Northeast Parent and Child Society, Inc. (“Employer” or “Northeast”) is a non-profit organization that operates two residential facilities and a school for foster children. Civil Service Employees Association, Inc., Local 1000 (“Petitioner” or “Union”) has filed a petition to represent a unit of employees\(^1\) at the Employer’s residential facilities located at 122 Park Avenue, Schenectady, New York 12304 (“the Park facility”) and 1768 Eastern Parkway, Schenectady, New York 12309 (“the Zoller facility”). The Employer contends that a multi-facility unit is inappropriate because employees at the Park and Zoller facilities lack a community of interest. It also seeks to exclude from the unit Team Leaders, Assistant

\(^1\) The proposed unit consists of:

- Included: All full-time and part-time employees in the following classifications that work at 122 Park Avenue, Schenectady, New York and 1768 Eastern Parkway, Schenectady, New York: Custodian, Senior Custodian, Maintenance Worker, Senior Maintenance Specialist, Team Leader Residential, Residential Counselor RC-1, Residential Counselor RC-2, Residential Counselor RC-3, Residential Assistant Supervisor RC-5, On-line On-call, Case Manager, Food Service Worker, Bus Driver, Office Manager, Licensed Practical Nurse, and Administrative Assistant.

- Excluded: All other employees.
Supervisors, and On-Line On-Call (“OLOC”) employees on the basis that they are guards and supervisors within the meaning of the Act.  

A hearing officer for the Board conducted a hearing on March 14 through March 17. The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. I find that the hearing officer’s rulings are free from prejudicial error and hereby affirm them. I further find that the Employer is engaged in commerce within the meaning of the Act; it will effectuate the purposes of the Act to assert jurisdiction; the Petitioner is a labor organization within the meaning of the Act; and a question affecting commerce exists concerning the representation of certain of Northeast’s employees.

Based on the record adduced at this hearing, I find that the multi-facility unit is appropriate; that Team Leaders, Assistant Supervisors, and OLOC employees are not guards within the meaning of the Act; and that Team Leaders are Section 2(11) supervisors while Assistant Supervisors and OLOC employees are not.

I. Positions of the Parties

The Employer maintains that a multi-facility unit, consisting of the Zoller facility and the Park facility, is inappropriate because employees of the two facilities lack a community of interest. Citing the single-facility presumption set forth in Jerry’s Chevrolet, 344 NLRB 689 (2005), it urges that the Union bears the burden of demonstrating that a multi-facility unit is appropriate. It maintains that the Union cannot sustain this burden because employees at the two facilities do not share a community of interest. The Union, in contrast, maintains that the single-facility presumption does not apply when a union petitions for a multi-facility unit and that the standard in such cases is simply that the unit be an appropriate one.

The Employer further argues that Team Leaders, Assistant Supervisors, and OLOC employees are guards within the meaning of the Act because, inter alia, they are charged with maintaining the safety of youth, admitting visitors, ensuring that employees comply with the Employer’s procedures, and, in the case of OLOC employees, monitoring security cameras and

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2 The parties resolved several issues via stipulation. First, the parties stipulated that part-time, including per diem employees, working in titles in the proposed unit will be included if they meet the Davison-Paxon, 185 NLRB 21 (1970) standard. The parties also stipulated that Clinicians are professional employees within the meaning of the Act. Finally, the parties stipulated to the conduct of a manual election as long as doing so will not jeopardize public health and safety.
making rounds of the facilities. The Union counters that employees in these titles are not guards because they do not enforce or compel compliance with rules against other employees to protect the Employer’s premises or the people onsite, nor do they have security or weapons training, carry weapons, participate in security rounds, or wear guard-type uniforms or badges.

Finally, the Employer represents that Team Leaders, Assistant Supervisors, and OLOC staff are statutory supervisors. For Team Leaders, it principally maintains that they have authority to effectively recommend candidates for hire as well as to assign and responsibly direct work, discipline, and evaluate Residential Counselors. For Assistant Supervisors and OLOC employees, the Employer primarily contends that they assign and responsibly direct Residential Counselors’ work. The Union maintains that none of the employees in these titles are statutory supervisors, arguing that they do not exercise independent judgment in any of these areas.

II. Summary of Record Evidence

a. Overview of Facilities

Northeast operates two facilities, the Park facility and the Zoller facility, that offer residential care to foster children. The two facilities are about a five-minute drive, or a mile and a half, apart.

The Zoller facility is a group home for foster children who do not have a permanent placement and whose families are not ready to take them back. It is located on a residential street and seeks to provide a home-like setting for youth. It does not offer food or maintenance service. It is not a locked facility in the sense that all doors open from the inside and children may sign in and out. For example, youth may leave for unsupervised home visits, medical appointments, and to attend school in the community. Staff members routinely take youth to see their families, on recreational outings, and for medical appointments.

The Park facility is a two-story facility with five residential dormitories. Four of the dormitories are located on the second floor and serve “hard-to-place” youth ages 12 to 21. These dormitories house 24 youth at a time or six per dormitory. The fifth dormitory, the Shaffer Shelter (“the Shelter”), is located on the first floor and serves hard-to-place youth ages 5 to 12. It houses eight children at a time. The first floor also includes a kitchen, nurse’s office, gymnasium, cafeteria, weight room, and an office for OLOC employees that has computers and monitors connected to security cameras. The yard surrounding Park Place has a pool and pavilion with a fence along the backyard’s border. Staff may bring youth from the Zoller facility
to the Park facility to see the nurse, play on a joint basketball team, and use the outdoor amenities.

The youth at the Park and Zoller facilities require different levels of supervision and care. For the Zoller facility, the New York State Office of Children and Family Services (“OCFS”) requires a staffing ratio of one staff member for every eight youth during the day and one staff member for every ten youth at night. OCFS requires a staffing ratio at the Park facility of one staff for every three youth because these “hard-to-place” youth have emotional, developmental, or behavioral concerns that require a higher level of supervision.

Staffing ratios are strictly enforced. If a facility is short staffed, employees from the other facility may work there to satisfy the staffing ratio requirement. The staff person punches in at their designated work location, travels to the other location to work, and then returns to punch out. Because staff punch in and out at their designated location, Human Resources does not maintain a record of employees filling in at another facility. The Employer maintains that staff may only work at another facility with prior authorization from an administrator.

