DECISION AND DIRECTION OF ELECTION

I. INTRODUCTION

Custom Aire, Inc. (the Employer) provides residential and commercial HVAC services to its customers from its facility in Bensalem, Pennsylvania (Facility). On November 8, 2021, SMART, Sheet Metal Workers Local 19 (Petitioner or Union) filed the instant petition with Region Four of the National Labor Relations Board (the Board) under Section 9(c) of the National Labor Relations Act (the Act) seeking to represent a unit of service technicians, service technician apprentices, duct cleaning/parts delivery employees, installation technicians, installation helpers, duct fabricators, and parts and supplies transport employees employed by the Employer at the Facility. There are approximately 18 employees in the petitioned-for unit and four additional employees whose inclusion in the unit is in dispute.

The Employer argues that four classifications – dispatcher, senior service field supervisor, sales consultant/senior install field supervisor, and sales consultant/install field supervisor – should be included in any appropriate unit. The Petitioner counters that those individuals are supervisors within the meaning of Section 2(11) of the Act, and therefore must be excluded from the unit. The parties also disagree as to the proper method of conducting the election: the Petitioner seeks a manual election, whereas the Employer contends that a mail-ballot election is appropriate given

1 The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act.
2 The petition sought a unit of “all employees employed by the employer” at the Facility. He parties stipulated, and I find, that the above-enumerated classifications are appropriately included in the unit. At the hearing’s conclusion, the Petitioner asserted for the first time that the dispatcher, senior service field supervisor, sales consultant/senior install field supervisor, and sales consultant/install field supervisor lack a community of interest with the petitioned-for unit. The Hearing Officer correctly precluded the Petitioner from presenting evidence regarding this issue because it failed to raise it in its Responsive Statement of Position, as Section 102.66(d) of the Board’s Rules and Regulations requires.
the continuing COVID-19 pandemic. The Employer asserts that it will not comply with the requirements set forth in *GC Memorandum 20-10* for conducting a manual election during the pandemic.

On November 30 and December 8, 2021, a hearing officer of the Board held a hearing in this matter, and the parties submitted post-hearing briefs which I have considered. The parties were advised that the method of election would not be litigated, but they were permitted to state their positions regarding the appropriateness and feasibility of conducting a manual election.

As explained below, based on the record and relevant legal precedent, I find that the Petitioner has failed to carry its burden of establishing that the dispatcher, senior service field supervisor, sales consultant/senior install field supervisor, and sales consultant/install field supervisor are supervisors within the meaning of Section 2(11) of the Act. Accordingly, I am directing an election in a unit that includes those employees. In addition, I have determined that the election should be conducted by mail ballot. 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. OVERVIEW OF THE EMPLOYER’S OPERATIONS

The Employer provides HVAC installation and repair services to residential and commercial customers. All of its employees report to the Employer’s Facility. President and CEO Robert Schneider is the highest-ranking Employer representative. Although Schneider lacks hands-on HVAC work experience, he has worked for the Employer since about 1986, including as its chief financial officer. Mike Wieczorek serves as vice president, Rosemary Black is the office manager, Debbie Schlossberg works as a bookkeeper, and another unidentified employee handles maintenance customers.

There are four departments at the Employer’s facility: installation, service, duct cleaning, and parts delivery.

A. Installation Department

The installation department sells and installs HVAC equipment. Charles Dixon holds the position of sales consultant/senior install field supervisor and John Ferris is the sales consultant/install field supervisor (collectively, sales consultants/install field supervisors). The department also includes four installation technicians, four installation helpers, and one duct fabricator. The installation technicians and helpers install the equipment Dixon and Ferris have sold to customers. The duct fabricator works at the Employer’s facility making sheet metal for duct installation. All of the installation department employees, including Dixon and Ferris, report to President/CEO Schneider and Office Manager Black.

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3 Unless otherwise stated, all dates are in 2021.
4 The determination of the method of election is within the Regional Director’s discretion and therefore was not litigated at hearing. NLRB Casehandling Manual (Part Two), Representation Proceedings, Section 11301.2.
B. Service Department

The service department repairs and services HVAC equipment, including oil and gas units. Within the service department, Anthony Farry is the senior service field supervisor and Antoine Hayes is the dispatcher. In addition, the Employer employs five service technicians, one of whom is an apprentice. The dispatcher takes service calls and assigns jobs to Farry and the service technicians. When they are not in the field, Farry and the service technicians work in the dispatch office ordering parts for service jobs. All of the service department employees, including Farry and Hayes, report directly to President/CEO Schneider.

C. Duct Cleaning and Parts Delivery Departments

The duct cleaning department includes two duct cleaning/parts delivery employees who clean duct work, deliver and pick up parts and, when needed, assist technicians with installation or service jobs. The parts delivery department comprises two parts and supplies transport employees who drop off and pick up parts and equipment. All of the employees in these two departments report to Vice President Wieczorek.

D. Restructuring of the Service and Installation Departments

In the fall of 2021, the Employer restructured its service and installation departments. Until October 26, Thomas Miller served as installation manager. During that period, Dixon and Ferris worked only as sales consultants. After Miller’s departure, Dixon and Ferris assumed Miller’s technical and field support responsibilities and were designated sales consultants/install field supervisors; President/CEO Schneider took on Miller’s remaining job functions. For a brief period before his departure, Miller also worked as the service manager after the prior service manager, John Keppol, resigned. According to Schneider, he decided not to hire a new service manager to replace Miller, and instead he assigned that position’s technical and field support responsibilities to Senior Service Field Supervisor Farry. Schneider took over the remaining functions of the service manager.

