DEcision and Direction of Election

On April 14, 2022, SEIU Healthcare Pennsylvania (“Petitioner”) filed a representation petition under Section 9(c) of the National Labor Relations Act (“Act”) seeking to represent certain employees employed by Comprehensive Healthcare Management Services LLC d/b/a Brighton Rehabilitation and Wellness Center (“Employer”) out of its skilled nursing facility located in Beaver, Pennsylvania. Specifically, Petitioner seeks a unit of all full-time and regular part-time professional and nonprofessional employees in the Employer’s Rehabilitation Department. There are approximately 24 employees in the petitioned-for unit.

A videoconference hearing was held on May 5 and 6, 2022, before a hearing officer of the National Labor Relations Board (“Board”). The Employer asserts Occupational Therapists (“OTs”) and Physical Therapists (“PTs”), including Licensed Physical Therapists (“LPTs”) and Doctors of Physical Therapy (“DPTs”) (collectively “Therapists”), must be excluded from any appropriate unit because they are statutory supervisors while Petitioner maintains the Therapists do not possess any of the primary indicia required for a supervisory finding. Specifically, the Employer contends Therapists possess the authority in the interest of the Employer to responsibly direct their respective assistants—Occupational Therapy Assistants (“OTAs”) and Certified Occupational Therapy Assistants (“COTAs”), including Certified Occupational Therapy Assistants – Licensed (“COTA/Ls”), and Physical Therapy Assistants (“PTAs”) (collectively “Assistants”)—and to make recommendations regarding performance and potential discipline,

1 On May 4, 2022, the Employer submitted an amended statement of position in which it asserted that Speech-Language Pathologists are also statutory supervisors. However, I precluded litigation of their supervisory status since the Employer failed to timely raise the issue. See Williams-Sonoma Direct, Inc., 365 NLRB No. 13 (2017) (adopting Regional Director’s decision to reject employer’s statement of position and preclude litigation of issues raised therein based solely on the employer’s failure to timely serve its statement of position on the petitioner); Brunswick Bowling Products, LLC, 364 NLRB No. 96 (2016) (overturning Regional Director’s decision to accept statement of position that was timely filed, but served 3 hours 20 minutes late, and allow union to litigate issues raised therein). The Employer subsequently stipulated to the inclusion of Speech-Language Pathologists in the petitioned-for professional voting group, rendering the issue moot.

2 The term “Therapists” is used throughout the record to refer to both OTs and PTs, separately and collectively. Similarly, the term “Assistants” is used to refer to all nonprofessional employees in the Therapy Department, including OTAs, COTAs, COTA/Ls, and PTAs. For convenience, I have adopted this usage throughout my decision.
using independent judgment. Petitioner argues the evidence fails to establish Therapists take corrective actions against Assistants or experience consequences caused by an Assistant’s actions.

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

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Based on the entire record in this proceeding, including the parties’ post-hearing briefs, and relevant Board law, I find that the Employer failed to meet its burden of showing Therapists are statutory supervisors by specific detailed uncontroverted evidence.² Accordingly, I shall order an election in the petitioned-for unit.

I. THE EMPLOYER’S OPERATIONS

The Employer operates an approximately 600-bed skilled nursing facility in Beaver County, Pennsylvania, that provides patients with a variety of healthcare services, including rehabilitation and therapy. At the time of the hearing, the Employer employed approximately 450 employees for 405 patients. The Employer divides its patient rooms by unit and floor. There are four units—Main, East, West, Grove—and up to five floors. Main is floors 2 through 5; East is 2 through 3; West is 2; and Grove is 1 through 3.

David Ferraro is the facility’s Administrator and oversees its operations, including approximately eight departments: Nursing, Dietary, Activities, Therapy, Case Management, Human Resources, Payroll, and Maintenance. Relevant to the instant petition is the Therapy Department, which has been directly overseen since 2016 by Therapy Director Dana Iorio, who reports to Administrator Ferraro.

The Therapy Department has three subdepartments—Occupational Therapy, Physical Therapy, and Speech Therapy. Pursuant to the parties’ stipulations, each component employs therapists, which are professional employees provided they do not possess supervisory indicia, and nonprofessional assistants. Occupational Therapy consists of four OTs, four OTAs, and four COTAs, including COTA/Ls. Physical Therapy employs one DPT, one LPT, and seven PTAs. Speech Therapy consists of one speech therapist and three speech-language pathologists, which the parties have stipulated should be included in any appropriate unit.

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³ As stipulated by the parties, the Therapists are appropriately included in the bargaining unit if they are not statutory supervisors.

⁴ Also referred to in the record as residents.

⁵ When testifying about the Employer’s departments, Administrator Ferraro listed both Dietary and Registered Dieticians. The record is not clear whether these constitute one department or two separate departments.

⁶ The record also references a Social Services Department.

⁷ Also referred to in the record as the Rehabilitation Department and Therapeutic Department.