The Park facility, Shelter, and Zoller facility each has its own budget and operating certificate. The facilities contribute from their respective budgets to shared services and staff, including maintenance, administration, clinicians, the nurse, and OLOC staff. Northeast posts all job descriptions and policies to a common SharePoint system and utilizes a common computer system, “Paycom,” for such personnel matters as timecards, time-off requests, evaluations, and disciplines.

b. Overview of Staff

The Park and Zoller facilities share clinical and administrative oversight. A Human Resources department oversees both facilities and maintains common personnel policies, job descriptions, rates of pay, hours, benefits, and trainings for all staff. Clinicians and Case Managers have offices at the Park facility but spend time working with youth at both locations. Clinicians develop treatment plans that residential staff implement. Meanwhile, the Senior Director of Residential Services manages operations for both facilities. In that capacity, she supervises a Program Manager, Case Management Supervisor, Intake Specialist, Recreation Coordinator, OLOC Team Leader, and Office Manager. The Program Manager supervises Team Leaders for both facilities. An administrator is always on-call to address issues that require their attention.
The Zoller facility, the Shelter, and each dormitory at the Park facility have a dedicated Team Leader, most of which are supported by an Assistant Supervisor. The Assistant Supervisor assumes many of the Team Leader’s responsibilities when the Team Leader is not working. However, Team Leaders also rotate being on-call after hours. Team Leaders and Assistant Supervisors oversee teams of Residential Counselors. Northeast employs 35 Residential Counselors, including 30 at the Park facility and five at the Zoller facility. Residential Counselors, alongside Team Leaders and Assistant Supervisors, see to the youths’ physical needs, including that they have food, clothing, and access to medical care, implement Clinician’s therapeutic care and programming, and ensure compliance with Northeast’s plans and protocols. They also must complete logs detailing daily programming, outings, and incidents.

All employees are trained in Therapeutic Crisis Intervention (“TCI”), which provides strategies for deescalating conflict and calming youth in moments of crisis, including suicidality and angry outbursts. Such strategies include talking to the child or allowing the child to go for a walk. Additionally, the youth have Individual Crisis Management Plans (“ICMP”) developed by Clinicians, which identify their triggers, high-risk behaviors, and TCI methods for helping them. Residential staff are responsible for implementing and following these plans. Additionally, youth are sometimes put on a safety plan. These plans detail special precautions, requirements, and levels of supervision for the child. Whenever a youth is in crisis, staff first use TCI procedures, including strategies in the youth’s ICMP plan, to deescalate the situation. They may restrain the youth using a three-person takedown if the child presents a danger to himself or others. A three-person takedown involves three staff members physically restraining a youth and placing him on his back. The staff may hold the child down for a maximum of 20 minutes. When restraining a youth, staff must continue to use TCI methods to deescalate the situation and gradually release the restraint. Staff are not authorized to restrain a youth who is destroying property or is attempting to leave the premises absent a threat to the youth or others.

At times, staff are also put on safety plans developed by Human Resources, quality management, and a program administrator. These plans may, for example, prohibit a staff member from being alone with a youth. Every shift, all staff must read these plans, which are kept in special binders in the dormitories and the OLOC office. Staff must report misconduct and violations of

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3 All staff at Northeast are mandatory reporters of abuse and neglect under New York Social Services Law §§ 488, 491. They must report any possible abuse or neglect to the New York State Justice Center for the Protection of People with Special Needs.
safety plans. They may also call police if they believe a situation warrants it. However, no staff are permitted to detain, search, or use physical force or restraint against other staff members. They also may not detain, search, or use physical force or restraint against authorized or unauthorized visitors.

All facilities are open to approved visitors. At the Park facility, during the day, an office manager admits guests by checking to see if they are on the schedule for the day. In the evening and night, OLOC employees perform this function. If a visitor is not on the schedule, the staff member monitoring visitors must contact a Clinician or senior administrator to ask if the visit is permissible. If not, the visitor is asked to leave. No staff are authorized to use force to remove an unauthorized visitor who refuses to leave. Nobody searches visitors before granting them access. Neither facility has a security system nor is either enclosed by a fence.

The Park facility has more security features than the Zoller facility, many of which are a legacy of the discontinued New Directions program serving 16-year-old girls who had been convicted of a crime but sent to the unlocked facility rather than a secure detention center. To support this program, the State of New York provided funds for additional monitors in the OLOC office, upgraded door locks, lockers for car keys, and a metal detector wand. Additionally, Park facility dormitories are locked from the outside, and youth must ask a staff member to let them in and out. They are not permitted to leave the dormitory without supervision and permission.

However, youth are not kept at the facility against their will. Each door has a bar that a staff member or youth can press down for 15 seconds to unlock the door following a loud beep. Youth regularly leave the premises for approved reasons. Some youth have jobs in the community, attend the area public school, and spend time with family members off-site. Staff members will also drive youth to medical appointments, recreational activities, and family visits as necessary. If a youth leaves without approval, which staff refer to as being “AWOL,” a staff member is supposed to follow the child unless doing so would leave other youth without sufficient supervision. Absent a threat of harm to the AWOL youth or others, staff are not

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4 The youth traditionally and presently living at the facilities have not been convicted of crimes.
5 While the New Directions program existed, the OLOC Team Leader’s title was changed to Security Manager, but it has since been changed back.
6 Staff have access to Employer-owned vehicles to transport youth. These vehicles are unmarked and do not have sirens or emergency lights. Any residential staff may transport youth and use a gas card to fuel the vehicle.
authorized to use force to compel the youth to remain on the premises but instead may follow and try to convince the child to return. Staff are required to call the Schenectady police department to file a missing persons report for any AWOL youth. When an AWOL youth returns, staff may perform a contraband search. OLOC employees typically perform these searches using a metal detecting wand. They do not frisk youth. They may ask the youth to remove socks and shoes or take off a bulky sweater or jacket, but do not otherwise have the youth remove their clothing. If contraband, including weapons, is found, staff cannot take it by force but must wait for the child to voluntarily relinquish it.

c. **OLOC Staff**

OLOC employees report to an OLOC Team Leader who in turn reports to the Program Manager. They are responsible for monitoring both facilities, youth, and staff members by making regular rounds and watching live video surveillance. In this manner, they make sure that the youth are not in crisis, units are staffed appropriately, employees working with the youth are behaving appropriately and remain awake, and that staff are following any applicable safety plans. They do not wear uniforms or badges. They are not required to have a law enforcement background, are not bonded, do not carry handcuffs or weapons, and do not have or receive specialized training in security, apprehending people, deterring theft, or use of weapons. They are not authorized to use force or search the person or property of other staff members. They also may not use force or search visitors, nor may they use force against anyone to protect the Employer’s property.

If an OLOC employee notices that a staff member is not behaving properly, is violating a safety plan or other procedure, or is sleeping, the employee will talk to the staff member about the situation and may elevate the issue to an administrator if necessary. They may assign Residential Counselors to certain tasks, such as taking a youth to a medical appointment or the hospital. They do not have authority to discipline other employees or interrogate them about misconduct, although they may use their judgment in reporting concerns about a staff member’s conduct to a Team Leader or administrator. They cannot review other employees’ timesheets, approve or deny leave requests, make schedules, or mandate that someone come in to work. They notify employees of safety plans and place them in the appropriate binder for other employees to review but are not involved in their creation or ensuring compliance with the plan’s requirements. If they notice a staff member not complying with a safety plan, they must report it to the Team Leader.