III. FACTS RELEVANT TO SUPERVISORY STATUS

A. Dispatcher

Since his start date in mid-November, Dispatcher Antoine Hayes has been responsible for taking customer calls for service, scheduling the work, and assigning the jobs to technicians. Hayes uses a computer program called Payzer, also known as the service calendar or board, to assign service jobs. Each evening, he creates the service schedule for the following day based on the number and locations of the jobs, and the customers’ and technicians’ availability. Hayes transmits technicians’ job assignments to them on Employer-furnished iPads. Generally, he sends only one service technician to each job. It appears that customers with maintenance contracts are given priority over other service jobs, but the highest priority is given to emergency calls by

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5 While Miller testified Schneider told him that the Employer posted the open service manager position, Schneider denied making that statement. The Union also offered into evidence a purported internet posting for the vacant service manager position, but the posting is undated.
customers without heat or air conditioning. When Hayes receives an emergency call, he adjusts the schedule to accommodate it. He selects a service technician to handle the call based on the customer’s and technicians’ availability as well as the customer’s geographic proximity to other scheduled service calls.

Hayes has no experience or training in performing HVAC work. President/CEO Schneider trained Hayes as a dispatcher by imparting information to him about each technician’s skills and experience. With respect to oil and hydronic work, which require specialized knowledge and experience, there is one service technician who is experienced in each, and therefore Hayes automatically assigns each type of work to the respective technician with the requisite skill. Aside from this specialized work, employees in the service department have varying levels of experience, from the service technician apprentice to Senior Service Field Supervisor Farry, who has about 38 years of HVAC experience. Given his experience, Farry gets the most difficult jobs, which he typically volunteers to take before they are dispatched to him. If there are conflicts with the schedule or Hayes has any questions, he consults with the service technicians or Farry prior to assigning the work. When a service technician is unexpectedly absent from work, Hayes either reschedules the technician’s assigned job or reassigns it to a different technician based on the availability of the other technicians and the locations of their scheduled work.

Hayes does not authorize overtime; service technicians remain on a job until the work is completed, and President/CEO Schneider approves the overtime when he reviews employee timecards. Hayes has no authority to assign an installation technician to perform service work or a service technician to perform installations. Sometime in November, installation technician Erich Murphy performed service work for two days, but Schneider, not Hayes, transferred Murphy to that job. Schneider also approves all requests for time off.

Hayes is paid $22.50 per hour, whereas service technicians are paid within a range of $21.00 to $30.00 per hour. Although one previous dispatcher was salaried, Hayes’ immediate predecessor appears to have been paid on an hourly basis.

B. Senior Service Field Supervisor

On about October 27, President/CEO Schneider hired Senior Service Field Supervisor Farry. Farry assists service technicians with difficult jobs that the technicians cannot repair on their own, providing them training in the process. Farry is paid about $30.00 per hour, and it appears he receives overtime pay like the other service technicians. Farry also wears the same uniform as the other service technicians. About 85 to 90 percent of his work is done in the field, and the rest of the time he works in the dispatch office helping service technicians by locating and ordering parts that are difficult to find. At the start of their shift, all service technicians go to the dispatcher’s office to pick up the parts they will need before they drive to their assigned jobs. At

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6 This same information about the technicians’ skills is detailed in a publicly posted document at the Facility, according to Senior Service Field Supervisor Farry.
7 Hydronic work involves the use of warming water, as opposed to air, to heat a home.
8 Sometime in 2012 or 2014, Farry worked for the Employer for about two months as a salesman.
9 Former Installation Manager Miller, by contrast, was paid a $75,000 salary and a commission for certain jobs.
that time, Farry conducts an informal 10- to 15-minute meeting with the service technicians in the dispatch office to answer any questions they have about their work assignments.

With respect to assigning work, Senior Service Field Supervisor Farry lacks authority to change the service calendar created by Dispatcher Hayes. The Union presented evidence of one instance when Farry allegedly assigned work to the duct cleaning/parts delivery employees, Gregory Hood and Tom Maxell. In general, when Hood is not performing duct-cleaning work, he will volunteer to assist Farry or Hayes. Sometime in October or November, Farry asked Hood and Maxell to go to a service job involving a hot water heater. Hood told Farry that he was not very familiar with that type of work, but he went with Maxell as requested. When the two employees were unable to fix the hot water heater, Farry went to the customer’s home himself and determined that the hot water heater could not be repaired, and Hood and Maxell returned to the Employer’s Facility. Hood testified that he considers Farry to be the service manager and he believes he must follow Farry’s instructions.

With respect to effective recommendations to hire, in around October or November, Farry recommended a friend for hire to President/CEO Schneider, and Schneider interviewed and hired the employee. There is no evidence that Farry took part in the interview or the decision to hire the employee, and any employee can recommend a job applicant to Schneider as Farry did. There also is no evidence that the former service manager had authority to hire employees. Schneider testified that, aside from Vice President Wieczorek, whose hiring recommendations Schneider generally accepts, Schneider makes independent hiring decisions. Similarly, Schneider conducts verbal performance evaluations of the service department employees on their anniversary dates and decides whether to grant wage increases, and the amounts. There is no evidence that Farry participates in either of those activities, nor is there evidence that the former service manager played a role in employee evaluations and wage increases. There is also no evidence that Farry has the authority to transfer or promote employees.