⁸ Also referred to in the record as Rehabilitation Director and Rehab Director.
The Occupational Therapy and Physical Therapy subdepartments each have a single designated “senior therapist,” who can be an Assistant or a Therapist. According to Director Iorio, the primary role of a senior therapist is to pass along information from the Employer to their respective coworkers. Iorio gave the example of notifying employees about meetings. The senior therapist in Occupational Therapy is an OT, and the senior therapist in Physical Therapy is a PTA. Iorio testified that the senior therapists do not have any authority beyond other employees in their respective classifications. Senior therapists receive a wage adjustment. The record does not indicate the amount of the increase.⁹

Prior to April 2021, the Therapy Department was operated by a third-party provider, Premier Therapy (“Premier”). In April 2021,¹⁰ the Employer assumed operation of the Therapy Department and hired, or offered employment to, former Premier workers, including Director Iorio.¹¹ According to Administrator Ferraro, former Premier employees retained their salaries and benefits. Therapists and Assistants signed acknowledgements of their job descriptions for the Employer on or about April 12, 2021, which were the same job descriptions they had signed while working for Premier. The job descriptions list various essential functions, required skills and abilities, required credentials, physical requirements, and clinical service delivery and documentation expectations. All Therapist and Assistant job descriptions list the positions as reporting to the Facility Rehabilitation Director, which is Iorio.

Therapists and Assistants all use desks in the therapy gym.¹²

A. Patient Admission and Evaluation

Patients come to the Employer as either new admissions or readmissions. Prior to arriving at the facility, the Employer assigns a patient to a unit and floor. Both types of admissions come with either specialized or generalized physician orders for occupational therapy, physical therapy, or both.

The patient is admitted on the first day and then typically evaluated on the second day. The Therapist conducting the evaluation depends on the physician’s orders. If the orders are for occupational therapy an OT conducts the evaluation. If the orders are for physical therapy a PT conducts the evaluation. If the orders are for occupational therapy and physical therapy then both an OT and a PT conduct separate evaluations although the evaluations may occur at the same

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⁹ The Employer does not argue, and I do not find, that the senior therapists are supervisors by virtue of any duties performed exclusively as a senior therapist.

¹⁰ Administrator Ferraro, Director Iorio, and an OT Amy Lui testified that the transition from Premier to the Employer occurred on April 1, 2021, while COTA/L Krista Laderer testified that the transition occurred on April 20, 2021.

¹¹ According to Administrator Ferraro and Director Iorio, Premier continues to provide certain consulting services to the Employer. Specifically, Ferraro testified that Premier checks productivity by comparing the amount of therapy minutes scheduled to therapy minutes delivered, “help with the hiring of some staff,” and “meet with the staff either weekly or monthly.” Iorio testified that Premier is a clinical resource for clinical guidance but do not have a role in the day-to-day management of the Therapy Department. The record contains no further details about Premier’s ongoing role with the Employer or the petitioned-for employees.

¹² Also referred to in the record as the rehab gym.
time.\textsuperscript{13} OT Amy Lui testified that occupational therapy evaluations are typically based on the patient’s assigned location in the facility while DPT Zach Gall testified that physical therapy evaluations are generally divided between new admissions, which he performs, and readmissions, which the LPT performs. Gall further testified that he may evaluate four to five new admissions per day but, if there are less than four, then he will perform some “in-house” evaluations. Lui testified that she evaluates between two and five patients per day.

If an evaluation results in the Therapist identifying a patient need, they work with the patient to develop a plan of care. The plan of care specifies goals the Therapist and patient want to achieve. Lui gave the example of a patient recovering from a broken wrist having the goal to restore the ability to feed themselves with their dominant hand. As such, the plan of care contains treatment and billing codes related to achieving that goal. According to Lui, the codes give the parameters for what treatments and therapies may be implemented.

\textbf{B. Therapists and Assistants}

In general terms, as described above, Therapists evaluate patient needs pursuant to physician orders, create plans of care in conjunction with the patient to achieve goals to meet those needs, and then monitor the patient’s progress within the plan of care. Assistants implement the plans of care established by the Therapists by administering treatments and therapies to patients.\textsuperscript{14} Therapists rarely observe Assistants treating patients; rather, Therapists review progress notes,\textsuperscript{15} which Assistants complete daily. DPT Gall testified that he reviews approximately 25 to 30 progress notes per day, in addition to completing his evaluations. OT Lui testified that she reviews between 15 to 20 or 25 progress notes per day. After review, the Therapist co-signs the progress note, acknowledging that treatments were delivered that day pursuant to the plan of care. The record does not describe any situations in which a Therapist would not co-sign a note. If an Assistant believes a patient may need to take on treatments, therapies, or tasks outside the goals in their current plan of care, the Assistant may make a recommendation to the Therapist to reevaluate the patient and change their goals. A change in the plan of care requires the approval of a physician.\textsuperscript{16}

Therapists and Assistants must follow Pennsylvania’s Occupational Therapy Practice Act (“OT Act”) and Physical Therapy Practice Act (“PT Act”) (collectively “Practice Acts”)\textsuperscript{17} and the Board of Occupational Therapy Education and Licensure and Board of Physical Therapy.\textsuperscript{18}

\textsuperscript{13} DPT Gall testified that Therapists attempt to ensure that their plans of care do not overlap and, in his two months with the Employer, he has not had any overlapping plans of care with an OT.

