

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 25**

**SOUTH CENTRAL INDIANA RURAL ELECTRIC  
MEMBERSHIP CORPORATION**

**Employer**

**and**

**Case 25-UC-363925**

**INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS LOCAL 1393**

**Petitioner**

**DECISION AND ORDER CLARIFYING UNIT**

On November 1, 2024, in Case 25-RC-351108, International Brotherhood of Electrical Workers Local 1393 (“Petitioner”) was certified as the exclusive collective-bargaining representative of employees employed by South Central Indiana Rural Electric Membership Corporation (“Employer”) in the following appropriate unit (“Unit”):

**Included:** All full-time and regular part-time Groundmen; Operators A, B, and C; Foremen A, B, and C; and Trimmers A, B, and C employed by the Employer at its 300 Morton Avenue, Martinsville, Indiana facility.<sup>1</sup>

**Excluded:** All office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act, and all other employees.

However, notification specialists are neither included in nor excluded from the bargaining unit covered by this certification, inasmuch as the parties did not agree on the inclusion or exclusion of notification specialists but agreed to vote them subject to challenge and resolution of their inclusion or exclusion was unnecessary because their ballots were not determinative for the election results.

Thereafter, Petitioner filed the instant petition on March 5, 2025, seeking clarification of the Unit. Petitioner seeks to include notification specialists in the Unit while the Employer contends notification specialists should be excluded.

A hearing was held on April 29, 2025, before a hearing officer of the National Labor Relations Board (“Board”). At the outset of the hearing, the hearing officer explained that since supervisory status and the contentions about community of interest involve exclusion, the party seeking exclusion on those bases bears the burden of proof and set forth the Board’s standard of

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<sup>1</sup> The stipulated election agreement by the parties and subsequent Certification of Representative contain an inadvertent omission of the word “facility.”

specific detailed evidence.<sup>2</sup> The parties were then 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. Specifically, Petitioner maintains notification specialists are nonsupervisory employees who share a community of interest with employees in the Unit. The Employer asserts notification specialists are supervisors within the meaning of Section 2(11) of the National Labor Relations Act (“Act”), as they exercise the requisite authority when regularly substituting for Superintendents, and do not share a sufficient community of interest with employees in the Unit to warrant their inclusion, if nonsupervisory. The Employer also argues Petitioner has the burden of establishing notification specialists share an “overwhelming community of interest” with Unit employees to be included in the Unit.

Consequently, the questions before me are whether notification specialists should be included or excluded from the Unit based on supervisory status and, if nonsupervisory, whether they share a sufficient community of interest with the Unit. I have carefully considered the entire record and the parties’ positions in reaching my determination. For the reasons discussed below, I find that the Employer has failed to meet its burden to establish that notification specialists are supervisors within Section 2(11) of the Act. Additionally, I find the traditional community-of-interest standard is applicable to this case, as opposed to the heightened overwhelming community-of-interest standard that the Employer seeks to apply here. I find that the evidence establishes the notification specialists share sufficient community of interest with other Unit employees and should be included in the Unit. Accordingly, I am clarifying the Unit certified in Case 25-RC-351108 to include the classification of Notification Specialist.

## **I. EMPLOYER’S OPERATIONS**

The Employer is a large rural electrical cooperative, which provides electric utility and high-speed internet services to its approximately 35,000 members<sup>3</sup> across a seven-county service area in South Central Indiana. The Employer owns roughly 4000 miles of both overhead and underground power lines, which must be maintained to ensure the unobstructed delivery of electric service to members. The Employer’s operation is organized into four distinct departments—the Business Department; the Line Operations Department, which maintains electricity; the Fiber Department, which maintains internet services; and the Vegetation Management Department, which ensures the areas around the power lines are clear of any trees, brush, or other vegetation. The Employer has two facilities in Martinsville, Indiana—the Main

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<sup>2</sup> The hearing officer erred in stating the burden with respect to community of interest. When the petitioned-for bargaining unit is not presumptively appropriate, as in this case, the Board has never articulated an explicit burden unless a non-petitioning party seeks to include additional classifications. See generally *Raytheon Co.*, 28-RC-298614 (Dec. 8, 2023) (unpublished) (finding “hearing officer erred in stating that ‘the community of interest involves a presumption under Board law’ and that ‘the burden lies with the party seeking to rebut the presumption’”). Nevertheless, as discussed below, such error was not prejudicial, as the Board looks to the same community-of-interest factors in a less-than-facility-wide unit whether or not there is a burden under both the traditional and overwhelming community-of-interest standards.

<sup>3</sup> The Employer’s members are essentially shareholders/owners of the Employer. The Employer primarily services its members, but it also provides high-speed internet services to some nonmember customers, as well.

Office located at 300 Morton Avenue and the Rogers Building, about one-quarter mile down the road from the Main Office.

### **Vegetation Management Department**

By maintaining the rights-of-way around power lines are clear, the Vegetation Management Department safeguards the reliability of electrical services for the Employer's members. Chris O'Neal is the Manager of the Vegetation Management Department and oversees its three Superintendents—AJ Kaufman, Ben Metcalf, and Kevin Watkins.<sup>4</sup> Each Superintendent supervises a team of nine to ten employees. The teams are made up of one notification specialist and a field crew that is composed of some combination of foremen, operators, trimmers, and ground specialists. Except for the notification specialists, there are increasing experience levels in each classification, with C designating the entry level and A designating the most experience in each classification. Specifically, the teams are organized as follows, with experience decreasing from left to right:

Superintendent (Production Team)									
Notification Specialist	Foreman A	Foreman A	Foreman B	Foreman C	Operator B	Operator C	Trimmer C	Ground Specialist A	Ground Specialist A

Superintendent (Production Team)									
Notification Specialist	Foreman A	Foreman A	Foreman A	Foreman B	Operator A	Operator B	Operator C	Trimmer C	Trimmer C

Superintendent (SOR Team)									
Notification Specialist	Foreman A	Foreman A	Foreman A	Foreman B	Foreman B	Operator C	Trimmer A	Trimmer C	

#### **Employer Exh. 1.**

Two of the teams are referred to as production teams and one is a service order request (“SOR”) team, which handles member requests for service. The two production teams are organized into a trimmer crew, a mowing crew, a cleanup crew, and a Kershaw crew,<sup>5</sup> plus one notification specialist. The SOR team consists of two bucket truck crews, plus a notification specialist. The vegetation management department works together collectively to clear the areas around the power lines and ensure the Employer is able to deliver electric service to its members without interruptions. Aside from substitutions due to absences or similar shifts, the teams generally work together as single units. Particularly, a notification specialist only completes notifications (which are later described herein) to client members for the work that the field crew on their respective team will complete.

The process of scheduling vegetation management projects starts with Manager O'Neal and the Superintendents, who consult with the Operations and Engineering Departments and

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<sup>4</sup> No party seeks to include the Manager and the Superintendents in the Unit and there is no dispute that they are supervisors under Section 2(11) of the Act, particularly in light of the Employer's contention that notification specialists engage in supervisory actions when filling-for Superintendents.