In contrast to Farry, when former Installation Manager Miller temporarily served as the service manager, he did have the authority to change the service calendar, to re-assign employees to different jobs within the installation or service departments, and to temporarily transfer employees between those two departments. In late 2020 or early 2021, Miller also recommended to Schneider that an installation technician be promoted to service technician, and Schneider promoted the employee.

C. Sales Consultants/Install Field Supervisors

Sales Consultant/Install Field Supervisor John Ferris was initially hired as a sales consultant in about July 2019, and Sales Consultant/Senior Install Field Supervisor Charles Dixon was hired as a sales consultant in about June 2021. Their current job functions and responsibilities are essentially the same. In their sales consultant function, Ferris and Dixon are responsible for providing quotes to customers for the installation of HVAC equipment, ordering and verifying equipment for jobs, and asking Office Manager Rosemary Black to schedule installation jobs. As install field supervisors, Ferris and Dixon work in the field assisting technicians with installation work, as needed. They also do estimates of the number of days required to complete a job prior to the preparation of a job quote, a function previously done by former Installation Manager Miller.
Additionally, Ferris and Dixon attend sales meetings with President/CEO Schneider, Vice President Wieczorek, and Office Manager Black where they primarily discuss unsold customer quotes, that is, jobs where they gave a price quote but the prospective customer did not sign a contract.

Since about October 27 or 28, when the installation manager’s employment ended, Ferris and Dixon have been responsible for assisting technicians with troubleshooting and ensuring they have the necessary equipment. At that time, Schneider announced to the installation technicians that Ferris and Dixon would be assisting them with those tasks. Ferris also performed sheet metal fabrication work beginning mid-November due to the duct fabricator’s absence from work with an injury. Ferris spends about 60 percent his time performing sales work and 40 percent engaged in technical and field support functions. According to duct cleaning/parts delivery employee Gregory Hood, when Ferris was hired, Schneider told him that Ferris was taking over Miller’s duties. Hood further testified he believes he is required to follow Ferris’s and Dixon’s instructions.

Installation technicians are each paired with a helper. Office Manager Black creates the installation schedule, or roster, on the computer. Only Schneider, Black, and Vice President Wieczorek can edit the schedule. Each evening, Black emails the installation technicians their job assignments for the following day. Black also prepares and sends technicians a “job pack” with paperwork related to the installation job. Ferris testified that if an installation technician were unable to work a particular day, Ferris could pair two technicians based on their availability, but only with prior approval from Black or Schneider. In actuality, none of the installation technicians have been absent from work since the sales consultant/install field supervisors assumed their new positions.

In general, the installation technicians all have the same skill set. About 90 percent of their work involves routine two-day jobs, such as changing out an existing air-conditioning unit or furnace. Office Manager Black assigns this routine work to installation technicians without consulting Ferris or Dixon about the assignment. Black also assigns all light commercial work, hydronic boiler heating work, and oil-fed work to one of three installation technicians, each of whom is skilled in one of these areas. About 10 percent of the work does not fall within those three areas but is more complex, such as installing a new duct system or an oil-to-gas conversion. For such non-routine work, Ferris sometimes will request that Office Manager Black assign a particular crew that he considers efficient based on his experience working with them in the field. In these circumstances, Black provides Ferris with the crew he requested about 70 to 80 percent of the time, based on the crew’s availability relative to Dixon’s already-scheduled installation jobs.

Sometime in October or November, Sales Consultant/Install Field Supervisor Ferris told duct cleaning/parts delivery employees Gregory Hood and Tom Maxell to go to a customer’s facility to clean duct work prior to the installation of a new unit. The record does not show if Vice President Wieczorek, who supervises and assigns work to those employees, approved the assignment. When Hood and Maxell arrived at the jobsite, Hood initiated a video phone call with Ferris to ask where they should start the job, and Ferris pointed to the area of duct where they should start cleaning. Hood and Maxell have performed work on other installation jobs where they

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10 As such, they are often referred to as lead or senior technicians.
have received similar direction from senior installation technicians. For example, in November, a senior installation technician instructed Hood how to assist with the installation of a roof-top unit. Similarly, on Hood’s first day of work on September 16, Vice President Wieczorek approved Sales Consultant/Senior Install Field Supervisor Dixon’s request that Hood and Maxell work as handymen on a two-day installation job. Dixon, who was at the job site, physically showed Hood and Maxell how to put some “flex” in the attic area, provided feedback, and at 3:30 p.m. – a half hour before Hood's shift ended – told them they could go home and should return to the jobsite the following Monday at 7:30 a.m.

Sales consultants receive a weekly base salary and a monthly commission check based on their closed sales. Ferris’s weekly base salary is $300 per week, and Dixon’s is $800. Their commissions directly correspond to the duration of a job compared to the sales consultant’s estimated time. Hence, if a sales consultant underestimates the amount of time required to complete a job, the sales consultant’s commission is reduced. Conversely, if a job is completed in less than the estimated time, the sales consultant’s commission increases. Since about 90 percent of the installation jobs are routine two-day jobs, jobs rarely exceed the projected hours. When estimate errors do occur, they are usually attributable to the sales consultant, not the installation technicians. There is no evidence that the terms and conditions of employment of installation technicians are affected if a job is not completed on time.