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7 Other staff may perform these searches if an OLOC or Team Leader is present.
Only one OLOC employee is working on any given shift. They work three shifts, 7:00 a.m. to 3:00 p.m., 2:00 p.m. to 11:00 p.m., and 11:00 p.m. to 9:00 a.m. They work out of the OLOC office located on the first floor of the Park facility. OLOC employees, Team Leaders, and Assistant Supervisors have access to the OLOC office. OLOC staff keep vehicle and facility keys in the office, including a master key that only they and maintenance workers have access to. The office has two computers, a bulletin board with schedules for the Shelter, Zoller facility, and each Park dormitory, and two monitors connected to the 85 security cameras placed inside and outside the facilities. OLOC staff are not trained and do not generally know how to operate the monitors, including how to turn them on and off, and lack access to old footage unless they specifically request access to it.

OLOC employees conduct rounds of the facilities, including the outside perimeter of the buildings. They generally make rounds inside the Park facility once per hour and of the exterior of the facility once per shift. Since the start of the COVID-19 pandemic, OLOC staff have not made in-person rounds at the Zoller facility, instead calling to check on ratios, staffing, and the status of the youth. During outside rounds, OLOC employees check to make sure that vehicle and facility doors are locked and there are no safety concerns. During interior rounds, OLOC employees will check most areas of the premises. However, their keys and swipe cards do not provide access to the kitchen, maintenance area, nurse’s office, or the administration wing. The principal purpose of these interior rounds is to ensure that staffing ratios are being met and no youth are in crisis. If OLOC employees notice an issue with staffing ratios, they can request that a Residential Counselor switch units for a shift or call an off-duty staff member to see if they would be willing to provide coverage. If a staff member needs a break, an OLOC employee may stay in a dormitory while making rounds to ensure appropriate staffing. Whenever they become aware that a youth is in crisis, the OLOC employee will help ensure that staff members follow proper TCI procedures.

OLOC employees play a role in admitting visitors to the premises. An office manager greets and screens visitors during the day. In the evenings and at night, OLOC employees assume this responsibility. They will ask the visitor about the purpose of their visit and check the visitor schedule to see if the visit has been approved. If it has, OLOC will admit the visitor. If not, OLOC will ask the on-call administrator if the visitor may enter and send the visitor away if not. OLOC employees are not authorized to search visitors. They may ask unauthorized
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visitors to leave but may not remove anyone by force. Likewise, they are not authorized to
search, detain, or use force against staff members for any reason. They also cannot use force to
protect the Employer’s property.

However, OLOC employees are responsible for searching youth and their property when
an AWOL youth returns if contraband or weapons are suspected. These searches consist of
using a metal detecting wand and asking the youth to remove shoes, socks, and bulky jackets or
sweaters as necessary. They do not frisk the youth or have them remove any other clothing.
Alternatively, residential staff may conduct this search at the youth’s request if an OLOC
employee is present.

OLOC employees are responsible for various reports and compliance matters. They
complete logs of each shift, including information about which staff and youth were present, late
arrivals, AWOLs, visitors, and any safety plans. They also log every search conducted of a
returning youth, prepare reports and provide required notices to authorities of any youth that
goes AWOL, and are the employees principally responsible for contacting law enforcement if a
youth goes AWOL or a security concern arises. OLOC employees also complete a security log
each shift that identifies the safety and security measures taken. These logs detail their rounds,
staff attendance, the status of and compliance with safety plans, and any significant incidents
with staff or youth. Additionally, OLOC staff schedule and document fire drills for the facilities.

In addition, OLOC employees are responsible for ensuring that staff members comply
with reporting procedures. They make sure that residential staff review “red alert binders” and
file missing person’s reports if a youth goes AWOL. They contact police if a youth goes AWOL
if another staff member has not already done so and ensure that staff properly report abuse or
neglect as mandatory reporters.

d. Team Leaders

Team Leaders work with youth at the Zoller facility, the Shelter, and the Park facility
dormitories. They work two shifts, 9:00 a.m. to 5:00 p.m. or 10:00 a.m. to 6:00 p.m., Monday
through Friday. When they are not working, an Assistant Supervisor is present. Residential
Counselors are also present with the number assigned to a unit dependent on OCFS staffing
ratios.

Team Leaders have their own offices as well as cell phones, laptops, and computers
through which they can access the video surveillance feed for their own location. The record
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does not reflect that they are required to access or review this video. They have a credit card that all staff can use to make purchases for youth. Although Team Leaders sometimes may restrain youth who are a danger to themselves or others if TCI procedures fail to deescalate a situation, their authorization to use force is limited to a 20-minute hold during which they gradually release a youth and continuously use TCI techniques to calm the child. They do not have law enforcement backgrounds, are not bonded, do not carry handcuffs or weapons, do not perform rounds or have access to all areas of their facility, cannot remove anyone from the premises, and lack training in weapons or security procedures.

The record contains evidence as to Team Leader’s authority with respect to hiring, promoting, assigning work, responsibly directing work, and disciplining employees.

As to their hiring authority, the record establishes that Team Leaders are responsible for conducting interviews of applicants. Team Leaders do not select applicants for interviews. The Program Manager assigns interviews to Team Leaders after screening applications. After they conduct these interviews, they communicate their impressions and recommendations to hire (or not) to Human Resources and senior management. They may suggest a unit assignment, days, and shifts that they believe would be a good fit for the applicant. The Senior Director of Residential Services testified that Northeast would extend an offer to any recommended applicant assuming the applicant passes a background check. She further testified about and presented evidence of two specific instances in which Team Leaders made recommendations to hire that resulted in management making an offer to the candidates. A Team Leader testified that management did not communicate with Team Leaders about the status of an applicant after Team Leaders communicate their recommendations. As a result, she was not aware whether offers of employment resulted from all her recommendations.

Team Leaders play a role in assigning work, including by delegating tasks. For example, Team Leaders may ask Residential Counselors to perform specific tasks, such as taking a youth to an appointment. However, Team Leaders testified that Residential Counselors volunteer for these assignments. Team Leaders also may move employees to another facility or dormitory to accommodate a staffing shortage. To do so, they ask employees already working to cover the shift or call to ask if an off-duty employee would be willing to volunteer to come in. They do not force anyone to come in on their time-off nor may they mandate overtime.
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Relatedly, Team Leaders are involved in creating schedules, approving time-off requests, and reviewing timesheets in the Paycom system for Assistant Supervisors and Residential Counselors. For scheduling, Assistant Supervisors and Residential Counselors are hired for a set schedule and location. Team Leaders therefore reference employees’ regular schedules and check that staffing ratios are sufficient. A Team Leader testified that senior management reviews schedules and has directed her to remove people from schedules that had not been approved to work. For example, the Team Leader stated that she has been told she did not need an extra staff member she had scheduled to work and has also been told that she could not adjust the regular schedule of the Assistant Supervisor in her dormitory. She further acknowledged that she has authority to approve time-off requests but stated that she will not deny such a request if the employee has sufficient leave available. The Team Leader then finds coverage by seeking volunteers. Team Leaders will also review timesheets for Assistant Supervisors and Residential Counselors. A Team Leader who testified stated that she lacks authority to make changes to a timesheet and would let a senior manager know if a staff member worked overtime that seemed unjustified, although she noted that she had never been in that situation.