\textsuperscript{14} Therapists may also directly provide treatments to patients, although the record contains minimal instances of this actually occurring.

\textsuperscript{15} Also referred to in the record as case notes.

\textsuperscript{16} The Employer has a direct licensure to perform therapy, which means plans of care must be approved by a physician. An indirect licensure, which the Employer does not have, enables Therapists to create and implement plans of care without physician approval.

\textsuperscript{17} See 63 P.S. § 1501 et seq. and § 1301 et seq., respectively.

\textsuperscript{18} See 49 Pa. Code Chapters 42 and 40, respectively.
1. Responsibly to Direct

Director Iorio assigns Assistants to particular units and floors, which determines the patients each Assistant typically treats. For example, PTA Alysia Franitti testified that she works on Grove 3 and East 2, 3, and 4. Multiple witnesses testified that Assistants may treat patients outside of their assigned areas, giving examples of covering for a patient’s regular Assistant on leave or not being reassigned if a patient is moved to a different location in the facility. Similarly, a Therapist may evaluate a patient outside of their assigned area and may review progress notes for plans of care they did not develop; however, an OT only reviews occupational therapy plans of care and a PT only reviews physical therapy plans of care.

Assistants receive a schedule each day at the start of their shift that specifies their work for the day. Director Iorio creates the schedules, which list the patient names, room number, treatment code, and projected minutes of therapy.19 Regarding the latter, Franitti testified that she determines the amount of time spent on each treatment. She gave the example of a schedule listing 30 minutes of physical therapy with the treatment codes for therapeutic activity and gait training, and then she decides to spend 15 minutes on gait training and 15 minutes on transfers.

COTA/L Laderer testified that she is not able to assess or perform anything that is outside a patient’s plan of care. She gave the example of not being able to do a feeding task with a patient that only has bathing and dressing on their plan of care.

Multiple witnesses testified that Assistants may vary treatments and therapies within the plan of care, provided it falls within the treatment codes of the approved plan of care. OT Lui gave the example of a plan of care goal that the “patient will demonstrate ability to improve self-feeding with the use of adaptive equipment,” noting the Assistant had flexibility to determine the type of adaptive equipment. Lui testified that she could specify the adaptive equipment to be used. The record does not indicate if, or how often, Therapists have specified the adaptive equipment.

As noted above, Therapists do not typically observe Assistants in the performance of their work. DPT Gall testified that, in his two months with the Employer, he has not observed an Assistant administering therapy.

a. Corrective Action

According to OT Lui, she “very rarely” sees repeated problems or deficiencies with Assistants’ work. When she has noticed a repeated problem or deficiency she speaks with the Assistant and, if the conversation does not resolve the issue, she notifies Director Iorio of the problem. According to Lui, she orally informs Iorio and there are no written forms. The record does not contain any examples of a repeated problem or the details of any conversations an OT has had regarding repeated problems or deficiencies.

DPT Gall testified that he has never addressed a performance issue with an Assistant or raised a performance issue with Director Iorio. If he were to notice an Assistant was not following the plan of care, he would take the issue to Director Iorio. Gall further testified that he

19 As noted above, the parties stipulated that Therapists do not assign work to employees.
recognizes he has the autonomy “to speak to the Assistant” himself and that he may not need to involve Iorio if he felt he “could convey the adjustments that would need to be made to the Assistant.” The record is devoid of details regarding the type of conversation he would have, whether it may only be reiterating the plan of care, or any specific hypothetical examples. Nor does the record describe what constitutes an adjustment.

b. Accountability

Director Iorio testified that Therapists “assume all professional responsibility for any of the services rendered by the Assistants.” OT Lui testified that it is an OT’s responsibility if a plan of care is not being followed. The record does not detail the purported responsibility of OTs for the services provided by their Assistants. According DPT Gall, if a plan of care is not being followed it is the responsibility of the PTA, and if the plan of care itself is not addressing the patient’s needs then the PT created an improper evaluation and plan of care.

Iorio also testified that a Therapist violating the rules codified in the Practice Acts could have their license revoked. The record contains no details or specific examples of Practice Act violations or consequences that the Employer could or would impose on a Therapist for violating the Practice Acts.

The record contains no evidence Therapists have ever received discipline or other negative consequences or rewards or other positive consequences as the result of an Assistant’s actions. Iorio further testified that she has not ever informed Therapists they could be rewarded or disciplined for the performance of Assistants. The two Therapists who testified at the hearing, DPT Gall and OT Lui, both testified that they have never been told they could receive positive or negative consequences for the performance of Assistants. Both further testified that they have never been disciplined or rewarded for the performance of Assistants.

2. Discipline

Director Iorio testified that the Employer does not have a formal disciplinary procedure for the Therapy Department and that she does not know of any disciplinary forms used by the Employer. She also testified that she expects “the staff would be able and should be able to offer insights to the Assistant, as needed, to follow the plan of care.” If the Assistant did not improve, then Iorio would expect to be involved. The record does not indicate Therapists would or should make a recommendation on discipline, nor does it indicate Iorio would always follow their recommendations.