When Ferris and Dixon assumed their new duties, President/CEO Schneider informed Ferris that it was Schneider’s responsibility to hire, fire, lay off, discipline, and review employees. At some point during his employment, Ferris recommended two individuals to work in the service department, and both were interviewed and hired by Schneider without Ferris’s involvement. In contrast, Miller testified that when he was employed as installation manager, he independently hired and discharged an installation technician. Miller’s written job offer for the installation manager position also stated that he was responsible for disciplinary actions, including termination, and he exercised this authority to discipline employees. Neither Ferris nor Dixon have authority to conduct performance evaluations or grant wage increases to installation department employees. While former Installation Manager Miller provided input to Schneider regarding the work performance of installation technicians, suggested wage increases, and occasionally attended performance reviews conducted by Schneider, Schneider independently determined those employees’ wage increases. Currently, Schneider is solely responsible for conducting performance evaluations, without input from the sales consultants/install field supervisors, and for granting wage increases for installation department employees.

D. Meeting between the Petitioner and the Employer about the Petition

Around November 10 or 11, at President/CEO Schneider’s request, the Petitioner and the Employer met to discuss the petition filed in this case. Schneider invited Senior Field Service

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11 Installation technicians are paid $20.00 to $34.00 per hour, and installation helpers are paid $20.00 to $22.00 per hour. The duct fabricator is paid $32.00 per hour.

12 Former Installation Manager Miller provided general testimony that he would raise such job costing issues during meetings with President/CEO Schneider, Vice President Wieczorek, Office Manager Black, Ferris, and Dixon.
Supervisor Farry and Sales Consultant/Install Field Supervisors Dixon and Ferris to attend the meeting to listen and help him understand the petition. According to Union representatives present at the meeting, Schneider introduced Farry, Ferris, and Dixon by their titles, said they were part of Schneider’s management team, and added that he takes into consideration everything his management team says. According to the Union witnesses, Farry, Dixon, and Ferris asked some questions during the meeting, a point admitted by the Employer’s witnesses.13

IV. ANALYSIS REGARDING SUPERVISORY STATUS

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; uses independent, rather than routine or clerical, judgment in exercising that authority; and 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)). The Board will not construe the statutory language too broadly because an 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 Healthcare, 348 NLRB 686, 688 (2006).

The statutory definition of a supervisor is read in the disjunctive, so that 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 be shown not only if the alleged supervisor has the authority to perform a supervisory function, but also if he has the authority merely to effectively recommend one. Effective recommendation requires the absence of an independent investigation by superiors, not simply that the recommendation is ultimately followed. Children’s Farm Home, 324 NLRB 61, 61 (1997). If authority is used only 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).

13 A Union representative testified that Farry, Dixon, and Ferris asked whether the Employer could terminate employees, whether the three of them would have a right to vote in the election, and about the Union’s hiring hall.
To show independent judgment, the supervisor must 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, such as those found in policies, rules, collective-bargaining agreement provisions, or verbal instructions from a higher authority, and it must involve a degree of discretion that rises above the routine, clerical, or perfunctory. Id. at 693. If a choice is obvious and self-evident, or it is made solely on the basis of equalizing workloads, the judgment is not independent. Ibid.

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. Purely conclusory evidence is insufficient to meet the burden of proof. 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. The Dispatcher is not a Statutory Supervisory

The only issue as to the dispatcher is whether he assigns work to the service technicians and senior service field supervisor using independent judgment; there is no evidence that he possesses any other supervisory authority delineated by Section 2(11).

In Oakwood, supra at 689, 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 it involves the exercise of independent judgment, which requires that the alleged supervisor exercises that authority free from the control of others, forms an opinion by discerning and comparing data, and makes a decision not dictated by circumstances or company policy. Id. at 692-693. Independent judgment requires that the decision “rise above the merely routine or clerical.” Id. at 693.

The record evidence shows that the dispatcher’s assignment of service jobs to service technicians is generally routine and clerical in nature and does not require the use of independent judgment. The dispatcher assigns most service calls based on the availability of the customer, the availability of the service technicians, and the customer’s location. See Springfield Terrace LTD, 355 NLRB 937, 943 (2010) (assignments do not require independent judgment where they are based on employee availability rather than assessment of employee skill in relation to work needs). Moreover, the dispatcher prioritizes emergency service calls from customers who do not have heat or air conditioning pursuant to the Employer’s policy. Armstrong Machine Co., 343 NLRB 1149, 1150 (2004) (assignments of work based on employer’s priority list and employees’ commonly known skills and experience do not require independent judgment); cf. Entergy Mississippi, supra, slip op. at 2 (dispatchers exercised independent judgment in prioritizing multiple calls during emergency situations based on discretionary factors).
Although the dispatcher takes into consideration the skills and experience of service technicians when assigning certain service jobs, he has no HVAC skills or work experience himself that would help him make that assessment. Rather, the dispatcher relies on the information the Employer provided him regarding the technicians’ skills and experience. Thus, one service technician receives all service calls involving oil, and another receives calls related to hydronics. The assignment of work based on the known skills and knowledge of an employee is insufficient to establish independent judgment. *G4S Government Solutions, Inc.*, 363 NLRB 977, 979 (2016), citing *Volair Contractors, Inc.*, supra at 673, 675 fn. 10 (2004); *Shaw, Inc.*, 350 NLRB 354, 356 fn. 9 (2007). Rather, these decisions are fairly obvious and routine in nature, particularly in a small workplace. See *Armstrong Machine Co.*, supra. For example, at one end of the spectrum, the Employer employs a service technician who is an apprentice, while at the other end is Senior Service Field Supervisor Farry who has nearly 40 years’ experience in HVAC. Moreover, Farry usually volunteers to perform more complex service calls before the work is assigned to him. Finally, contrary to the Petitioner’s argument, the fact that the dispatcher reassigns the work of employees who call off from work to available service technicians is insufficient to establish supervisory status, given that the dispatcher uses the same criteria as he does with regular assignments, involving no independent judgment.