The record reflects that Team Leaders provide direction to employees. They meet with new staff to go through a pre-made orientation binder, explain daily programming set by Clinicians, make sure Residential Counselors conduct this programming, check sheets that Residential Counselors complete regarding the outcomes of the programs, and take calls from Assistant Supervisors when emergency issues come up after hours. However, the record contains no evidence that Team Leaders are held responsible for Assistant Supervisors’ or Residential Counselors’ performance of work, including whether they are ever held accountable for mistakes that occur based on their directions.8

The record contains limited evidence of Team Leader’s role in promoting employees. It reflects one instance in which a Team Leader recommended an employee for a promotion. In that instance, management told the Team Leader that the employee would not be promoted. However, the record also contains evidence that Team Leaders play a role in evaluating employees. The uncontradicted evidence is that they complete evaluations for Assistant

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8 The record reflects an instance in which a Residential Counselor was disciplined for not following a Team Leader’s directive. However, this speaks to the Residential Counselor’s accountability not the Team Leader’s.
Supervisors and Residential Counselors in Paycom. The record does not reflect the impact of these evaluations on these employees’ wages or career progression.

Team Leaders may also provide feedback to and discipline employees. They meet with each Residential Counselor once every two weeks for a “supervision.” During this meeting, they will communicate feedback about concerns, areas for improvement, and instances of good work. If there is a concern that may warrant discipline, the Team Leader may issue a written “supervision” documenting the issue and warning of the potential for disciplinary action if the issue recurs. These supervisions are documented in Paycom. If a Residential Counselor fails to improve, Team Leaders may be required to write-up a discipline for that employee. The Senior Director of Residential Services noted that Team Leaders would communicate the need for a discipline to their supervisor and Human Resources. Such disciplines must comport with the Employer’s progressive discipline policy and are reviewed by Human Resources before the Team Leader meets with the employee to issue the discipline. The record includes multiple examples of a Team Leader signing a discipline for a Residential Counselor. However, the record reflects that Team Leaders’ recommendations as to disciplines are not always followed. For example, a Team Leader testified that she has been ordered on two occasions to issue a discipline when she thought that a supervision would suffice. She recalled being ordered by the Program Manager to discipline an employee for speeding in a van even though she disagreed as to whether a discipline, as opposed to a supervision, was warranted. She further stated that she has never disciplined anyone absent a direction from the Program Manager, stating that administrators micromanage this function notwithstanding that she has been told she has authority to issue disciplines. The Chief Human Resources Officer acknowledged that she reviews all progressive disciplines, that a written supervision “isn’t really counted as discipline,” and that the policy specifically authorizes the Employer to modify disciplinary actions based on the facts of each individual situation, which would be ascertained by talking to the Team Leader and looking at cameras if necessary.

e. **Assistant Supervisors**

Assistant Supervisors are assigned to the Zoller facility and each dormitory of the Park facility. They are present when Team Leaders are not working. They work 2:00 p.m. to 11:00 p.m. Sunday through Wednesday or Wednesday through Saturday.
Assistant Supervisors do not have law enforcement backgrounds, are not bonded, do not carry handcuffs or weapons, do not perform rounds or have access to all areas of their facility, cannot remove anyone from the premises, and lack training in weapons or security procedures. As with other employees, they sometimes must use physical restraint on a youth in crisis. They may only use such force when TCI procedures fail and, even then, only for 20 minutes. They do not have authority to detain or remove anyone from the Employer’s premises, including if that individual is unauthorized or to protect the Employer’s property and those within it. They do not have access to video cameras or archival footage. They must, however, report any suspected misconduct by staff members. They also may be responsible for searching youth who are returning from AWOL status or who may have contraband, although they will only do so when an OLOC employee is unavailable, or the youth prefers to be searched by someone of his or her own gender.

Assistant Supervisors do not participate in interviews, but do draft evaluations, conduct trainings, and lead by example in their respective dormitories. They are principally responsible for overseeing programming on their assigned unit when Team Leaders are off duty. To that end, they follow the programming that Clinicians develop, document activities, and make sure that staff follow all plans for youth and staff. They may ask Residential Counselors to perform specific tasks, such as taking a youth to the hospital. However, as when Team Leaders are present, Residential Counselors generally volunteer for these assignments and otherwise coordinate what needs to be done amongst themselves. An Assistant Supervisor who testified conceded that she might assign someone to a task if no one volunteered or if it were an emergency but stated this did not regularly happen.

The record contains no evidence that Assistant Supervisors discipline staff members. The Employer offered testimony that Assistant Supervisors were authorized to issue supervisions or to contact Human Resources if they wished to discipline an employee. For example, the Senior Director of Residential Services testified that she received a call on one occasion from an Assistant Supervisor who told an employee to go home for being insubordinate. The record does not reflect whether the employee was suspended or whether further disciplinary action resulted. It is also unclear whether Assistant Supervisors exercise such authority with any consistency. Indeed, a current Assistant Supervisor testified that she had never issued a discipline and would contact the Team Leader if she had a potential disciplinary issue. The record further indicates
that Human Resources may conduct an independent investigation of a potential discipline, including by looking at security footage. An Assistant Supervisor testified that she would not be held accountable for a misstep by a Residential Counselor while she was on duty.

Although Assistant Supervisors do not create staff schedules, they can adjust schedules by seeking volunteers to work in their dormitory if they are short staffed. They may also ask a Residential Counselor to work on another unit if that unit is short-staffed. Likewise, they can tell Residential Counselors to go home if they are feeling unwell and secure coverage for that staff member. The Employer offered testimony that in sending an employee to another unit or seeking coverage, the Assistant Supervisor would have to consider the staff member’s abilities and the needs of the youth in question and that no one needs to approve the change. However, Assistant Supervisors seek volunteers in these instances and lack authority to require anyone to come into work if they are not already there.

III. Multi-Facility Unit

The general rule is that a single-plant unit is presumptively appropriate. *Trane*, 339 NLRB 866, 867 (2003). However, when a union petitions for a multi-facility unit, the single-facility presumption does not apply and need not be overcome; the question is simply whether the petitioned-for unit is an appropriate one. *Hazard Express, Inc.*, 324 NLRB 989, 989 (1997) (citing *NLRB v. Carson Cable TC*, 795 F.2d 879, 886-87 (9th Cir. 1986); *Cap. Coors Co.*, 309 NLRB 322, 325 (1992)).