OT Lui testified that every worker has a responsibility to report improper or inappropriate patient interactions by employees. COTA/L Laderer testified that when she notices an Assistant acting inappropriately she informs the senior therapist20 of the subdepartment—Occupational Therapy or Physical Therapy—and notifies Director Iorio. She gave the example of seeing a PTA incorrectly documenting treatment, after which she consulted with coworkers and the senior therapist for Physical Therapy (who is a PTA) about how to handle the situation. She then made a

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20 As noted above, the senior therapist is not necessarily a Therapist and is an administrative function designated by Director Iorio.
full report of her observations to Iorio. Specifically, the senior therapist guided Laderer to report the issue to Iorio. Laderer does not know if any actions were taken with regard to the PTA based on her reporting.

According to OT Lui, she has never been told she has the authority discipline or recommend discipline, has never disciplined an employee, has never recommended an employee be disciplined, and has never received instruction on how to discipline. DPT Gall also testified that he has never disciplined an employee or recommended an employee be discipline and he does not have the authority to discipline or recommend the discipline of an employee.

The senior therapists in each subdepartment perform weekly audits of their respective plans of care. The senior therapist in Occupational Therapy, OT Lui, audits random occupational therapy plans of care, reviewing the work of OTs and OTAs and COTAs, including COTA/Ls. The senior therapist in Physical Therapy, who is a PTA, audits random physical therapy plans of care, reviewing the work of PTs and PTAs. Lui testified that if she finds a problem while auditing she notes the deficiency on a form and submits the form to Director Iorio. The record does not contain any auditing forms nor was there testimony elicited that the forms are more than a report of the deficiency or what, in any, consequences have resulted from the forms.

The record contains one specific example of increased auditing. According to Director Iorio, DPT Gall raised a concern about the sufficiency of a PTA’s progress notes, specifically the PTA was documenting only one or two factors of a multifactorial goal. Iorio and Gall “together” decided on increased audits of the PTA’s progress notes to monitor their sufficiency. Iorio testified that she and the senior therapist in Physical Therapy continue to audit the PTA’s progress notes. Gall testified that the sufficiency of the PTA’s progress notes was raised by another PTA, and then he, Iorio, and the senior therapist in Physical Therapy, who is also PTA, 21 had an “open discussion” regarding the sufficiency of the PTA’s progress notes. According to Gall, this resulted in the Gall, Iorio, and the senior therapist monitoring the PTA’s progress notes—not formal auditing. Gall also testified that he was unaware that these heightened observations had continued.

3. Other Supervisory Indicia

The parties stipulated that Therapists do not have the authority to hire, transfer, suspend or discipline (with the exception of recommending effective discipline), lay off or recall, promote or reward (including evaluations, overtime, assignments, time off, wage increases), discharge or assign. They also stipulated that no discipline or recommendations to discipline have been issued by Therapists.

4. Secondary Supervisory Indicia

The record contains no specific references to secondary indicia.

21 The record is not clear whether the senior therapist was the PTA who raised the issue with DPT Gall.
II. SUPERVISORY STATUS

A. Board Law

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

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

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

The Board’s seminal decision in *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006), sets forth the analysis to be applied in assessing supervisory status.22

The Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions; between effective recommendation and forceful suggestions; and between the appearance of supervision and supervision in fact. The exercise of some supervisory authority in a merely routine, clerical, or perfunctory manner does not confer supervisory status on an employee. See *Oakwood*, 348 NLRB at 693; see also *J. C. Brock Corp.*, 314 NLRB 157, 158 (1994). The authority to effectively recommend an action means that the recommended action is taken without independent investigation by acknowledged supervisors, not simply that the recommendation is ultimately followed. See *DirecTV U.S. DirecTV Holdings LLC*, 357 NLRB 1747, 1748–1749 (2011) (quoting *Children’s Farm Home*, 324 NLRB 61 (1997)); see also *Veolia Transportation Services, Inc.*, 363 NLRB 902, 906 (2016) (*Veolia I*); *Ryder Truck Rental, Inc.*, 326 NLRB 1386 (1998).

“[T]o exercise ‘independent judgment,’ an individual must at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data. …[A] judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company rules or policies, the verbal instructions of a higher

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22 In particular, the Board adopted specific definitions for “assign,” “responsibly to direct,” and “independent judgment.” On the same day it issued *Oakwood*, the Board also issued decisions in two companion cases, applying its newly refined supervisory analysis—*Croft Metals, Inc.*, 348 NLRB 717 (2006), and *Golden Crest Healthcare Center*, 348 NLRB 727 (2006). As such, Board decisions involving these terms that predate *Oakwood* may be of limited precedential value.
authority, or in the provisions of a collective-bargaining agreement.” Oakwood, 248 NLRB at 692–693. Testimony that decisions are collaborative also is insufficient to show independent judgment free from the control of others. CNN America, Inc., 361 NLRB 439, 460 (2014) (citing KGW-TV, 329 NLRB 378, 381–382 (1999)); see also Veolia Transportation, 363 NLRB 1879, 1885–1886 (2016) (Veolia II). Professional or technical judgments involving the use of independent judgment are supervisory only if they involve one of the 12 primary indicia. Entergy Mississippi, Inc., 357 NLRB 2150, 2154 (2011) (quoting Oakwood, above at 692).