Accordingly, I find that the Petitioner has failed to establish that the dispatcher is a supervisor within the meaning of Section 2(11) of the Act, and I find that the dispatcher should be included in the unit.

**C. The Senior Service Field Supervisor is not a Statutory Supervisor**

There is no record evidence that Senior Service Field Supervisor Farry has the authority to transfer, suspend, lay off, recall, promote, discharge, reward, discipline, responsibly direct, or adjust the grievances of other employees, or to effectively recommend such actions. With respect to hiring, although Farry once recommended a friend who was hired by President/CEO Schneider, there is no evidence Farry was involved in the interview or hiring decision. The sole remaining issue is whether Farry assigns work using independent judgment.

Farry spends about 90 percent of his time in the field performing service work, including training more junior service technicians. See *F.A. Bartlett Tree Expert Co.*, 325 NLRB 243, 243 fn. 1 (1997) (crew foremen who provided less-experienced employees with on-the-job training were not statutory supervisors). When he is not in the field, Farry orders parts for service jobs. Farry does not assign service technicians to service calls and he usually volunteers to perform the most difficult jobs himself due to his extensive experience performing HVAC work. While on one occasion he did ask duct cleaning/parts delivery employees Gregory Hood and Tom Maxell to attempt to fix a hot water heater, those two employees generally assist other departments when they are not performing their regular work. More to the point, there is no evidence Farry exercised independent judgment in assigning the repair work; rather, it appears Farry asked them to attempt the repair because they were available. When neither they nor Farry could fix the heater, Hood and Maxell returned to the Employer’s facility. Finally, there is no evidence that Farry has the authority to discipline the duct cleaning/parts delivery employees if they fail to follow his instructions. Even if Farry’s assignment to Hood and Maxell did require independent judgment, it was an occurrence too isolated to confer supervisory status.
Accordingly, the Petitioner has not established that the senior service field supervisor assigns work using independent judgment or is otherwise a supervisor within the meaning of Section 2(11) of the Act, and I find that the position should be included in the unit.

D. The Sales Consultants/Install Field Supervisors are not Statutory Supervisors

There is no evidence that sales consultants/install field supervisors have the authority to transfer, suspend, lay off, recall, promote, discharge, reward or discipline other employees, or to adjust their grievances, or effectively recommend such actions. With respect to hiring, although Sales Consultant/Install Field Supervisor Ferris recommended two individuals for the service department who were hired by President/CEO Schneider, there is no evidence that Ferris was involved in the interviews or hiring decisions. The remaining question is whether the sales consultant/install field supervisors either assign work or responsibly direct employees using independent judgment.

1. Assignment of Work

The sales consultant/install field supervisors spend about 60 percent of their work time performing sales work, and about 40 percent assisting service technicians with equipment and troubleshooting. About 90 percent of the installation jobs are routine two-day change outs of equipment, and the service technicians generally have the same skills necessary to perform the work. Office Manager Black, who creates the installation schedule, automatically assigns light commercial work to a specific technician and hydronic boiler heating and oil-fed work to two other technicians who have the skills to perform that work. For non-routine work, Ferris sometimes requests a specific crew that he believes can perform the work more efficiently based on his experience working with the installation technicians in the field, but he does not always receive the crew that he requests. The assignment of work based on the experience level of an employee does not establish independent judgment.

On one occasion, based on a request from Dixon, Vice President Wieczorek authorized duct cleaning/parts delivery employees Gregory Hood and Tom Maxell to perform handyman work on an installation job. At 3:30 p.m., Dixon told Hood and Maxell to leave and return to the jobsite the following Monday at 7:30 a.m. However, there is no evidence that Dixon established the employees’ work schedule. Hood’s shift ends at 4:00 p.m., and it was a routine two-day installation job necessitating the employees’ return to the site.

Finally, the Petitioner argues that although Ferris has never reassigned technicians, he has the authority to do so, citing Vacuum Platers, Inc., 154 NLRB 588, 593 (1965), enfd. 374 F.2d 866 (7th Cir. 1967). In that case, the Board found that the individuals in question not only had supervisory authority, but also exercised their authority to hire, fire, discipline, and responsibly direct employees. There is no such evidence in the instant case. While individuals who possess Section 2(11) supervisory authority can be held to be supervisors even if the authority has not been exercised, Fred Meyer Alaska, Inc., 334 NLRB 646 (2001), there still must be persuasive evidence that such authority exists, Avante at Wilson, Inc., 348 NLRB 1056, 1057 (2006). Here, there is no such evidence, and even if there were, the authority to reassign work would not establish supervisory status because it would entail routine determinations based on the availability of installation technicians, all of whom generally have the same skills. Accordingly, I find that the Petitioner has not established that Ferris and Dixon have the authority to assign work using independent judgment within the meaning of the Act.
2. Responsible Direction

The Petitioner has similarly failed to show that Ferris and Dixon responsibly direct employees within the meaning of the Act. In *Oakwood*, the Board discussed the “responsible direction” requirement: “If 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.” Continuing, the Board noted that “[r]esponsible 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 those employees. Accountability means that the employer has delegated to the putative supervisor the authority to direct the work and 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. Id.; see also *Community Education Centers, Inc.*, 360 NLRB 85, 85 (2014).