<sup>5</sup> Kershaw is a vegetation management equipment manufacturer, and the record references its SkyTrim as piece of heavy equipment used by the Employer's field crew.

look at the reliability data for an area of the electrical circuit called a “feeder”<sup>6</sup> to determine where vegetation needs to be cleared. They determine if there are any emergency situations requiring immediate attention and create a trimming schedule for that feeder. Manager O’Neal and the Superintendents then meet with the notification specialist to discuss the trimming schedule for that feeder. At that point, the notification specialist begins the process of notifying the members serviced through the feeder of the vegetation clearing work that will be done on and around their properties. Once members are notified, the field crew can begin the work. A notification specialist works about two to three weeks ahead of their field crew team performing the work. After the notification specialist notifies the last members on a particular feeder, they meet with the Manager and Superintendents to discuss the schedule and begin notifying members along the next feeder as their field crew finishes up the work on the previous feeder.

All field crew employees and notification specialists are paid on an hourly basis. The Notification Specialist and Foreman A classifications receive the same hourly rate of \$32.35. If vegetation management employees need to work overtime, they must request permission from a Superintendent or Manager. All employees in the Vegetation Management Department record their time in the PAYCOM system, using either their phones or a computer. They record the number of hours and any overtime they work daily. All employees of the Employer are eligible to receive the same benefits and receive the same amount of paid time off. Superintendents approve or deny leave requests for notification specialists and field crew employees.<sup>7</sup>

All the employees in the Vegetation Management Department interact on a daily basis. All employees report to work at 7:00 a.m. and end the day at 3:00 p.m. Both production teams, including their notification specialists, report to and leave from the Rogers Building, and the SOR team, including its notification specialist, reports to and leaves from the Main Office. When they arrive in the mornings, notification specialists and field crew employees discuss work and nonwork topics together as they get things in order and prepare for the day. During that time, notification specialists and field crew may perform common tasks to prepare for the day together in common areas at each facility. Likewise, when the vegetation management employees are done for the day, they all report back to either the Rogers Building or the Main Office with their respective crew and generally chitchat with each other, clean out their trucks, and prepare to finish the workday. Sometimes the employees will begin to prepare for the next workday, for example, by fueling up vehicles or equipment, cleaning out or washing their trucks, completing an inspection, performing equipment maintenance, going through paperwork, gathering documents, or reviewing the workload for the next day.

## **1. Notification Specialists**

Notification specialists are the liaison between the field crews and the Employer members they service. Before a field crew can begin the work of clearing a right-of-way, the notification specialist must contact the member owner of the property where the work will be done and obtain their permission to perform the work. The notification specialists analyze what

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<sup>6</sup> Each feeder can range anywhere from 20 to 120 miles long.

<sup>7</sup> Manager O’Neal approves or denies leave requests for the Superintendents.

work needs to be done, determine the equipment needed, and identify any special concerns or hazards, before communicating the project to the member orally or in writing and obtaining the member's permission to complete the work on their property.

Notification specialists regularly deal with difficult members, persuade hesitant members to allow the work to proceed, and find solutions that allow the Employer to complete the work and to which undecided members can agree. Notification specialists call members on the phone and visit members at their homes to discuss the upcoming work. They prepare notification documents, which outline the details of the work to be performed and obtain members' signatures. When they are unable to catch a member at home, notification specialists will leave a door hanger with information about the project and a place to sign or request more communication, and they go back later to follow up with the member as necessary or collect the signed door hanger.

Once notification specialists receive members' signoff, the field crews can begin the work of clearing the areas around those power lines. At that point, notification specialists coordinate with and work closely with the foremen out in the field. Often, the foremen will ride out with the notification specialists to review the forthcoming work. The other field crew also work with notification specialists at any given time, though not as frequently as the foremen. At the start of a project, notification specialists go to the worksite with the field crew to explain the scope of the work, the necessary equipment, any special considerations, and any other information the field crew may need for a particular project. The field crews then proceed to complete the work of clearing the rights-of-way while the notification specialists move on to notifying members of the next scheduled projects. They also go back to the worksite as necessary to consult with the field crews if any questions come up about the project or if a member questions the field crew as they are working. Notification specialists occasionally go back to review finished work as well, since they made the agreements with the members.

To perform their work, notification specialists are issued cellphones, laptop computers, and iPads, and they use these devices daily. Notification specialists primarily use their cellphones and iPads. Notification specialists also use feeder maps to identify, highlight, and track their work, as well as review goals and progress. They use the Meridian app, which contains members' account and contact information, the Field Pro app (or Futura desktop version), which contains the Employer's maps, the Federated SAFE app for job briefings, and the FleetIO app for truck inspections. To establish the scope of each project, notification specialists often review easements and maps in the Employer's various files, apps, and systems or by occasionally visiting county courthouses.

Notification specialists have designated cubicles at the Main Office and access to a small office with a printer, fax, scanner, and copier at the Rogers Building. Manager O'Neal testified that they spend between about 20 and 30 percent of their time performing in-office work, such as looking up member contact information, reviewing easements, or creating service order requests. The record does not reflect whether this in-office work is occurring in the cubicle in the Main Office or the small office space at the Rogers Building where the unit dispatches from. Notification specialists spend most of their time working out of their Employer-provided F-150 trucks in the field, going door-to-door leaving documentation or meeting with members, and on

project sites with the field crews. Notification specialists are issued company credit cards, which they can use to purchase things such as parts for the field crew, replacement trees for members, or anything else a Superintendent or Manager asks them to buy. Only the Manager, Superintendents, and notification specialists are issued credit cards. The frequency with which notification specialists use their credit cards varies from approximately once a month to three times a year. Generally, notification specialists get approval from a Superintendent before making purchases with their credit cards.

To qualify as a notification specialist, applicants must have at least three years' experience of utility tree trimming and tree identification, with preference for experience as an operator, trimmer, and foreman. The Employer also requires notification specialists to be working toward obtaining an arborist certification within one year and a utility arborist certification within two years of obtaining the position. Employees commonly progress through the Vegetation Management Department classifications up to notification specialist and beyond.<sup>8</sup> A 3-year notification specialist has worked for the Employer about 17 years, where he progressed from ground specialist to B-climber, to A-climber, to bucket truck operator, to A-trimmer, and A-foreman, as well as filling in as an operator on various equipment. A 7-year notification specialist started as a ground specialist and progressed to mower operator then mower foreman before he became a notification specialist. The record does indicate the progression, if any, of the Employer's third notification specialist.

**a. Substituting for and assisting field crew**

Since they typically work weeks in advance of field crew projects, notification specialists have the flexibility to step in and help field crews, commonly flagging traffic and serving in other roles as well. Because they are generally promoted from field crew positions, notification specialists have experience and training on field crew equipment and its use. Notification specialists use the mini-skid or "dingo" on average at least once a month to help field crews transferring brush, trees, logs, and debris from the roadway. They use the brush chipper about once every few months to turn brush and tree limbs into wood chips. Notification specialists can also fill in as a mower operator if they have skills and training to operate the machine. They drive bucket trucks out to jobsites as well, on average about once a month and, if they possess a commercial driver's license, use the dump truck at least a couple times a month to deliver machinery to jobsites or to haul stone or other materials.