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

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

Burden of Proof and Weight of the Evidence

The burden of establishing supervisory status rests on the party asserting that such status exists. NLRB v. Kentucky River, 532 U.S. at 711; Shaw, Inc., 350 NLRB at 355; Croft Metals, Inc., 348 NLRB 717, 721 (2006). The party seeking to prove supervisory status must establish it by a preponderance of the evidence. Croft Metals, above at 721; Oakwood, 348 NLRB at 687.

The fact that not all putative supervisors have actually exercised supervisory authority does not defeat a supervisory finding. See generally, Fred Meyer Alaska, Inc., 334 NLRB 646, 649 fn. 8 (2001). However, the Act “requires … evidence of actual supervisory authority visibly translated into tangible examples demonstrating the existence of such authority.” G4S Regulated Security Solutions, 362 NLRB 1073 (2015) (quoting Oil Chemical & Atomic Workers v. NLRB, 445 F.2d 237, 243 (DC Cir. 1971), cert. denied 404 U.S. 1039 (1972)). See also Lynwood Manor, 350 NLRB 489, 490 (2007); Golden Crest, 348 NLRB at 731. “Purely conclusory evidence does not satisfy that burden. Lack of evidence is construed against the party asserting supervisory status.” Veolia II, 363 NLRB at 1883–1884 (citing Lynwood Manor, above at 490; Dean & Deluca New York, Inc., 338 NLRB 1046, 1048 (2003)). Job titles, job descriptions, or similar documents are not given controlling weight and will be rejected as mere paper absent independent evidence of the
possession of the described authority. *Golden Crest*, above at 731 (citing *Training School at Vineland*, 332 NLRB 1412, 1416 (2000)). See also *CHI LakeWood Health*, 365 NLRB No. 10, slip op. at 1 fn. 1 (2016) (cases cited therein).

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

Where the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. *Veolia II*, 363 NLRB at 1884 (citing *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989)); *G4S*, 362 NLRB at 1072–1073. See also *Dole Fresh Vegetables, Inc.*, 339 NLRB 785, 792 (2003). Finally, the sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. See *Shaw, Inc.*, 350 NLRB at 357 fn. 21; *Oakwood*, 348 NLRB at 693. See also *Kanawha Stone Co., Inc.*, 334 NLRB 235, 237 (2001); *Commercial Fleet Wash, Inc.*, 190 NLRB 326 (1971).

Less weight has been given to evidence and testimony without an established foundation in the record. Similarly, the weight of record evidence is attenuated by the passage of time or where it concerns facts or circumstances predating organizational and procedural changes at the Employer. Conversely, I accord more weight to witness testimony where the record establishes direct knowledge of the facts when the instant petition was filed. Affirmative responses to leading questions are devalued because they suffer the weakness of being the testimony of the questioner rather than the witness. See generally, *H. C. Thomson, Inc.*, 230 NLRB 808, 809 fn. 2 (1977); see also, *Soltech, Inc.*, 306 NLRB 269, 270 (1992) (observing “some testimony elicited in response to leading questions has little probative weight because it amounts to mere agreement with statements by counsel rather than persuasive testimony by the witness”). Such testimony typically does not constitute the specific detailed evidence necessary to establish putative supervisors possess primary indicia consistent with the concern expressed that it is the actual duties and actual accountability of the worker that count when determining supervisory status. *G4S*, 362 NLRB at 1072–1073.

**B. Application of Board Law to This Case**

Of the 12 primary indicia for supervisory status, the Employer does not contend, and the record contains no evidence, that Therapists have the authority to hire, transfer, suspend, lay off or recall, promote or reward (including evaluations, overtime, assignments, time off, wage increases), discharge, or assign work to any other employee at the facility.\(^{23}\) The Employer asserts the

\(^{23}\) Although not included in the parties’ stipulation, the Employer does not address Therapists’ authority to adjust employee grievances in its post-hearing brief and appears to have abandoned any argument they possess this supervisory indicium. I find that the record evidence is insufficient to show that Therapists adjust employee grievances.
Therapists use independent judgment to responsibly direct work, along with “mak[ing] effective recommendations regarding performance and potential discipline.” Petitioner asserts the evidence fails to establish Therapists direct the work of Assistants, issue corrective actions to Assistants, or possess accountability for Assistants’ actions. It highlights the Employer has issued no formal discipline and the record is insufficient to show Therapists possess authority to effectively recommend discipline.

As explained in the sections below, the record evidence and examples of purported supervisory authority contain minimal details of Therapists’ discretion, particularly the factors considered and how they are weighed. It also lacks specificity on how Therapists’ decisions or actions directly affect employees. Witness testimony of consequences affecting Therapists’ job status due to the performance of Assistants or other employees is nonexistent. Thus, the uncontradicted evidence lacks the specificity and detail required by the Board to establish Therapists use independent judgment when recommending discipline, including whether such recommendations would be effective, or are held responsible for the actions of Assistants or other employees. Accordingly, I find the Employer has not satisfied its burden to prove Therapists are statutory supervisors.