In its decisions on multi-facility units, the Board has repeatedly emphasized that such units should correspond to employers’ administrative groupings. See, e.g., *Exemplar, Inc.*, 363 NLRB 1500 (2016) (finding petitioned-for unit appropriate because it embraced all the Employer’s facilities in San Francisco, supervised by a regional manager, and thereby corresponded to a distinct administrative grouping); *Alamo Rent-A-Car*, 330 NLRB 897, 898 (2000) (finding the petitioned-for unit of two of the employer’s facilities in the San Francisco area not to be appropriate where, inter alia, “[t]he proposed unit [did] not conform to any administrative function or grouping of the Employer’s operations.”).

“In determining whether a petitioned-for multifacility unit is appropriate, the Board evaluates the following community-of-interest factors among employees working at the different locations: similarity in employees’ skills, duties, and working conditions; centralized control of management and supervision; functional integration of business operations, including employee

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interchange; geographic proximity; bargaining history; and extent of union organization and employee choice.” Exemplar, 363 NLRB at 1501 (citing Clarian Health Partners, Inc., 344 NLRB 332, 334 (2005); Bashas’, Inc., 337 NLRB 710, 711 (2002); Alamo Rent-A-Car, 330 NLRB at 897). A petitioned-for unit need only be an appropriate unit, not the only or the most appropriate one. See Specialty Healthcare, 357 NLRB 934, 940 (2011) (“But the suggestion that there is only one set of appropriate units in an industry runs counter to the statutory language and the main corpus of our unit jurisprudence, which holds that the Board need find only that the proposed unit is an appropriate unit, rather than the most appropriate unit.”) (emphasis in original). “The Board’s discretion in this area is broad, reflecting Congress’ recognition ‘of the need for flexibility in shaping the [bargaining] unit to the particular case.’” NLRB v. Action Auto., 469 U.S. 490, 494 (1985) (quoting NLRB v. Hearst Pubs., Inc., 322 U.S. 111, 134 (1944)).

Here, the traditional community of interest factors support the petitioned-for, multi-facility unit. Employees’ skills and duties are the same at both the Park and Zoller facilities. The two facilities are staffed by employees in the same classifications, including Team Leaders, Assistant Supervisors, and Residential Counselors. OLOC employees monitor both facilities to ensure compliance with protocols and procedures and to assist when youth are in crisis. Although the youth at the Park facility require more supervision due to their special needs, staff have the same responsibilities in caring for these children as for the foster children living in the Zoller facility. They see to their physical well-being, implement programming, and ensure that staff follow applicable ICMP and safety plans. Accordingly, they have the same training in TCI techniques for dealing with youth in crisis and have the same orientation and training.

Their working conditions are also the same. They work in the same job titles for the same rates of pay, have the same qualifications, are eligible for the same benefits, are subject to the same personnel policies set by a shared human resources office, record their time and request leave in the same payroll system, follow the same recommended dress code of employer-issued shirts, and report through the same management structure.

Additionally, centralized administrators oversee both facilities. A Senior Director of Residential Services manages operations. A common Program Manager, Case Management Supervisor, Intake Specialist, Recreation Coordinator, OLOC Team Leader, Human Resources staff, and Office Manager also serve both locations. Team Leaders at both facilities report to the same Program Manager. Although the Zoller facility, the Shelter, and Park facility maintain
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separate budgets, they contribute from their budgets to those common administrative functions and staff, including nursing and maintenance employees.

The record also reflects the existence of employee interchange. On an hourly basis, OLOC employees perform rounds to check on both facilities because they are responsible for monitoring both. Team Leaders from both locations meet at the Park facility for team meetings. When insufficient staff are present to meet required ratios, residential staff can come from another facility to fill-in. Zoller facility staff also regularly take youth to the Park facility to use the amenities, see the nurse, or participate in a joint basketball game. This interchange occurs regularly and seamlessly in the normal course of business. The facilities are therefore functionally integrated.

The remaining factors also support the conclusion that the petitioned-for unit is appropriate. The facilities are only 1.7 miles or a 5-minute drive apart. Neither facility has a separate bargaining history. The Union has, moreover, petitioned to represent the facilities in a single unit, which is always a relevant consideration.

I therefore find on the basis of the record evidence that the two facilities share a community of interest and the petitioned-for unit is appropriate.

IV. Guards

Pursuant to Section 9(b)(3) of the Act, the Board shall not:

decide that any unit is appropriate . . . if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer’s premises. . . .

This section of the Act reflects Congress’s concern that conflicts of interest might arise if guards were represented by unions that also represent non-guard employees. Burns Sec. Servs., 300 NLRB 298, 299 (1990). As the Board noted in The Boeing Company, 328 NLRB 128, 130 (1999), Congress was particularly concerned about the role a guard may play during a period of industrial unrest or strike by other employees of the same employer. Congress therefore excluded guards to prevent conflicts that might arise if they were required to enforce security rules against their striking co-workers. Id.

In keeping with this concern, to be considered a guard under the Act, an individual must enforce rules to protect the property of the employer’s premises against employees and other
persons. *Reynolds Metal Co.*, 198 NLRB 120, 120 (1972). A guard is, therefore, an employee with responsibilities typically associated with traditional police and plant security functions such as (1) the enforcement of rules directed at other employees; (2) the authority to compel compliance with those rules; (3) training in weapons and security procedures; (4) possession of weapons; (5) participation in security rounds and patrols; (6) monitoring and controlling access to the employer’s premises; and (7) wearing guard-type uniforms or displaying other indicia of guard status. *Boeing Co.*, 328 NLRB at 130 (citing *Wolverine Dispatch, Inc.*, 321 NLRB 11, 13 (1996); *55 Liberty Owners Corp.*, 318 NLRB 308, 310 (1995); *Burns Sec. Servs.*, 300 NLRB at 300). Employees with mixed duties are guards whenever a portion of their time, and a significant portion of their job, is spent performing guard duties including enforcement of company rules against other employees. *See id.*

As to the Team Leaders and Assistant Supervisors at issue in this case, the record evidence does not support the conclusion that they perform guard duties. They do not enforce rules directed at other employees to protect property or the safety of others on the premises. They lack authority to compel other employees to comply with Employer rules, lack training in weapons or security procedures, and do not possess weapons. They do not search employees’ person or property and may not use force against employees. Likewise, they lack authority to use force against visitors or the youth in their care, including to take away a weapon or protect the Employer’s property, with the limited exception of restraining a youth for up to 20 minutes when TCI techniques fail to deescalate a crisis. Although Team Leaders and Assistant Supervisors may search a youth returning from AWOL status or suspected of having contraband, they do so only if the OLOC employee is unavailable or the youth prefers to be searched by someone of their own gender. The search is, moreover, limited to use of a metal-detecting wand and removal of bulky outerwear, socks, and shoes. They do not have authority to use force to take away contraband. Team Leaders and Assistant Supervisors do not participate in security rounds nor do they monitor or control access to the Employer’s premises. Likewise, they do not wear guard-type uniforms or display any insignia of guard status. Accordingly, because Team Leaders and Assistant Supervisors lack any indicia of guard status, they are not guards within the

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9 Although the record reflects that Team Leaders have access to security footage, there is no evidence that they are required to review it nor that they do so with any regularity.
meaning of the Act and may be included in the same unit as other employees in the petitioned-for unit.