**b. Acting as Superintendent**

Additionally, notification specialists regularly fill in for the Superintendents. When any employee fills in for the Superintendent, they are paid the higher wage rate.<sup>9</sup> Notification specialists fill in for Superintendents for as little as an hour at a time while the Superintendent is in a meeting, for example, or they can fill in for an entire week or more while the Superintendent

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<sup>8</sup> At the time of the hearing, two current Superintendents previously held the notification specialist position.

<sup>9</sup> The supervisor fill-in rate is \$33.63 per hour compared to the notification specialist's regular hourly rate of \$32.35.

is on vacation or other leave.<sup>10</sup> The 3-year notification specialist served as Acting Superintendent approximately 10 to 15 times in the last year. He testified that he has declined when asked to serve as Acting Superintendent when he was too busy and that a foreman served as Acting Superintendent instead. A notification specialist testified that he had declined a request to perform Acting Superintendent role on at least one occasion and the record does not show that the Employer has ever otherwise required a notification specialist (or any other employee) to be an Acting Superintendent.

While acting as Superintendent, notification specialists are present in case issues or questions arise while the Superintendent is away. Superintendents typically set trimming schedules and goals and expectations for their teams well in advance of upcoming projects, so Acting Superintendents answer questions or provide guidance as needed. Notification specialists acting as Superintendents do not dictate how the crews perform their work and are not held responsible for the crews' performance. If someone on a field crew is working unsafely, everybody on the crew has the authority and a responsibility to stop the work.

A notification specialist does not have access to the Employer's timekeeping system as Acting Superintendent, so any field crew employee's unexpected days off or late arrivals are passed along to Manager O'Neal.<sup>11</sup> If an absence causes a staffing problem, the Acting Superintendent may find a substitute by seeking permission from a regular Superintendent to shift someone from their team. While filling in for a Superintendent, notification specialists can review the work their field crews completed and, if they see any issues, report it to O'Neal to handle. This is also in line with their regular notification specialist duties.

As Acting Superintendent, the 7-year notification specialist has informed field crew members on at least one occasion that they were spending too much time at a gas station and needed to return to the jobsite. He then reported the incident to Manager O'Neal. According to the 7-year notification specialist, if the crew had refused to return to the jobsite as instructed, his only recourse would be to report the incident to Manager O'Neal. There is evidence that, as Acting Superintendent, the 7-year notification specialist has also informed a foreman that his field crew needed more clearance around a power line to avoid having to go back to redo the job later.

While filling in for Superintendents, notification specialists do not participate in hiring, handle payroll, recommend or award raises, recommend or promote employees, adjust employee grievances, authorize or mandate overtime, assign work or schedule projects, authorize employees to leave early, enforce break times, transfer employees, discipline, investigate discipline, or recommend discipline of employees, evaluate employee performance, select vendors, set pricing, approve timecards, or schedule employee vacations.

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<sup>10</sup> The Parties stipulated that notification specialists do not have authority to hire, suspend, lay off, recall, promote, or discharge other employees, or to effectively recommend such actions in their regular job duties or when serving as acting superintendent.

<sup>11</sup> Field crew employees may initially notify their foreman, who passes the information to the Acting Superintendent

## **2. Foremen**

Foremen oversee a specific crew on the larger team, which could be a Kershaw crew, a mowing crew, a trimming crew, or a clean-up crew. Crews can range from two to three people to six to ten people depending on the project. The foremen are responsible for overseeing and directing their crew while also working with their crew, either trimming or operating, out in the field. In addition to the equipment and machinery they use for the job, foremen are issued iPads and use them daily for job briefings, inspections, and traffic. Foremen use the Safe app and the FleetIO app on their iPads. They also use feeder maps to identify, highlight, and track their work, and to review weekly and monthly goals and progress with their field crew.

Foremen oversee the field crews and ensure they are performing their jobs adequately and safely while also working in the field with the crews. They operate the grapple truck, which transfers brush from a jobsite to a dumping site and the bucket truck, which is a 75-foot aerial lift truck used for trimming. Foremen work closely with superintendents, notification specialists, and their crews. They can step in anywhere on the jobsite as necessary, such as operating machines, directing traffic, or speaking with a member. Foremen also provide training and guidance to the members on their crew. Field crews take scheduled breaks at 10:00 a.m., 12:00 p.m., and 2:00 p.m. Sometimes, the breaks need to be adjusted for various reasons, and the foreman generally makes the decision to adjust the crew's break times. According to Manager O'Neal, one foreman has filled in for a notification specialist. Additionally, foremen fill in for Superintendents occasionally, in the same capacity as the notification specialists.

To qualify as a foreman, employees must have experience with line clearance in either a trimmer A or operator A level and have specialized experience in the area the foreman will be overseeing. Additionally, foremen are required to have a class A CDL license with an air brake endorsement or the ability to obtain it within 30 days of starting. Foremen progress through experience levels from the lowest level C to the highest-level A.

## **3. Operators**

Generally, operators run the heavy tree trimming and vegetation management machines. Operators run the forestry mulcher, which is referred to as the "mower," and the sky trimmer, called the "Kershaw." The Kershaw trims trees and the mower cleans up the brush and debris left behind after the trees are trimmed. Operators drive a dump truck with a hydraulic dumping bed to haul the mowers, as well as stone, dirt, or similar materials. A Class A CDL with air brakes is required to drive the dump truck. Operators also drive the grapple truck, which transfers brush and debris from a jobsite to a dumping location. All field crew, including the operators, use the mini skid or "dingo," which is used to transfer brush, trees, logs, and debris from the roadway and the brush chipper, which chips brush and tree limbs into wood chips. When they are not transporting the heavy machinery out to the jobsite, operators typically drive a pickup truck with a utility bed to the jobsite carrying equipment typically used on the jobsite, including several chainsaws, Xtendo saws, traffic control tools, and other equipment.

Operators progress through experience levels from the lowest level C to the highest level A. Operators receive on-the-job training from the more experienced operators and the foremen.



At first, they will learn the machine from the outside, then learn maintenance of the machine, and then progress to learning to operate the machine. When the Employer brings in a new piece of equipment, everyone in the department receives basic training on the equipment.

#### **4. Trimmers**

Trimmers trim the trees around the power lines out of a bucket truck, using a lift, from the ground, or by manually climbing the tree. Trimmers use various tools to trim trees, including hydraulic pole saws, chainsaws, and pole pruners. They also trim trees from the ground using hand pruners or an Xtendo saw. Trimmers also progress on a C-to-A experience scale. C-level trimmers work under the supervision of the more experienced B- or A-level trimmers and the trimmer foreman.

In order to qualify to be a trimmer, an employee must first successfully work at least six months as a ground specialist or have similar experience. Additionally, trimmers receive safety training on proper knots, rigging techniques, chainsaw operation, and bucket truck operation.