The record shows that on one occasion, Ferris, on a video phone call, showed Hood and Maxell where to start working on a duct pipe. Such a basic instruction does not involve the use of independent judgment. Rather, such direction is routine in nature, and Hood has received similar direction from senior installation technicians on jobs. Moreover, there is no evidence that Ferris and Dixon are held accountable for the work performance of employees performing installation work. The Petitioner contends that Dixon gave Duct Cleaning/Parts Delivery Employees Hood and Maxell “good feedback” regarding their work on an installation job, but mere feedback does not establish responsible direction, absent accountability. Finally, although Hood testified that he believes he is required to follow instructions from Ferris or Dixon, there is no evidence that Ferris and Dixon have the authority to discipline those employees for failing to follow their instructions.

It is true that Ferris and Dixon’s sales commissions may be reduced if an installation crew fails to complete a job within the estimated hours, but Ferris testified that such commission reductions are rare, and most of the time are due to his error in underestimating the project hours required rather than the crew’s performance. Likewise, there is no evidence that the wages or other terms and conditions of employment of the installation technicians are impacted when an installation job is not completed on time. See *Cook Inlet Tug & Barge, Inc.*, 362 NLRB 1153, 1155 (2015) (no showing of responsible direction where testimony showed that tugboat captains were held accountable only for their own performance, not that of the crew). Accordingly, I find that the Petitioner has failed to establish that Ferris and Dixon responsibly direct employees using independent judgment.

In sum, I find that the Petitioner has not established that the sales consultant/senior install field supervisor and the sales consultant/install field supervisor are supervisors within the meaning of Section 2(11) of the Act, and I find that they should be included in the unit.

E. Secondary Indicia of Supervisory Status and Petitioner’s Additional Contentions

Secondary indicia of supervisory authority may lend support to a conclusion regarding supervisory status when coupled with evidence of primary indicia, but standing alone they cannot establish supervisory status. *Modesto Radiology Imaging, Inc.*, 361 NLRB 888, 890 fn. 4 (2014).
McClatchy Newspapers, Inc., 307 NLRB 773, 779 fn. 14 (1992); Dean & Deluca New York, Inc., 338 NLRB 1046, 1048 fn. 14 (2003). Duct Cleaner/Parts Delivery Employee Hood testified that he believes that Senior Service Field Supervisor Farry is the service manager and that Sales Consultant/Install Field Supervisor Ferris is the installation manager, but it is actual authority, not job descriptions or titles, that determines supervisory status. Western Union Telegraph Co., 242 NLRB 825, 826 (1979). Although Hood further testified that he believes he is required to follow instructions given to him by Farry, Ferris and Dixon, there is no evidence that he is in fact required to do so. Cf. Wolverine World Wide, Inc., 196 NLRB 410 (1972) (supervisory status of “all around” men and “floor girls” established where they not only were held out as supervisors by department foremen, but employees were expressly instructed to follow the individuals’ direction); Bama Co., 145 NLRB 1141 (1964), enf’d. 353 F.2d 320 (1965) (supervisory status established where employees considered an individual to be their supervisor, and individual in fact responsibly directed employees). In addition, there is no evidence that Farry, Ferris, or Dixon had authority to discipline employees who failed to follow instructions. Finally, the Petitioner provided some inconclusive evidence regarding the attendance of Ferris and Dixon at management meetings where job costing was discussed. However, attending management meetings, absent evidence of any primary indicia, does not establish supervisory authority. Dean & Deluca, supra at 1048.

With regard to the meeting between the Employer and the Union about the petition, there is contradictory evidence regarding several aspects of the meeting, including whether Schneider held out Farry, Ferris, and Dixon as part of the Employer’s management team. Contradictory evidence cannot establish supervisory status. However, I note that, at most, this would show that the Employer held them out in that manner to the Petitioner’s representatives, not to any employees. Although Farry, Ferris, and Dixon asked questions during the meeting, there is insufficient evidence, as the Petitioner contends, that they advised Schneider regarding the Petitioner’s unionizing efforts. Rather, the testimony of Union representatives shows that the three asked general questions. Likewise, although Schneider allegedly told the Petitioner that he considered everything his management team said, this does not establish that Farry, Dixon, and Ferris advised the Employer regarding the Union’s organizing campaign. In addition, the Petitioner argues that Schneider is not credible because he testified that he needed help understanding the petition even though he had family members experienced with unions. However, credibility is not assessed in pre-election hearings, which are investigatory not adversarial. Marian Manor for the Aged and Infirm, Inc., 333 NLRB 1084, 1084 (2001).