OLOC employees also do not satisfy the criteria to be considered guards. Centrally, they do not enforce or compel compliance with Employer rules against other employees to protect the Employer’s property or the safety of others on the premises, thereby obviating the conflict-of-interest concern at the heart of Congress’ decision to exclude guards from broader bargaining units. The record reflects that OLOC employees are responsible for monitoring staff to ensure that staffing remains at required ratios and that no youth are in crisis. They may speak to staff about ratios and deviations from protocol and report these concerns. They also keep logs of which staff are working and of any late arrivals. However, they lack authority to use physical restraints against, search, or detain their colleagues under any circumstance. Their role is to ensure that the Employer’s normal operations are conducted safely and according to procedure. It is not to protect or preserve the Employer’s property and the safety of others on the premises in a police-like or security manner. Therefore, no concern exists about the sort of conflict of interest that motivated Congress’s exclusion of guards from a broader unit.

Likewise, although OLOC employees monitor the entrance of the Park facility for visitors in the evening and nights, they do not have authority to search, restrain, or remove visitors from the Employer’s premises, including if visitors refuse to leave when asked or to protect the Employer’s property. While they monitor the premises, admit visitors, and make regular rounds during which they check vehicles, locks, and staffing ratios, they do not act in a police-like capacity when doing so. Their purpose is not primarily to protect the property or

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10 Lion Country Safari, 225 NLRB 969 (1976) (gatemen and tower observers at wildlife preserve and amusement park were not guards because they merely observed and reported violations of rules designed to protect park patrons and the animals during normal operations of the business, did not enforce rules against employees and had only limited contact with customers insofar as enforcement of the employer’s rules was concerned, noting that these activities were not the circumstances in which Congress felt conflicting loyalties might exist); cf Portland Museum of Art, 370 NLRB No. 113 (Apr. 16, 2021) (finding that gallery ambassadors were guards because they were responsible for the security of the artworks, the safety of visitors and other employees on the employer’s premises, and enforcing rules, such as bag checks, against other employees).

11 Meyer Mfg. Corp., 170 NLRB 509, 509-10 (1968) (access to employer property, and admitting persons onto the property, is insufficient to find guard status if the employees have no authority to enforce rules to protect property or persons); see also Shattuck School, 189 NLRB 886 (1971) (a night watchman who kept a record, including vehicle license numbers, of any strangers on the campus, reported any necessary repairs or hazards he observed, made regular rounds in which he...
persons of the employer but to ensure that the Employer’s normal business operations are conducted safely. Similarly, although they occasionally may use physical restraint against a youth, their authority in this regard is no different from that of other residential staff. Their mandate is to use therapeutic techniques to deescalate situations with youth, monitor staffing ratios and compliance with safety plans, and notify law enforcement if a situation warrants escalation. *Boeing Co.*, 328 NLRB at 131 (stating that “reporting function alone, without other significant security-related responsibilities” insufficient to confer guard status). Indeed, OLOC employees receive no training on the use of weapons or security procedures, do not carry or have access to weapons, and do not wear guard uniforms or insignia. Their duties therefore do not include those “typically associated with traditional police and plant security functions” nor do they raise a concern about a conflict of interest with their colleagues. *Boeing Co.*, 328 NLRB at 130.

I therefore find that Team Leaders, Assistant Supervisors, and OLOC employees are not guards within the meaning of the Act.

V. Supervisory Status

Supervisors are specifically excluded from the Act’s coverage under Section 2(11). That Section defines a supervisor as any individual with the authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The burden of establishing supervisory status is on the party asserting that such status exists. *NLRB v. Kentucky River Cmty. Care, Inc.*, 532 U.S. 706, 711 (2001); *Shaw Inc.*, 350 NLRB 354, 355 (2007); *Croft Metals, Inc.*, 348 NLRB 717, 721 (2006). The party seeking to prove supervisory status must establish it by a preponderance of the evidence. *Croft Metals*, 348 NLRB at 721; *Oakwood Healthcare, Inc.*, 348 NLRB 686, 694 (2006). To establish that individuals are supervisors, the asserting party must show: (1) that the purported supervisors turned off lights and certain motors, and was employed because the employer’s insurance required an individual to patrol the premises for fire or other emergency protection, not a guard because his primary duty was to check fire hazards and he did not enforce rules to protect the property of the employer or safety of persons on the premises).
have the authority to engage in any one of the twelve enumerated supervisory functions; (2) that their “exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment”; and (3) that their authority is exercised “in the interest of the employer.” *Kentucky River*, 532 U.S. at 710-13. A lack of evidence in the record is construed against the party asserting supervisory status. *Elmhurst Extended Care Facs.*, 329 NLRB 535, 536 fn.8 (1999). Purely conclusory evidence is insufficient to establish supervisory status. *Community Education Centers, Inc.*, 360 NLRB 85, 90 (2014); *Volair Contractors*, 341 NLRB 673, 675 (2004).

a. **Supervisory Status of Team Leaders**

   Based on the record evidence, I conclude that Team Leaders are supervisors within the meaning of Section 2(11) of the Act because they effectively recommend that the Employer hire or decline to hire the applicants they interview for Residential Counselor positions.

   Specifically, the record establishes that the Employer delegates to Team Leaders full responsibility for interviewing and evaluating applicants. The Employer presented emails showing such recommendations as well as specific testimony that two of the candidates recommended for hire were in fact offered positions, as is typical of the Employer’s practice to hire those that Team Leaders interview and recommend. The Employer further offered uncontradicted testimony that no one other than Team Leaders interview and evaluate candidates. Corroborating this representation, a Team Leader testified that she regularly conducts candidate interviews and did not believe anyone else was involved in the interview process. Although Human Resources conducts an initial screening of applicants and a background check of anyone Team Leaders recommend for hire, the record contains no evidence that these gatekeeping functions are anything but ministerial.

   Team Leaders are therefore the sole individuals who meet with candidates and are the only ones who ask them questions and form an opinion about their fitness for the role. Their role in the interview process therefore entails the exercise of independent judgment. For example, one email showed a Team Leader recommending someone for hire based on their calm demeanor and connection to the foster care experience, notwithstanding that the candidate lacked experience working in a residential foster care setting. Another Team Leader wanted to hire a candidate she had interviewed, but for a different dormitory than her own because she wanted a male staff member given the particular needs and dynamics of unit. These recommendations
reflect the authority, free from the control of others, to “form an opinion or evaluation by
discerning and comparing data.” Oakwood Healthcare, Inc., 348 NLRB at 692-93.