#### **5. Ground Specialists**

The ground specialists or groundmen operate in a sort of support role for the other field crew employees. They pick up the brush and carry it to the chipper or pile it up to be discarded. Ground specialists load and unload trucks, chip brush, carry, lay out, and maintain materials and tools, such as chainsaws and ropes, furnish materials and tools to climbers, move brush and logs, and hook trailers up to trucks. Once they are qualified to do so through on-the-job training, ground specialists also drive trucks and operate chippers. Ground specialists often direct traffic, as well. Additionally, ground specialists take care of equipment maintenance.

Ground specialists receive safety training from a safety professional when they go through onboarding. They watch a few instructional videos and then receive hands-on training from their foreman and fellow crewmen.

## **II. SUPERVISORY STATUS OF NOTIFICATION SPECIALISTS**

### **A. Board Law**

Section 2(3) of the Act excludes any individual employed as a supervisor from the definition of “employee.” Section 2(11) of the Act defines “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. *Shaw, Inc.*, 350 NLRB 354, 355 (2007). 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, 713 (2001).

The Board's seminal decision in *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006), sets forth the analysis to be applied in assessing supervisory status. 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. *Oakwood*, above at 693; see also *J. C. Brock Corp.*, 314 NLRB 157, 158 (1994). "[T]o exercise 'independent judgment,' an individual must at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data. ...[A] judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company rules or policies, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement." *Oakwood*, above at 692–693. The authority to effectively recommend an action means that the recommended action is taken without independent investigation by superiors, 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, 61 (1997)); see also *Veolia Transportation Services, Inc.*, 363 NLRB 902, 906 (2016) (*Veolia I*); *Ryder Truck Rental, Inc.*, 326 NLRB 1386 (1998). Testimony that decisions are collaborative 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*). Finally, the sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. See *Shaw*, 350 NLRB at 357 fn. 21; *Oakwood*, above at 693.

The Board considers indicia other than those enumerated in Section 2(11) of the Act as secondary indicia. Although secondary indicia may be considered in determining supervisory issues, they are not dispositive and are insufficient to establish supervisory status in the absence of an established primary indicium. *DirecTV*, 357 NLRB at 1750 (citing *Ken-Crest Services*, 335 NLRB 777, 779 (2001)); see also *PowerBack Rehabilitation*, 365 NLRB 1188, 1189 (2017) (citing *Modesto Radiology Imaging, Inc.*, 361 NLRB 888, 890 fn. 4 (2014)). Secondary indicia include, but are not limited to, the individual's: designation or perception as a supervisor, attendance at supervisory meetings, receipt of management memos, responsibility for a shift or phase of the employer's operation, authority to grant time off to other employees, responsibility for inspecting the work of others, responsibility for reporting rule infractions, receipt of privileges exclusive to members of management, compensation at a rate higher than the employees supervised, and the ratio of putative supervisors to employees. See *Sheraton Universal Hotel*, 350 NLRB 1114, 1118 (2007); see also *Flexi-Van Service Center*, 228 NLRB 956, 960 (1977).

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

### **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*, 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. “Purely conclusory evidence does not satisfy that burden, and supervisory status is not proven where the record evidence ‘is in conflict or otherwise inconclusive.’” *The Arc of South Norfolk*, 368 NLRB No. 32, slip op. at 3 (2019) (quoting *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989), citing *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006)).

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 1072, 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*, above at 731. The Board looks to evidence of supervisory authority in practice, not simply paper authority, and job titles, job descriptions, or similar documents are not given controlling weight. *Lucky Cab Co.*, 360 NLRB 271, 272 (2014); *Avante at Wilson*, 348 NLRB at 1057. The Board emphasizes 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. See, for example, *Northeast Center for Rehabilitation & Brain Injury*, 372 NLRB No. 35, slip op. at 9–10 (2022); *WSI Savannah River Site*, 363 NLRB 977, 979 (2016); *Pacific Coast M.S. Industries*, 355 NLRB 1422 (2010). Mere inferences or conclusory statements, without detailed specific evidence, are insufficient to establish supervisory authority. *Lynwood Manor*, above at 490; *Golden Crest*, above at 731. Vague or hypothetical testimony fails to establish independent judgment. See, for example, *Cook Inlet Tug & Barge, Inc.*, 362 NLRB 1153, 1153–1154 (2015).

In this case, 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 pre-dating organizational and procedural changes at the Employer. I accord more weight to witness testimony where the record establishes direct knowledge of the facts at the time 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, for example, *ODS Chauffeured Transportation*, 367 NLRB No. 87, slip op. at 1 fn. 1 (2019) (“Answers given in response to leading questions from a party’s own counsel are ... entitled to ‘minimal weight,’” citing *H. C. Thomson, Inc.*, 230 NLRB 808, 809 fn. 2 (1977); Fed.R.Evid. 611(c), Advisory Committee Notes); *G4S*, above at 1073, fn. 4.

## **B. Application of Board Law to the Instant Case**

The Employer acknowledges that notification specialists do not exercise supervisory authority in their normal duties, and there is no evidence in the record which would indicate otherwise. Instead, the Employer asserts notification specialists regularly and substantially substitute for Superintendents and, as Acting Superintendents, they independently determine when to stop work, assign work, direct the course of work, change projects and scheduling, inspect work, train employees, schedule and approve lunch breaks, receive absence notifications, order supplies, and effectively recommend discipline for Unit employees.<sup>12</sup> Petitioner maintains that when serving as Acting Superintendent, notification specialists exercise authority primarily related to routine matters and generally relay information to a Superintendent or the Department Manager rather than making decisions independently. Therefore, at issue is whether notification specialists, as Acting Superintendents, exercise authority to assign, transfer, responsibly direct, reward, discipline, or adjust employee grievances, using independent judgment.

As explained below, based on the record as a whole, I find the Employer has failed to show notification specialists spend a regular and substantial portion of their worktime as Acting Superintendents. Thus, they are not supervisors. Even assuming, for the sake of argument, notification specialists regularly and substantially substitute for Superintendents, the Employer has failed to establish they exercise a substantial share of the Superintendents' supervisory authority when they do so. The testimony establishes that Acting Superintendents serve mostly as a designated point of contact for field crew employees when a Superintendent is unavailable and any decisions Acting Superintendents make are routine in nature. Accordingly, I find that their role as Acting Superintendent does not make notification specialists supervisors under Section 2(11) of the Act.

### **1. Substitution**

“Where an individual is engaged a part of the time as a supervisor and the rest of the time as a unit employee, the legal standard for a supervisory determination is whether the individual spends a regular and substantial portion of [their] work time performing supervisory functions.” *Oakwood*, 348 NLRB at 694 (citations omitted).<sup>13</sup> In other words, “mere substitution for a supervisor without the *exercise* of supervisory authority does not confer supervisory status” (emphasis added). *Fred Rogers Co.*, 226 NLRB 1160, 1161 (1976) (citing *Boston Store*, 221 NLRB 1126, 1127 (1976); *Holiday Inn of Henryetta*, 198 NLRB 410, 420 (1972); *Cubit Systems Corp.*, 194 NLRB 622, 624 (1971)). See also *Brown & Root, Inc.*, 314 NLRB 19, 21 (1994) (“An

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<sup>12</sup> Of the 12 primary indicia for supervisory status, the Employer and Petitioner stipulated that, as Acting Superintendents, notification specialists do not have authority to hire, suspend, lay off, recall, promote, discharge, or effectively recommend such actions for other employees.

