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

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

D. Posting of Notices of Election

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

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

RIGHT TO REQUEST REVIEW

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

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

Neither the filing of a request for review nor the Board’s granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. 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 at Baltimore, Maryland this 10th day of March, 2022.

(SEAL) /s/ Sean R. Marshall
Sean R. Marshall, Regional Director
National Labor Relations Board, Region 05
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