The Union argues that the Employer has not sustained its burden of showing that the
Employer always hires candidates that Team Leaders recommend because Team Leaders are not
aware whether every recommended hire in fact receives an offer. However, the standard is not
that all recommended candidates receive an offer. The standard is that the function of evaluating
and recommending someone for hire be delegated without independent investigation by a
superior, as is the case here. Children’s Farm Home, 324 NLRB 61, 61 (1997) (stating that a
recommendation is effective when “the recommended action is taken without independent
investigation by superiors, not simply that the recommendation is ultimately followed”). The
Board therefore looks to the weight the employer affords a recommendation, USF Reddaway,
Inc., 349 NLRB 329, 340 (2007), specifically considering whether “management is prepared to
implement the recommendation without an independent investigation of the relevant
circumstances.” Chevron USA, 309 NLRB 61, 65 (1992); cf J.C. Penney Corp., 347 NLRB 127,
128-129 (2006) (employee did not effectively recommend hiring where all applicants
“recommended” were subsequently interviewed by other managers); Ryder Truck Rental, Inc.,
326 NLRB 1386, 1387 fn. 9, 1388 (1998) (technicians-in-charge who interviewed candidates and
offered “opinions or recommendations” that were given “significant” weight did not have
authority to effectively recommend hiring where a higher-level official also participated in the
interview and hiring process); Waverly-Cedar Falls Health Care, 297 NLRB 390, 392 (1989)
(LPNs did not effectively recommend hiring where no contention or finding that the director of
nursing relied solely on the their recommendations without further inquiries).

A secondary indicium of supervisory status supports this conclusion. As the Employer
points out, the ratio of staff to supervisors would be approximately 1 to 50 if the Team Leaders
were not supervisors, leaving the Program Manager in charge of all Team Leaders, Assistant
Supervisors, and Residential Counselors. The Board has found such ratios to be disproportionate
in other cases and indicated that such disproportionate supervisory ratios support a conclusion
that supervisory status exists when an employer has already established a primary indicium. See,
e.g., Formco, Inc., 245 NLRB 127, 128 (1979) (noting that a 30-1 ratio of employees to
supervisors was disproportionate).
Accordingly, the Employer has sustained its burden of showing that it delegates the interview and recommendation for hire of Residential Counselors to Team Leaders without conducting an independent investigation of the potential employee. Team Leaders therefore qualify as supervisors within the meaning of the Act.¹²

b. Supervisory Status of Assistant Supervisors

I find that Assistant Supervisors are not supervisors within the meaning of Section 2(11) of the Act. As an initial matter, the record contains no evidence of their involvement in hiring, transferring, suspending, laying off, recalling, promoting, discharging, or rewarding staff. Unlike Team Leaders, Assistant Supervisors do not participate in interviews of job applicants and therefore are not able to effectively recommend anyone for hire.

¹² Although not dispositive of my decision, I also find that the Employer did not sustain its burden of demonstrating that Team Leaders assign work, responsibly direct, promote, or discipline employees, or effectively recommend action in any of these areas.

As to assigning work, Team Leaders do not exercise independent judgment in this area because Residential Counselors typically volunteer for or coordinate assignments collaboratively. *Children’s Farm Home*, 324 NLRB at 67 (affirming Regional Director’s decision that there was no exercise of independent judgment in the assignment of tasks because “[m]ost such decisions are based on the expressed preferences of the employees involved or are reached by a consensus of the employees on the shift”). Similarly, Team Leaders’ role in setting schedules, reviewing timesheets, and approving leave is clerical in nature and does not entail the exercise of independent judgment.

The evidence is also insufficient to establish that Team Leaders responsibly direct Residential Counselors. Although they oversee and provide guidance as to programming and compliance with plans and procedures, the Employer failed to establish that it holds them accountable for Residential Counselors’ work, as required to establish responsible direction. *Golden Crest Healthcare Ctr.*, 348 NLRB at 731 (requiring “a more-than-merely-paper showing that” the prospect of consequences exists for failing to direct employees adequately).

Further, the record fails to support the conclusion that Team Leaders play a role in promoting employees. Although they complete evaluations, no evidence exists that these evaluations have a tangible impact on employees’ wages or career progression. Indeed, the only evidence on the issue indicates that the Employer declined to follow a Team Leader’s recommendation that an employee receive a promotion. *See, e.g., Ten Broeck Commons*, 320 NLRB 806, 813 (1996) (stating that there must be a direct correlation between the employees’ evaluation and their wage increases and/or job status).

Lastly, the Employer did not sustain its burden of showing that Team Leaders effectively recommend discipline. Record evidence establishes that Team Leaders observe employee conduct and sign disciplinary notices. However, the Employer may override Team Leaders’ disciplinary decisions and have Human Resources independently investigate an issue by, for example, looking at video from security cameras. *See, e.g., Veolia Transp. Servs., Inc.*, 363 NLRB 902, 910 (2016).
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Northeast urges that Assistant Supervisors are statutory supervisors because they assign and responsibly direct the work of Residential Counselors when Team Leaders are off duty. However, the Employer has failed to sustain its burden in these areas.

First, the evidence is insufficient to establish that Assistant Supervisors exercise independent discretion in the assignment of work. Clinicians set programming, which Assistant Supervisors oversee in Team Leaders’ absence. In that capacity, Assistant Supervisors generally allow staff to volunteer and coordinate assignments amongst themselves. When discrete tasks arise, they seek volunteers to perform them. Although they may direct a Residential Counselor to perform a task in the absence of volunteers, an Assistant Supervisor testified that this does not generally happen. Regardless, the assignment of these discrete tasks does not entail the independent exercise of discretion because the skills and job functions are the same for all Residential Counselors and the tasks—for example, taking a youth to the hospital—do not require any special assessment of the staff member’s abilities relative to the youth’s needs. See The Arc of South Norfolk, 368 NLRB No. 32 (2019) (finding that independent judgment does not exist if decision is based on well-known employee skills or solely with respect to whether the employee can do the job). Likewise, when Assistant Supervisors ask a Residential Counselor to perform a discrete task or to work on another unit to satisfy the staffing ratio, they seek volunteers among those present or off-duty. Relatedly, any adjustments that Assistant Supervisors make to schedules are routine and do not involve the exercise of independent judgment because such changes would be motivated only by ensuring proper staffing ratios. See Oakwood Healthcare, Inc., 348 NLRB at 692-93 (stating that, for independent judgment to exist, “an individual must at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data”).

Second, the Employer has failed to sustain its burden that Assistant Supervisors responsibly direct work. Although they are responsible for ensuring that Residential Coordinators complete evening and nighttime programming and follow applicable plans and procedures, the Employer presented no evidence that Assistant Supervisors are held accountable for Residential Counselor’s mistakes or performance. See Golden Crest Healthcare Ctr., 348 NLRB at 731.