<sup>13</sup> As hereinbefore described, the Acting Superintendent work by notification specialists is closely intermingled with the nonsupervisory work of Unit employees. Thus, the Board's 50-percent test does not apply. See *Canonie Transportation Co.*, 289 NLRB 299, 300 (1988) (finding 50-percent rule does not apply “wherein the disputed individuals are performing both their allegedly supervisory and nonsupervisory jobs during the same workweek, in the same department with essentially the same complement of employees,” quoting *Doctor's Hospital of Modesto*, 183 NLRB 950, 951 (1970), *affd.* 193 NLRB 833 (1971), *enfd.* 489 F.2d 772 (9th Cir. 1973)).

employee who substitutes for an absent supervisor is not deemed to be a supervisor unless his exercise of supervisory authority is both regular and substantial,” citing *Hexacomb*, 313 NLRB 983, 984 (1994) (“it is clearly established that an employee who substitutes for a supervisor may be deemed a supervisor only if that individual’s exercise of supervisory authority is both regular and substantial”).

Employee substitution for a supervisor less than 10 percent of their worktime is generally insufficient to establish regular and substantial substitution while the Board typically finds substitution regular and substantial when it occurs more than 20 percent of an employee’s worktime. Compare *Hexacomb Corp.*, above at 984 (finding irregular and sporadic substitution for 8%-10% of working time during vacation periods or on other unscheduled occasions), and *Murphy Bonded Warehouse, Inc.*, 180 NLRB 463 (1969) (finding leadman nonsupervisory where substituting only when regular supervisor not present which was less than 10% of his working time), with *Honda of San Diego*, 254 NLRB 1248, 1249–1250 (1981) (affirming supervisory status where employee regularly substituted 10 of his 40 working hours each week); *Sewell, Inc.*, 207 NLRB 325, 330 (1973) (adopting supervisory finding where employees substituted 1-2 days per week); and *Sears, Roebuck & Co.*, 112 NLRB 559, 562 (1955) (finding substitution regular and substantial where “1 full day and 1 morning and evening each week”).

“Under the Board’s standard, ‘regular’ means according to a pattern or schedule, as opposed to sporadic substitution.” *Oakwood*, above at 694 (citations omitted). Thus, the Board generally finds substitution sporadic when it occurs only during vacation periods of acknowledged supervisors or to cover their medical absences. *Rhode Island Hospital*, 313 NLRB 343, 348 (1993) (citing *Latas De Aluminio Reynolds*, 276 NLRB 1313 (1985); *Canonsburg General Hospital Assn.*, 244 NLRB 899 (1979)). See also *Quality Chemical, Inc.*, 324 NLRB 328, 331 (1997) (affirming as irregular and sporadic substitution occurring “only when supervisors are sick, on leave, or otherwise temporarily absent from the facility”); *Jakel Motors, Inc.*, 288 NLRB 730 (1988) (finding irregular substitution when supervisor “was on vacation or off because of an extended illness”), *enfd.* 875 F.2d 644 (7th Cir. 1989). It is this regularity the Board looks to particularly in cases where supervisory substitution occurs between 10 and 20 percent of an employee’s worktime. Compare, for example, *Gaines Electric Co., Inc.*, 309 NLRB 1077, 1078 (1992) (finding substitution intermittent and sporadic where no discernable pattern and 15% of working time over a 17-month period), and *Tomkins-Johnson Co.*, 172 NLRB 2216 (1968) (finding nonsupervisory where employee substituted for supervisor “on his annual 2-week vacation and when [he] was outside of [his work area] in other parts of the plant ... typically from 1 to 1½ hours a day”), with *Aladdin Hotel*, 270 NLRB 838, 840 (1984) (finding substitution regular and supervisory status attached based on Employer’s “established, routine practice of scheduling dealers to work as substitutes for [supervisors]” for those dealers who substituted “on the average of at least two times per month over the past three months”).

Vice President of Human Resources Marilou Idland testified that notification specialists substitute for Superintendents when the Superintendent asks and is unavailable because “they could be training, they could be out, they could be in a meeting.” Tr. 57. Vegetation Management Manager O’Neal further testified that notification specialists substitute for “the absence of a Superintendent, whether they’re out sick or they’re on vacation or they’re tied up in

a meeting.” Tr. 193. The record establishes the three current notification specialists’ substitution for the Superintendents accounts for less than 10 percent of their worktime since 2022.<sup>14</sup> As such, this substitution, particularly given it occurs during Superintendent’s vacation, illness, and other unscheduled absences,<sup>15</sup> fails to meet the Board’s standard of regular and substantial substitution. See *Quality Chemical*, above; *Tomkins-Johnson*, above.

Accordingly, I find that the record fails to establish notification specialists substitute on a regular and substantial basis for Superintendents and, thus, cannot be supervisors under Section 2(11) of the Act.

Should the Board or courts find notification specialists’ substitution to be regular and substantial, I analyze the contested supervisory indicia<sup>16</sup> below and find the Employer failed to meet its burden to establish that notification specialists exercise sufficient supervisory authority when filling in for Superintendents to make them statutory supervisors.

## **2. Assign**

The Board defines “assign” as “designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee.” *Oakwood*, 348 NLRB at 689. The Board elaborated further that “assignment of an employee to a certain department (e.g., housewares) or to a certain shift (e.g., night) or to certain significant overall tasks (e.g., restocking shelves) would generally qualify as ‘assign’ ... However, choosing the order in which the employee will perform discrete tasks within those assignments (e.g., restocking toasters before coffeemakers) would not be indicative of the authority to ‘assign.’” *Ibid*.

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<sup>14</sup> Employer Exh. 9 shows the hours worked, including overtime (as differentiated from other time such as sick leave or vacation), by each notification specialist from January 2022 through April 2025. Employer Exhs. 10 & 11 show the hours each notification specialist substituted for a Superintendent over the same period of time. Two of the three current notification specialists held their positions in January 2022 while the third (the 3-year notification specialist) became a notification specialist in September 2022. The record shows that, for the 40-month period in the record, the 3-year notification specialist worked approximately 4551 hours of which 343 hours were as Acting Superintendent (or 7.54%); the 7-year notification specialist worked approximately 5746 total hours of which 280 hours were as Acting Superintendent (or 4.87%); and the remaining current notification specialist worked approximately 5939 hours of which 478 hours were as Acting Superintendent (or 8.05%). There does not appear to be any regularity to the hours worked as Acting Superintendent among the three current notification specialists.

While the record indicates two former notification specialists substituted for Superintendents approximately 17.49% and 21.49% (stated on the record by Employer counsel as 18% and 31%) of their working time, including overtime, these individuals stopped substituting by September 2022 and March 2023—more than 2 years before the hearing in this matter—and the record does not explain the difference in the rate of substitution compared to current notification specialists. Both former notification specialists are currently employed as staking technicians in the Employer’s Engineering Department.

<sup>15</sup> Manager O’Neal testified that Superintendents may call notification specialists to fill in when the Superintendent attends the weekly management meeting on Mondays; however, the Employer’s payroll records show only two instances where a notification specialist was Acting Superintendent for part of a Monday.