The Petitioner also contends that the Employer restructured the installation and service department and misclassified Farry, Ferris, and Dixon as supervisors rather than managers as a pretense, which amounts to an argument that the Employer’s conduct was unlawfully motivated. However, “[e]vidence of unfair labor practices, as such, is not admissible in a representation hearing.” See NLRB Casehandling Manual (Part Two), Representation Proceedings, Section 11228. For the same reason, I reject the Petitioner’s argument that the Employer decided to pay Dispatcher Hayes on an hourly basis, rather than a salary like a former dispatcher, as part of an unlawfully motivated restructuring plan. Finally, the Petitioner argues that certain of Schneider’s testimony is illogical. As stated above, this amounts to an argument about Schneider’s credibility which is not assessed in a pre-election hearing. See Marian Manor, supra. Nonetheless, I note that the record shows that when the Employer employed an installation and service manager, Schneider conducted performance evaluations and made independent decisions regarding wage increases.
V. METHOD OF ELECTION

A. Position of the Parties

The Petitioner requested a manual election. In its statement of position, the Employer also initially requested a manual election, but it changed its position at the hearing to assert that the election should be held by mail ballot. In that regard, the Employer would not agree to abide by the COVID safety protocols set forth in GC Memorandum 20-10. In the event that a manual election were to be directed, the parties did not propose any election details regarding the election site.

B. Board Law and Guidance

The mechanics of an election, such as the date, time, and place, are left to the discretion of the Regional Director. Ceva Logistics U.S., Inc., 357 NLRB 628, 628 (2011); Manchester Knitted Fashions, Inc., 108 NLRB 1366 (1954). Consistent with that broad discretion, Regional Directors have the authority to determine whether an election will be conducted manually or by mail ballot. See Nouveau Elevator Industries, Inc., 326 NLRB 470, 471 (1998); NLRB Casehandling Manual (Part Two), Representation Proceedings, Section 11301.2 (determination over method of election is not a litigable issue).

While the Board has a strong preference for conducting manual elections, see ibid.; San Diego Gas & Electric, 325 NLRB 1143 (1998), it also has a history of conducting elections by mail when necessary. As the Board noted in London’s Farm Dairy, Inc., 323 NLRB 1057 (1997), “[f]rom the earliest days of the Act, the Board has permitted eligible voters in appropriate circumstances to cast their ballots by mail.” The Board has identified situations in which a Regional Director may reasonably determine to hold an election by mail: where voters are scattered geographically or in the sense that their work schedules vary significantly; in instances of a strike, lockout or picketing; or in other unspecified extraordinary circumstances. San Diego Gas, supra. The pandemic and related risks associated with in-person gatherings has been found to constitute an extraordinary situation, prompting an increased use of mail-ballot elections.

In response to the evolving realities of the pandemic, on July 6, 2020, the Office of the General Counsel issued Memorandum GC 20-10, “Suggested Manual Election Protocols.” The memorandum contains ten safety protocols to be addressed in any Stipulated Election Agreement or Decision and Direction of Election in which a manual election is to be conducted:

A. Spacious polling area, sufficient to accommodate six-foot distancing, which should be marked on the floor with tape to insure separation for observers, Board Agent, and voters.
B. Separate entrance and exit for voters, with markings to depict safe traffic flow throughout polling area.
C. Separate tables spaced six feet apart so Board Agent, observers, ballot booth and ballot box are at least six feet apart.
D. The Employer will provide markings on the floor to remind/enforce social distancing.
E. The Employer will provide sufficient disposable pencils without erasers for each voter to mark their ballot.

F. The Employer will provide glue sticks or tape to seal challenged ballot envelopes.

G. The Employer will provide plexiglass barriers of sufficient size to protect the observers and Board Agent to separate observers and the Board Agent from voters and each other, pre-election conference and ballot count attendees, as well as masks, hand sanitizer, gloves and wipes for observers.

H. The Agency will provide to the Board Agent(s) running the election a face shield, mask, disposable clothes covering if requested, hand sanitizer, gloves and disinfecting wipes.

I. An inspection of the polling area will be conducted by video conference at least 24 hours prior to the election so that the Board Agent and parties can view the polling area.

J. In accordance with CDC guidance, all voters, observers, party representatives, and other participants should wear CDC-conforming masks in all phases of the election, including the pre-election conference, in the polling area or while observing the count. Signs will be posted in or immediately adjacent to the Notice of Election to notify voters, observers, party representatives and other participants of this requirement.

This memorandum also requires an employer’s written certification that the polling area will be consistently cleaned in conformity with CDC standards as well as a certification of how many individuals have been present in the facility within the preceding 14 days who have tested positive for COVID-19; who have been directed by a medical professional to proceed as if they have tested positive for COVID-19; who are awaiting results of a COVID-19 test; who are exhibiting symptoms of COVID-19; or who have had direct contact with anyone in the previous 14 days who has tested positive for COVID-19. Also required are written certifications from each party representative and observer participating in the pre-election conference, election and ballot count that within the preceding 14 days, they have not tested positive for COVID-19, are not awaiting the results of a test and have not had direct contact with anyone who has tested positive, is awaiting the results of a test or has been directed by a medical professional to proceed as if they have tested positive. GC Memorandum 20-10 does not provide an enforcement mechanism for its suggested protocols other than canceling an election, thus delaying the resolution of the question concerning representation.