1. Responsibly to Direct

The Employer asserts that Therapists use independent judgment when directing Assistants, including correcting Assistants’ deficient performance, and may suffer consequences if an Assistant performs poorly.

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

Specifically, an OT testified that she does not “correct grievances” and there is no other testimony regarding Therapists addressing employee complaints about terms and conditions of employment.

24 To the extent the Employer asserts Therapists make recommendations “regarding performance,” I note the parties stipulated that Therapists do not possess the authority to promote or reward. Similarly, I find that the record evidence is insufficient to show that Therapists effectively recommend reward or promotion. Specifically, the record contains no evidence regarding a Therapist recommending reward or promotion for an Assistant or any other employee.
Thus, in order to establish supervisory status by virtue of responsible direction, the Employer must show by specific detailed evidence that Therapists have authority to direct employees with corrective actions, using independent judgment, and have the prospect of consequences based on the quality of the work performed. *Oakwood*, 348 NLRB at 692.

I am cognizant that some language in the Pennsylvania Code and espoused by the Board of Physical Therapy and the Board of Occupational Therapy Education and Licensure, may appear to implicate supervisory authority for Therapists. However, as the Employer acknowledges, the regulations and relevant regulatory bodies “do not in and of themselves create authority to direct other employees.” Rather, the analysis for supervisory status under Section 2(11) of the Act looks at how an employer effectuates those rules and regulations within its operations, as demonstrated by specific detailed record evidence. Not every employer will implement regulations through the same policies and procedures or in the same ways; nor, as is the case here, will every record reveal the requisite supervisory authority.

The Employer’s reliance on job descriptions, employee-signed acknowledgements of the job descriptions, and witness testimony that the job descriptions “accurately describe” the Therapists’ duties is misplaced. To the extent these documents contain any reference to supervisory authority, this is the type of “paper authority” and general conclusory testimony the Board eschews when determining supervisory status. See, for example, *Southside Medical Center, Inc.*, 356 NLRB 295, 295 fn. 1 (2010) (affirming nonsupervisory finding where job description listed supervisory indicia and incumbent signed an acknowledgement, but the record contained no specific detailed evidence incumbent possessed supervisory authority or used independent judgment). Accordingly, I cannot find that the Therapists possess or exercise any supervisory authority based on the job description and acknowledgements.

The Employer cites to testimony by Director Iorio describing an instance involving a returning patient. According to Iorio, an OT took on treatment of the patient herself instead of it being assigned to an OTA or COTA, including COTA/L. Iorio explained it was a “difficult patient,” who was not very compliant with treatment provided by the previous OTA, so the OT independently undertook to provide treatment after evaluating the patient. The OT notified Iorio of her plan to take over patient treatment. However, as noted above, the parties stipulated that Therapists do not assign work and, in this instance, the OT assigned work to herself not to an Assistant or another employee. I further note the record is unclear as to whether the OT’s actions were in response to the patient or the OTA (or both).

OT Lui testified that she had discretion on which issues to bring to Director Iorio or handle herself, and that she used independent judgment to resolve issues. Lui could not recall any specific examples, and the record contains no details of the types of issues or how they were (or could potentially be) resolved. Similarly, Lui testified that she has the ability to use her judgment and discretion when it comes to “certain aspects of [her] job,” but again, the record fails to specify the aspects and does not contain any examples. Therefore, the record is vague and inconclusive and insufficient for me to find that Therapists use the requisite independent judgment to find they possess the authority responsibly to direct the work of Assistants.

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25 The record contains none of the Employer’s policies or procedures.
Regarding the authority to take corrective action, the evidence is also vague and inconclusive. Lui testified that she speaks with Assistants when she notices a repeated problem or deficiency. Specifically, Lui testified that if an Assistant has questions about a plan of care she expects them to seek her out, and that if she felt a plan of care of is not thoroughly documented then she would “speak” and “collaborate” with the Assistant to ensure the plan was sufficiently documented. She further responded to a leading a question regarding hypothetical mistakes, testifying that if an Assistant made mistakes she would “address” them. However, the record contains no details regarding how Lui would address such mistakes. Therefore, the record is insufficient for me to find that Therapists take corrective actions, as defined by the Board, necessary for responsible direction. The record contains no details or tangible examples of conversations Lui or any other Therapist has had with Assistants, including the factors considered by the Therapists in initiating and having those conversations, or any subsequent training or retraining. Compare Community Education, above at 85 (finding “corrective action by recording [employee]’s failures to follow proper procedures and by providing related training”). Thus, the evidence fails to establish that Therapists’ conversations with Assistants constitutes a corrective action.

Regarding the “responsible” aspect of direction, the record is clear that no Therapist has received discipline for the performance of Assistants on their plans of care. Testimony on responsibility is vague and inconclusive. The Employer cites to testimony by Director Iorio that Therapists “assume all professional responsibility for any of the services rendered by the Assistants” and Lui’s testimony that it is an OT’s responsibility if a plan of care is not being followed; however, the record does not describe any potential Employer-imposed consequences for Therapists that result (or even could result) from such failures in services and to follow plans of care. As noted above, no Therapist has received discipline, let alone for the performance of Assistants. Thus, the evidence fails to establish Therapists receive any job-affecting consequences for the performance of Assistants.