<sup>16</sup> See footnote 12, above.

Assignments must be based on independent judgment to confer supervisory status, and making assignments based on employees' well-known skills does not involve independent judgment. *CNN America, Inc.*, 361 NLRB 439, 460 (2014) (citing *KGW-TV*, 329 NLRB 378, 378, 381–382 (1999), *enfd.* in relevant part 865 F.3d 740 (DC Cir. 2017)); see also *S.D.I. Operating Partners, L.P.*, 321 NLRB 111 (1996). Making an assignment merely because the employee is capable of performing the job does not involve independent judgment. See *WSI Savannah River Site*, 363 NLRB at 979 (citing *Volair Contractors, Inc.*, 341 NLRB 673, 675 fn. 10 (2004)); *Cook Inlet Tug & Barge, Inc.*, 362 NLRB at 1154 (citing *Croft Metals*, 348 NLRB 717, 722 (2006)). Similarly, assignment of work duties based on employee preferences or seniority does not reflect the use of independent judgment. *Springfield Terrace Limited*, 355 NLRB 937, 942 (2010). Independent judgment is likewise not established by the assignment of recurrent and predictable tasks. *Shaw, Inc.*, 350 NLRB 354, 355–356 (2007); *Croft Metals*, above at 721 fn. 14 (citing *Franklin Home Health Agency*, 337 NLRB 826, 831 (2002); *Bowne of Houston*, 280 NLRB 1222, 1223 (1986)). Assignments in a merely routine, clerical, or perfunctory manner where there is only one self-evident choice do not require independent judgment. *Oakwood*, above at 693.

The record evidence on this subject is vague and conclusory. Vegetation Management Manager O'Neal testified that, as Acting Superintendents, notification specialists have authority to independently direct the course of work, change projects and scheduling, and schedule and approve lunch breaks. The record contains no specific examples of notification specialists, acting as Superintendent, assigning employees to a place, time, or overall duties, using independent judgment. Rather, the evidence indicates field crew projects are generally planned at least a couple weeks in advance by Superintendents, and there is nothing in the record demonstrating Acting Superintendents engage in such planning activities for field crew projects. Thus, Acting Superintendents appear to simply communicate assignments previously planned and scheduled by the Superintendents. Where the putative supervisor serves as a conduit relaying assignments to employees, the independent judgment standard is not met. See *Shaw, Inc.*, 350 NLRB at 355; *Golden Crest*, 348 NLRB at 729. In addition, the evidence indicates field crew classifications are distinguished by type of work (e.g., trimmer, mower, etc.) and experience and skill levels (i.e., A, B, C), and the record lacks details and specificity regarding any nonroutine factors an Acting Superintendent (or Superintendent) considers when making any assignments. Thus, the evidence falls short of establishing Acting Superintendents use independent judgment when assigning projects to field crews.

Further, the record establishes that all field crew employees have the same schedule and generally take breaks at prescribed times, with the need to deviate from those break times arising only in limited circumstances. Therefore, Acting Superintendents do not assign employees to a certain shift or even break times on a regular basis. The one example in the record, where an Acting Superintendent instructed employees to return to a jobsite from the gas station, contains little detail beyond the Acting Superintendent's belief that employees were taking too long for a routine task and fails to show substantial independent judgment.

Accordingly, I find the limited record evidence fails to show notification specialists have authority to assign other employees, using independent judgment, within the meaning of Section 2(11) of the Act.

### **3. Responsibly to direct**

The Board finds direction when it is shown that the employer has delegated to the putative supervisor the authority to direct the work—that is, to determine what tasks are done or by whom—and the authority to take corrective action, if necessary. See *Oakwood*, 348 NLRB at 691, 692. The threshold for establishing corrective action under responsible direction is lower than the threshold for the other supervisory indicia. See *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)). To responsibly direct, the so-called supervisor must also be held accountable for the performance of the task they supposedly direct. *Oakwood*, above at 692. As such, the ability to take corrective action without supporting evidence of accountability does not confer supervisory status. *Community Education Centers*, 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*, 348 NLRB at 731; see also, *Peacock Productions of NBC Universal Media, LLC*, 364 NLRB 1523, 1526 (2016). “Responsibly to direct” does not include “minor supervisory functions performed by lead employees, straw bosses, and setup men.” *Oakwood*, above at 690.

Acting Superintendents may review field crews’ work, which is also already an aspect of the notification specialists’ regular job duties. However, there is no evidence of any particular action the notification specialists take after reviewing work done by a field crew, whether in their normal duties or as Acting Superintendent. Additionally, there is no evidence indicating Acting Superintendents dictate how the field crew members perform their work or that they are held accountable for job performance of the field crews. The record contained one example where an Acting Superintendent informed a field crew foreman that more clearance was needed around a power line to avoid going back to redo the job later. However, there was no evidence indicating what, if anything, might have happened to the Acting Superintendent if the clearance had not been sufficient and the field crew had to go back to redo the job again later. Further, while the Employer emphasized that Acting Superintendents have independent stop work authority anytime safety is at risk, but the record is clear that all employees have the same stop work authority and, in fact, a responsibility to stop work anytime a safety issue arises. Accordingly, I find the record fails to establish notification specialists have authority to responsibly direct other employees, using independent judgment, within the meaning of Section 2(11) of the Act.

### **4. Transfer**

The Board generally assesses the authority to transfer as whether an individual moves employees from one work location or department to another or from one team or supervisor to another. See, for example, *Wolverine World Wide, Inc.*, 196 NLRB 410, 410 & fn. 4 (1972) (finding putative supervisors “assigned work and transferred employees from one job to another, from machine to machine based on production needs and their knowledge of the employees’



capability to perform the work”). However, short-term or temporary transfers to cover urgent needs are typically not viewed as conferring supervisory status. See *Children’s Farm Home*, 324 NLRB 61, 67 (1997) (affirming leads as nonsupervisory where they can arrange temporary transfers of employees but have no authority to permanently transfer employees); *Greenpark Care Center*, 231 NLRB 753, 754 (1977).

As with other primary indicia, the ability to transfer or effectively recommend transfer must be accomplished with independent judgment to confer supervisory status. See *Croft Metals*, 348 NLRB at 718 (finding lead person nonsupervisory where, among other things, acknowledged supervisor ultimately decides whether to temporarily transfer an employee to the crew from another part of the plant); *Bowne of Houston*, 280 NLRB at 1224 (finding individual nonsupervisory where manager determined number of employees to be transferred and putative supervisor “usually sent whomever was available and not busy”).

Here, the record establishes that Acting Superintendents may temporarily transfer a field crew employee from one team to another in the event that an employee is absent. However, to do so, the Acting Superintendents do not make those decisions on their own but rather work with another Superintendent to move the field crew members around. Further, the record fails to indicate how often such temporary transfers by notification specialists as Acting Superintendents occur. Accordingly, I find the evidence insufficient to establish notification specialists possess and exercise the authority to transfer employees, using independent judgment, within the meaning of Section 2(11) of the Act.