In Aspirus Keweenaw, 370 NLRB No. 45 (2020), the Board outlined situations to consider when assessing the risk associated with the pandemic and the propriety of a mail-ballot election. In so doing, the Board reaffirmed its longstanding policy favoring manual elections, but identified six situations, the existence of any of which would suggest the Regional Director should direct a mail-ballot election. Those are as follows:

1. The Agency office tasked with conducting the election is operating under “mandatory telework” status;
2. Either the 14-day trend in the number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher;
3. The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size;
4. The employer fails or refuses to commit to abide by the General Counsel’s protocols for Manual Elections established in GC Memo 20-10;
5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status; and/or
6. Other similarly compelling circumstances.

The Board indicated that a Regional Director who exercises discretion to direct a mail-ballot election when one or more of these situations exists will not have abused his or her discretion. *Id.*, slip op. at 8.

For *Aspirus* Situation 2, the Board instructed Regional Directors to “generally focus their consideration on recent statistics that reflect the severity of the outbreak in the specific locality where the election will be conducted” and held that “a mail-ballot election will normally be appropriate if either (a) the 14-day trend in the number of new confirmed Covid-19 cases in the county where the facility is located is increasing, or (b) the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher.” *Id.*, slip op. at 5. With respect to the latter, the Board noted that many locales do not report the 14-day testing positivity rate. Often, a 7-day average is more available from local or county health departments, and the Board has found such metrics to be sufficient. See *Sysco Central California, Inc.*, 32-RC-272441, fn. 1 (September 28, 2021) (unpublished); *Stericycle, Inc.*, 04-RC-260851 (February 22, 2021) (unpublished).

Regarding Situation 5, the Board has clarified that Regional Directors “should determine whether the Covid-19 cases at the facility would reasonably be expected to affect the conduct of a manual election. Relevant considerations in this regard include whether (1) the number or physical location of such Covid-19 cases, or the likelihood that those cases will result inunit employees being exposed to Covid-19, indicates that a manual election would pose a threat to health or safety; or (2) current Covid-19 cases among unit employees would result in their disenfranchisement by a manual election.” *Rush University Medical Center*, 370 NLRB No. 115, slip op. at 2 (2021).

**C. A Mail Ballot Election is Appropriate**

With respect to factors 1 and 3, the Regional office responsible for conducting this election is not in a mandatory telework status, and there are no mandatory state or local health orders related to maximum gathering size. As to factor 4, however, the Employer has refused to abide by the protocols set forth in *GC Memorandum 20-10*, and the parties did not propose an election site for conducting a manual election. Turning to factor 2, while the positivity rate for COVID cases in
Bucks County on March 15 was 3%,¹⁴ the CDC reported a 21.8 percent increase in the number of cases for the week ending March 14, and it deemed the community transmission rate to be moderate.¹⁵ With respect to factor 5, there is no evidence regarding whether there is a current COVID-19 outbreak at the facility, and the Employer has not agreed to disclose and certify its current status.

Because the COVID case rate in Bucks County has shown an uptick in the past seven-day period, and the Employer has not agreed to disclose and certify the current COVID-19 status at its facility or to follow the safety protocols set forth in GC Memorandum 20-10, I find that it is appropriate and within my discretion to conduct the election by mail. Accordingly, I am directing a mail-ballot election, the details of which are below.

VI. CONCLUSIONS

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the Board. Based on the entire record in this proceeding, I find:

1. The rulings made by the Hearing Officer 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.¹⁶

3. 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. 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.

5. 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.

6. 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:

¹⁶ The parties stipulated to the following commerce facts: Custom Aire, Inc. is a Pennsylvania corporation engaged in the provision of residential and commercial HVAC services from its facility located at 962 Bristol Pike, Bensalem, Pennsylvania. Within the past 12-month period, the Employer derived gross revenues in excess of $500,000, and during the same period of time purchased and received at its Bensalem, Pennsylvania facility goods and services valued in excess of $5,000 directly from suppliers located outside the Commonwealth of Pennsylvania.
Included: All service technicians, service technician apprentice, senior service field supervisor, dispatcher, duct cleaning/parts delivery employees, installation technicians, installation helpers, sales consultant/senior install field supervisor, sales consultant/install field supervisor, duct fabricator, and parts and supplies transport employees employed by the Employer at its facility located at 962 Bristol Pike, Bensalem, Pennsylvania.

Excluded: All other employees, managers, guards, and supervisors as defined in the Act.17

VII. 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 SMART, Sheet Metal Workers Local 19, the Petitioner.

A. Election Details

The election will be conducted by mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit at 5:00 P.M. on Tuesday, March 29, 2022. Voters must return their mail ballots so that they will be received by close of business on Tuesday, April 19, 2022. The mail ballots will be counted on Thursday, April 21, 2022 at a time and location to be determined, either in person or otherwise, after consultation with the parties.

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 Four office no later than 5:00 pm on Tuesday, April 5, 2022 in order to arrange for another mail ballot kit to be sent to that employee.

B. Voting Eligibility

Those eligible to vote in the election are employees in the above unit who were employed during the payroll period ending Tuesday, March 15, 2022, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the above 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.

17 The unit exclusions are set forth in the Petition and are undisputed.
Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, and, in a mail ballot election, before they mail in their ballots to the Board’s designated office, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date 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 Acting 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 March 18, 2022.¹⁸ 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.

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.

¹⁸ The Petitioner did not waive the 10-day period that it is permitted to receive the voting list prior to the opening of the polling period.
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 that will issue and that accompany 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 objetcting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objetcting 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 in this case 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 Acting 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 Acting Regional Director. 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: March 16, 2022

Thomas A. Goonan, Regional Director
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