Accordingly, I find that the record is insufficient to show Therapists responsibly direct the work of Assistants.

2. **Discipline**

The Employer acknowledges that no formal discipline has issued against Assistants (or Therapists) but argues that the “lack of any specific instances of discipline likewise does not mean that the licensed Therapists do not possess the ability to make recommendations when it comes to performance issues of the Assistants.”

The Board has consistently held that asserted disciplinary authority “must lead to personnel action without independent investigation by upper management” to establish supervisory status. *Veolia I*, 363 NLRB at 908 (citing *Sheraton Universal Hotel*, 350 NLRB 1114, 1116 (2007); *Beverly Health & Rehabilitation Services, Inc.*, 335 NLRB 635, 669 (2001), enf’d. in pertinent part 317 F.3d 316 (DC Cir. 2003)). See also *Lucky Cab Co.*, 360 NLRB 271 (2014) (quoting *Franklin*  

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26 While the record contains general and conclusory testimony that a Therapist could lose their state licensure if they violated their respective Practice Act, it does not indicate what, if anything, could or would happen to the job status of the Therapist.
Home Health Agency, 337 NLRB 826, 830 (2002); Pepsi-Cola Bottling Co., 154 NLRB 490, 493–494 (1965). “Warnings that simply bring the employer’s attention to substandard performance without recommendations for future discipline serve a limited reporting function, and do not establish that the disputed individual is exercising disciplinary authority. Similarly, authority to issue verbal reprimands is, without more, too minor a disciplinary function to constitute supervisory authority.” Republican Co., 361 NLRB 93, 97 (2014) (citations omitted). See also, Veolia II, 363 at 1884; Veolia I, 363 NLRB at 908, 911. Further, “the issuance of written warnings that do not alone affect job status or tenure do not constitute supervisory authority.” DirecTV, 357 NLRB at 1749 (citing Phelps Community Medical, 269 NLRB at 490). Where the evidence is in conflict as to whether a particular type of corrective action constitutes discipline, the Board will find that the party asserting supervisory status has not met its burden. See, for example, Veolia I, above at 908, 911 (finding conflicting testimony on whether mere issuance of “observation notice,” as well as coaching and counseling, constituted discipline).

“A warning may qualify as disciplinary within the meaning of Section 2(11) if it ‘automatically’ or ‘routinely’ leads to job-affecting discipline, by operation of a defined progressive disciplinary system.” Republican Co., above at 99 (citing Oak Park Nursing Care Center, 351 NLRB 27, 30 (2007); Ohio Masonic Home, 295 NLRB 390, 393–394 (1989)). “It is the [e]mployer’s burden to prove the existence of such a system, as well as the role warnings issued by putative supervisors play within it. If an ostensibly progressive system is not consistently applied, progressive discipline has not been established.” Veolia II, above at 1844 (citing Ken-Crest Services, 335 NLRB 777, 777–778 (2001); Republican Co., above at 99 fn. 8; Ten Broeck Commons, 320 NLRB at 809).

Thus, for Therapists to be found statutory supervisors, the Employer must show through specific detailed evidence that they make recommendations without independent review which affect Assistants’ job status or tenure, including the nonroutine and nonobvious factors Therapists consider when making recommendations.

As discussed above, the record contains no evidence the Employer has a formal disciplinary procedure or any disciplinary forms for the Therapy Department. The Employer points to Director Iorio’s open-door policy, which she described as: “[T]here have been instances that if a PT or OT would come to me, I have identified an issue, we would have an open discussion on what the issue is, has there been any attempt to remedy the problem, where do we go from here taking into account things that they have seen or done.” The record contains a single example involving a PTA’s progress notes being monitored more closely due to questions about their sufficiency. However, the evidence is vague, inconclusive, and in conflict. In this regard, DPT Gall’s account of the situation indicates another PTA raised the issue and Gall, Iorio, and the senior therapist had an open discussion about the issue. In contrast, Iorio’s version is that, Gall raised the problem and he and Iorio “decided together” to audit the PTA’s progress notes. Regardless, the

See, for example, Republican Co., 361 NLRB at 96–97 (finding verbal warning did not establish supervisory status where there was no evidence it had effect on warned employee’s job status or tenure); see also Hausner Hard-Chrome of KY, Inc., 326 NLRB 426, 427 (1998) (finding written reprimand not disciplinary without evidence “job affecting discipline” resulted); Azusa Ranch Market, 321 NLRB 811, 812–813 (1996) (finding evidence did not show written warnings had any effect on employee’s employment status); Ten Broeck Commons, 320 NLRB at 812 (holding written warnings do not establish supervisory status where merely reportorial and not clearly linked to disciplinary action affecting job status).
The record does not detail who recommended auditing or monitoring or how the decision was ultimately made. More importantly, nothing in the record indicates auditing or monitoring is a form of discipline (or corrective action), and it is unknown whether the PTA was even aware her progress notes are being audited or monitored. Further, the record fails to describe what, if any, consequence would result if the sufficiency of the progress notes does not improve.