## **5. Reward**

The Board will find the authority to reward where alleged supervisors use independent judgment to substantially impact the earnings of other employees, for example, by granting merit increases or awarding bonuses. It has also found the granting of time off *as a result of good performance* to constitute a reward. *Newspaper Guild, Local 47 (Pulitzer Publishing)*, 272 NLRB 1195, 1200 (1984); *Taylor-O-Brien Corp.*, 112 NLRB 1, 12–13 (1955). More commonly, the Board analyzes whether a putative supervisor effectively recommends rewarding employees by virtue of evaluating their performance, and the evaluation, by itself, directly affects other employees’ job status. See, for example, *Wal-Mart Stores*, 335 NLRB 1310 (2001); *Trevilla of Golden Valley*, 330 NLRB 1377 (2000); *Bayou Manor Health Center*, 311 NLRB 955 (1993); *Pine Manor Nursing Center*, 270 NLRB 1008, 1009 (1984).

Here, the record contains no evidence that notification specialists or any other employees serving as Acting Superintendents are involved in employee wage increases or bonuses or performance appraisals in any way; nor is there any evidence that Acting Superintendents grant time off based on performance. Accordingly, I find the evidence fails to show notification specialists possess the authority to reward or effectively recommend reward, using independent judgment, within the meaning of Section 2(11) of the Act.

## 6. Discipline

To establish supervisory status regarding the authority to issue discipline, the discipline issued “must lead to personnel action without independent investigation by upper management.” *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), *enfd.* in relevant part 317 F.3d 316 (DC Cir. 2003)). Independent judgment requires “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.” *Oakwood*, above at 693. Merely issuing verbal reprimands is too minor a disciplinary function to be statutory authority. *Passavant Health Center*, 284 NLRB 887, 889 (1987) (citing *Beverly Manor Convalescent Centers*, 275 NLRB 943, 945 (1985)).

“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). 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. 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*, 363 NLRB at 908, 911 (finding conflicting testimony on whether mere issuance of “observation notice,” as well as coaching and counseling, constituted discipline).

The record contains no writeups, warnings, or other disciplinary forms. Manager O’Neal testified that “if it’s something disciplinary or things like that ... [Acting Superintendents] would progress that to myself or another Superintendent.” Tr. 196. There is a single incident in the record of a notification specialist serving as Acting Superintendent instructing field crew members to return to the jobsite because they had been at the gas station for at least an hour. After giving the instruction, the Acting Superintendent reported the incident to Manager O’Neal. There is no evidence of any recommendation for or against discipline, and the notification specialist testified that if the field employees had not returned to the jobsite, O’Neal would handle the issue. This one example available in the record shows the Acting Superintendent merely reporting the crew’s substandard performance to Manager O’Neal. Any disciplinary action was up to O’Neal. Accordingly, I find the record fails to show notification specialists possess the authority to discipline, using independent judgment, within the meaning of Section 2(11) of the Act.

## 7. Adjust employee grievances

To establish supervisory status based on the ability to adjust employee grievances, alleged supervisors must have the authority to resolve workplace complaints beyond minor disputes, again using independent judgment. See *Ken-Crest Services*, 335 NLRB at 778–779; see also *Riverchase Health Care Center*, 304 NLRB 861, 865 (1991). Responding to informal complaints regarding workloads, break schedules, and personality conflicts amongst employees

is not sufficient to establish the authority to adjust grievances. *Riverchase*, above at 865. It is insufficient to show the putative supervisor simply has some involvement in the grievance procedure. Rather, the Employer must present evidence demonstrating the role the purported supervisor plays in the procedure and that they independently adjust employee grievances. *Training School at Vineland*, 332 NLRB 1412, 1412 fn. 2 (2000).

There was no evidence in the record showing notification specialists or any other employees serving as Acting Superintendents use independent judgment to adjust employee grievances. The record established that Acting Superintendents serve mainly as the point of contact if any unexpected issues arise while the Superintendent is away. Generally, if there is a nonroutine issue, the Acting Superintendent advances the issue to Manager O’Neal or a regular Superintendent instead of using independent authority to address the issue. Accordingly, I find the record insufficient to establish notification specialists possess the authority to adjust grievances or recommend such action, using independent judgment, within the meaning of Section 2(11) of the Act.

### III. COMMUNITY OF INTEREST

#### A. Board Law and Applicable Standard

The Board clarified the standards that apply to the instant circumstances in *MV Transportation, Inc.*, 373 NLRB No. 8 (2023).

[W]hen a unit clarification petition seeks to resolve the unit placement of a classification that voted subject to challenge, but whose placement was unnecessary to resolve prior to the issuance of the certification of representative, the applicable standard is the same standard that would have been applied had the issue been litigated prior to the underlying election.

*Id.*, slip op. at 6.

The Employer argues Petitioner must show the notification specialists share an overwhelming community of interest with the Unit because it is seeking to add them to the existing Unit. However, the overwhelming community-of-interest standard applies only where a party contends the petitioned-for unit is inappropriate because it excludes additional employees who are not sufficiently distinct from the petitioned-for employees. *American Steel Construction, Inc.*, 372 NLRB No. 23, slip op. at 1–2 (2022) (citing *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), *enfd. sub nom. Kindred Nursing Centers East, LLC v. NLRB*, 727 F.3d 552 (6th Cir. 2013)). In the present case, Petitioner petitioned for the notification specialists and is now litigating the unresolved question of their inclusion with or exclusion from the Unit. Thus, the traditional community-of-interest standard applies here, as it would have if the issue was litigated prior to the election and subsequent certification. *MV Transportation*, above; see also *Republic Services of Dexter*, 210 LRRM 1159 fn. 1 (Sep. 17, 2017) (rejecting overwhelming community-of-interest standard where petitioner “consistently sought the inclusion of the [disputed position] in the unit” despite “entering into a stipulated election agreement that provided for the [disputed position] to vote subject to challenge,” citing

*Odwalla, Inc.*, 357 NLRB 1608, 1608, 1611 & fn. 27 (2011)); *Johnson Controls, Inc.*, 322 NLRB 669, 670 (1996) (“The Board determines whether the employees in the petitioned-for unit share a sufficient community of interest in view of their duties, functions, supervision, and other terms and conditions of employment, to constitute an appropriate unit”).

This well-established test considers whether employees are organized into separate departments, have distinct skills and training, have distinct job functions, perform distinct work, including inquiry into the amount and type of job overlap between classifications, are functionally integrated with the employer’s other employees, have frequent contact with other employees, interchange with other employees, have distinct terms and conditions of employment, and are separately supervised. *United Operations, Inc.*, 338 NLRB 123, 123 (2002). Various configurations of employees might share a community of interest sufficient for collective bargaining, and more than one unit may be appropriate. See *Haag Drug Co., Inc.*, 169 NLRB 877, 877 (1968); *Country Ford Trucks, Inc. v. NLRB*, 229 F.3d 1184, 1189 (D.C. Cir. 2000). Therefore, the Board’s inquiry will “consider only whether the requested unit is an appropriate one even though it may not be the optimum or most appropriate unit for collective bargaining.” *Black & Decker Mfg. Co.*, 147 NLRB 825, 828 (1964).