Consequently, Assistant Supervisors are not supervisors within the meaning of Section 2(11) of the Act and are therefore properly included in the petitioned-for unit.
c. Supervisory Status of On-Line On-Call Employees

I find that OLOC employees are not supervisors within the meaning of Section 2(11) of the Act. The record contains no evidence that OLOC employees hire, fire, suspend, layoff, recall, promote, discharge, reward, or discipline employees. The Employer principally maintains that OLOC employees are supervisors because they assign and responsibly direct employees. However, the record does not establish that they exercise independent judgment in the assignment of work, nor that they are held responsible for the performance of other employees.

As to assignment of work, the record establishes that OLOC employees are responsible for monitoring each of the facilities to ensure appropriate staffing ratios and compliance with the Employer’s plans and procedures. They will step in if there is an incident with a youth and may provide guidance on how to handle the situation. They may intervene if they see a Residential Counselor sleeping or failing to follow proper procedures. They may also send a Residential Counselor who fails to follow a direction home, ask off-duty Residential Counselors to come in to satisfy staffing ratios, and may assign a Residential Counselor to perform a task as needed, such as taking a youth to the hospital. However, the record does not establish that OLOC employees exercise independent judgment in these functions. Although they monitor compliance with procedures, they elevate significant issues to upper-level management. Further, they do not have authority to mandate an off-duty employee to report to work and therefore seek coverage based on employees’ availability and whether the employee is willing to volunteer to come in. Entergy Mississippi, Inc., 357 NLRB 2150, 2156 (2011) (citing Golden Crest Healthcare, 348 NLRB at 729 (“[T]he party seeking to establish supervisory authority must show that the putative supervisor has the ability to require that a certain action be taken; supervisory authority is not established where the putative supervisor has the authority merely to request that a certain action be taken.”)). To the extent that they assign discrete tasks to Residential Counselors, these assignments do not require the exercise of independent judgment because all Residential Counselors have the same skills and the tasks in question do not require any special assessment of individual ability. See Oakwood Healthcare, Inc., 348 NLRB at 692-93; see also The Arc of South Norfolk, 368 NLRB No. 32, slip op. at 3 (2019). The record also contains no evidence as to the frequency with which OLOC must assign work to staff in this manner. UPS Ground Freight, Inc., 365 NLRB No. 113, slip op. at 1 (2017) (“Mere inferences
or conclusory statements, without detailed, specific evidence, are insufficient to establish supervisory authority.”).

The Employer therefore has not satisfied its burden of demonstrating that OLOC staff use independent judgment in the assignment of work.

Likewise, the Employer has not sustained its burden that OLOC employees responsibly direct employees. In particular, the record is devoid of evidence that OLOC employees are held accountable for Residential Counselors’ (or anyone else’s) performance. See, e.g., Entergy Mississippi, 357 NLRB at 2154-55 (quoting Oakwood Healthcare, 348 NLRB at 692 (“[F]or direction to be ‘responsible,’ the person directing and performing the oversight of the employee must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly”) (emphasis added)).

I therefore find that OLOC employees are not supervisors within the meaning of Section 2(11) of the Act and are properly included within the petitioned-for bargaining unit.

VI. Conclusion

Consistent with the precedent set forth herein, I find that the following unit is appropriate for bargaining and hereby order that it proceed to an election:13

Included: All full-time and regular part-time employees in the following classifications employed by the Employer at 122 Park Avenue, Schenectady, New York and 1768 Eastern Parkway, Schenectady, New York: Custodian, Senior Custodian, Maintenance Worker, Senior Maintenance Specialist, Residential Counselor RC-1, Residential Counselor RC-2, Residential Counselor RC-3, Residential Assistant Supervisor RC-5, On-line On-call, Case Manager, Food Service Worker, Bus Driver, Office Manager, Licensed Practical Nurse, and Administrative Assistant.

Excluded: Guards, professional employees and supervisors as defined in the Act, and all other employees.

13 I further conclude the Case Managers are properly included in the bargaining unit. Although the Union did not include Case Managers in its petition, the Employer included this title in its list of employees with its timely-filed statement of position. The Union has agreed to the inclusion of this job classification in the unit.
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 Civil Service Employees Association, Inc., Local 1000, American Federation of State, County and Municipal Employees, AFL-CIO.

A. Election Details

The election will be held on Tuesday, May 3, 2022, from 7:00 a.m. to 10:00 a.m., 3:00 p.m. to 5:00 p.m., and 10 p.m. to 11:59 p.m. at 1st floor conference room at 122 Park Avenue, Schenectady, New York.

B. Election Arrangements and Mechanics Pursuant to GC Memo 20-10

If the protocols set forth in General Counsel Memorandum 20-10, Suggested Manual Election Protocols (“GC Memo 20-10”), including those listed below, cannot be followed (or attested to as described in the memo), I reserve the right to cancel or reschedule the manual election, or convert the election to a mail-ballot election with ballots being mailed out on or as soon as practicable after the scheduled manual election date.

Given the COVID-19 pandemic, in order to protect the voters, observers, Board agent, and others during the election and ballot count:

a) The Employer will provide four separate tables with four chairs that will be placed at least 6 feet apart in the voting area: There will be one table for the Employer’s Election Observer, one for the Union’s Election Observer, one for the Board Agent, and one for the ballots/ballot box/writing utensils. In the event the space of the voting area will not allow for four separate tables; the Employer will set the voting area up to ensure that six feet of space between the voters, the Board Agent, and the Election Observers can be maintained at all times;

b) Employer will ensure that the voting area has sufficient room for voters to maintain 6 feet of space between one another when entering and exiting the voting area (the Board Agent will direct the flow of traffic to allow only one voter in the area at a time);

c) Employer will provide masks for all voters;

d) The Board Agent, voters, and Election Observers shall wear masks in the voting area during the entirety of the election process. In accordance with the “Voting Place Notice”, Form NLRB-5017, the Board Agent has the discretion to advise a voter who is not properly masked to leave the voting area and return when properly masked;

14 See also Aspirus Keweenaw, 370 NLRB No. 45 (2020).
e) The Board Agent has the discretion to limit attendance at the process of handling of the ballots to the number of people who can maintain 6 feet of space between one another;

f) All individuals attending the process of handling of the ballots shall wear masks;

g) The Employer will complete and submit COVID-19 Certification Forms A and B to the Region within the time frame set forth on the forms;

h) The Union will complete and submit COVID-19 Certification Form B to the Region within the time frame set forth on the form.

C. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending April 3, 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.

D. 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 Friday, April 15, 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.
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.

E. Posting of Notices of Election

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

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board’s Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is
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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 must be E-Filed through the Agency’s website and 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, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency’s E-Filing system or why filing electronically would impose an undue burden. 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: April 13, 2022.

/s/LINDA M. LESLIE

LINDA M. LESLIE
REGIONAL DIRECTOR
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