The Employer also suggests the situation where an OT assigned herself to provide treatment to a “difficult patient” instead of the OTA, who had previously treated the patient, constitutes discipline, but fails to explain how this constitutes an adverse action against the OTA.

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

3. Secondary Indicia

As explained above, secondary indicia can support a finding of supervisory status but only where evidence indicates the existence of at least one of the primary indicia, which I find does not exist. In any event, the instant record fails to detail the existence of most secondary indicia, and neither party points to any secondary indicia.

III. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.28

3. The Petitioner is a labor organization which claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. In accordance with Section 9(b) of the Act, I make the following unit determinations:

28 As stipulated by the parties: “The Employer, a Pennsylvania limited liability corporation, is a healthcare institution within the meaning of Section 2(14) of the Act and is engaged in providing nursing care and services at its 246 Friendship Circle, Beaver, PA 15009 facility, the sole facility involved herein. During the most recent twelve-month period, the Employer derived gross revenues in excess of $250,000, and purchased and received goods or services valued in excess of $5,000 directly from points located outside of the Commonwealth of Pennsylvania.”
Voting Group A – Professional Unit

Included: All full-time and regular part-time professional employees employed by the Employer in its Therapy Department at its facility currently located at 246 Friendship Circle, Beaver County, Pennsylvania, including but not limited to Occupational Therapists, Physical Therapists, Licensed Physical Therapists, Doctors of Physical Therapy, Speech Therapists, and Speech/Language Pathologists.

Excluded: All nonprofessional employees, casual employees, administrative assistants, confidential employees, supervisors and guards as defined by the Act.

Voting Group B – Nonprofessional Unit

Included: All full-time and regular part-time nonprofessional employees employed by the Employer in its Therapy Department at its facility currently located at 246 Friendship Circle, Beaver County, Pennsylvania, including but not limited to Occupational Therapy Assistants, Certified Occupational Therapy Assistants, including Certified Occupational Therapy Assistants-Licensed and Physical Therapy Assistants.

Excluded: Professional employees, casual employees, administrative assistants, confidential employees, supervisors and guards as defined by the Act.

Combined Unit – Voting Groups A and B

Included: All full-time and regular part-time professional and nonprofessional employees employed by the Employer in its Therapy Department at its facility currently located at 246 Friendship Circle, Beaver County, Pennsylvania, including but not limited to Occupational Therapists, Physical Therapists, Licensed Physical Therapists, Doctors of Physical Therapy Speech Therapists, Speech/Language Pathologists, Occupational Therapy Assistants, Certified Occupational Therapy Assistants, including Certified Occupational Therapy Assistants-Licensed and Physical Therapy Assistants.

Excluded: Administrative assistants, casual employees, confidential employees, supervisors and guards as defined by the Act.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct secret-ballot elections among the employees in the voting groups set forth above. The employees in the professional unit (Voting Group A) will have two choices on their ballot: (1) whether they wish to be included with the employees in the nonprofessional unit of their Employer’s employees for purposes of collective bargaining and, (2) whether they wish to be represented for purposes of collective bargaining by the Petitioner. The employees in the non-professional unit will receive a ballot with only the second question.

If a majority of the professional employees in Voting Group A vote “yes” to the first question, indicating their desire to be included in a unit with nonprofessional employees in Voting Group B, they will be so included, and their votes on the second question will be counted together.
with the votes of the nonprofessional employees in Voting Group B to decide the question concerning representation for the overall combined unit, consisting of the professional and nonprofessional employees in Voting Groups A and B. If, on the other hand, a majority of the professional employees voting in Voting Group A do not vote “yes” to the first question, their ballots will be counted separately to decide the question concerning representation in a separate professional unit.

A. Election Details

The parties are in agreement that a manual election should be conducted at the Employer’s facility. According to the election will be held on Tuesday, July 12, 2022, from 5:00 a.m. to 8:30 a.m. in the Grove Gym of the Employer’s facility.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **June 18, 2022**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all employees in the unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.

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 provide a mailing address or appear in person at the polls to vote.

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

C. Voter List

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

29 My decision to direct a manual election is conditioned upon the Employer’s commitment to abide by *GC Memo 20-10*, “Suggested Manual Election Protocols” and the COVID-19 positivity rate in Beaver County not reversing its downward trend. As of June 23, 2022, Beaver County’s COVID-19 positivity rate is about 14 percent but, it is continuing to trend lower. Thus, I will reassess my decision to direct a manual ballot election rather than a mail ballot election within the week prior to the election. See *Aspirus Keweenaw*, 370 NLRB No. 45 (2020).
To be timely filed and served, the list must be *received* by the Regional Director and the parties by **June 28, 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](http://www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency’s website at [www.nlrb.gov](http://www.nlrb.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

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

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

**D. Posting of Notices of Election**

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

**RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board’s Rules and Regulations, a request for review in this case may be filed with the Board at any time following the issuance of this Decision until 10
business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board’s Rules and Regulations.

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

Neither the filing of a request for review nor the Board’s granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated:  June 24, 2022

/s/ Nancy Wilson
Nancy Wilson, Regional Director
National Labor Relations Board, Region 6
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Pittsburgh, Pennsylvania 15222-4111