## **B. Application of Board Law to the Instant Case**

As discussed below, nearly every traditional factor weighs in favor of a community of interest between the notification specialists and the Unit employees. Except for employee skills and functions, which I find neutral, the degree of functional integration, common supervision, interchange and contact among employees, terms and working conditions, and the Employer’s administrative organization all favor including the notification specialists with the undisputed Unit employees. Accordingly, I find that the petitioned-for unit, which includes notification specialists, is a unit appropriate for collective bargaining.

### **1. Employer’s administrative organization**

An important consideration in any unit determination is whether the proposed unit conforms to an administrative function or grouping of an employer’s operation. See *Gustave Fisher, Inc.*, 256 NLRB 1069 (1981). For example, the Board generally would not approve a unit consisting of some, but not all, of an employer’s production and maintenance employees. See *Check Printers, Inc.*, 205 NLRB 33 (1973). However, in certain circumstances the Board will approve a unit in spite of the fact that other employees in the same administrative grouping are excluded. See *Home Depot USA, Inc.*, 331 NLRB 1289, 1289, 1291 (2000).

Here, the Employer has organized the Vegetation Management Department to include the notification specialists and the undisputed Unit employees. Consequently, notification specialists will be the only nonsupervisory classification in the department excluded from the Unit if they are not included in the Unit. Thus, I find this factor weighs in favor of a community of interest among all Vegetation Management employees and including the notification specialists in the Unit.

## **2. Common supervision**

Another traditional community-of-interest factor is whether the disputed and undisputed employees are commonly supervised. In examining supervision, most important is the identity of employees' supervisors who have the authority to hire, to fire, or to discipline employees (or effectively recommend those actions), or to supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work, and providing guidance on a day-to-day basis. *Executive Resources Associates*, 301 NLRB 400, 402 (1991); *NCR Corp.*, 236 NLRB 215 (1978). Common supervision weighs in favor of placing the employees in dispute in one unit. However, the fact that two groups are commonly supervised does not mandate they be included in the same unit, particularly where there is no evidence of interchange, contact, or functional integration. *United Operations*, 338 NLRB at 125. Similarly, while the fact that two groups of employees are separately supervised weighs against their inclusion in the same unit, separate supervision does not mandate separate units. *Casino Aztar*, 349 NLRB 603, 607 (2007).

The notification specialists and the undisputed Unit employees share common first- and second-level supervision in their Superintendents and Manager O'Neal, respectively. Each Superintendent supervises a team of nine to ten employees, consisting of one notification specialist and a number of undisputed Unit employees in any combination of foreman, operator, trimmer, and ground specialist classifications. Thus, I find notification specialist's common supervision with Unit employees weighs heavily in favor of their inclusion in the Unit.

## **3. Nature of employee skills and functions**

This factor examines whether disputed employees can be distinguished from one another on the basis of job functions, duties, or skills. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one unit. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another's work, or that the disputed employees work together as a crew, support a finding of similarity of functions. Evidence that disputed employees have similar requirements to obtain employment; that they have similar job descriptions or licensure requirements; that they participate in the same employer training programs; or that they use similar equipment supports a finding of similarity of skills. See *Casino Aztar*, 349 NLRB at 604–605; *J. C. Penny Co., Inc.*, 328 NLRB 766 (1999); *Brand Precision Services*, 313 NLRB 657 (1994); *Phoenician*, 308 NLRB 826 (1992).

Notification specialists spend a majority of their time notifying the Employer's members of forthcoming tree and brush clearing work around power lines on their property or completing research and paperwork to prepare for member notifications. The undisputed Unit employees, on the other hand, perform the manual tree and brush clearing work. There is not much overlap in functions and skills between the notification specialists' primary work and the field crews' primary work. However, notification specialists must know and understand the work the field crews will perform in order to adequately explain the project to the property owner and obtain the owner's agreement to perform that work on their property.

Moreover, the record establishes notification specialists consistently perform field crew functions, operating field crew equipment at least five times a month on average. This is possible, in part, because notification specialists and undisputed Unit employees receive similar training. When the Employer acquires a piece of new equipment, all employees in the Vegetation Management Department receive training on the new machinery. In addition, notification specialists typically progress into their roles from field crew classifications and, thus, have prior similar experience and received the same training as undisputed Unit employees while progressing through their employment.<sup>17</sup> Consequently, while notification specialists' primary skills and functions differ from field crew employees, they are some of the most experienced employees and provide guidance to less senior employees, along with foremen and other experienced employees, and occasionally substitute for absent field crew or perform some field crew duties, as needed.

Where notification specialists have similar knowledge and skills as Unit employees but only perform Unit functions on limited occasions, I find this factor to be a neutral in the community-of-interest analysis.

#### **4. Degree of functional integration**

“[F]unctional integration exists only where employees must work together and depend on one another to accomplish their tasks.” *WideOpenWest Illinois, LLC*, 371 NLRB No. 107, slip op. at 7 fn. 16 (2022) (citing *Casino Aztar*, 349 NLRB at 605; *Publix Super Markets, Inc.*, 343 NLRB 1023, 1024–1025 (2004)). For example, there is functional integration among employees who work on different phases of the same product or as a group provide a service. An employer's workflow involving all employees in a unit sought by a union is another example of functional integration. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. *Publix*, above; *Transerv Systems, Inc.*, 311 NLRB 766 (1993). On the other hand, if functional integration does not result in contact among employees the existence of functional integration has less weight.

The record shows the Vegetation Management Department is one functionally integrated operation. Manager O'Neal testified that all three teams in the department “work collectively together to achieve the same goal” of ensuring trees and brush are cleared from the power lines. Notification specialists undertake the first step in the department's overarching process by notifying and obtaining agreement from members before field crews can begin clearing the vegetation around the power lines. Notification specialists also return to jobsites while the work is ongoing to resolve issues if a property owner raises concerns, advise the field crews on the scope of the work, or otherwise assist or fill in for undisputed Unit employees as needed or when available. Generally, notification specialists work a couple weeks ahead of the field crews, but they also work side-by-side with the field crews at times, explaining the scope of the work agreed to by the member when field crews are starting a new project and helping out in various

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<sup>17</sup> Employees receive safety training when they are first hired, and from there, a majority of the Employer's training is on-the-job training from more experienced employees on the team.

capacities on the jobsite when needed. Therefore, I conclude that functional integration weighs in favor of including the notification specialists in the Unit.

## **5. Frequency of contact among employees**

Also relevant is the amount of work-related contact among employees, including whether they work beside one another. Thus, it is important to compare the amount of contact employees in the petitioned-for unit have with one another. See *Casino Aztar*, 349 NLRB at 605–606.

Notification specialists have daily contact with the field crews, as they report to the same facility<sup>18</sup> with the undisputed Unit employees on their team at the same time every day. Employees discuss work and nonwork subjects as they prepare for the workday at the facility, and then as they report back to their respective locations at the same time at the end of the day, where they perform various closing activities or begin preparations for the next day. Foremen frequently ride with notification specialists to view upcoming jobsites. Notification specialists also regularly interact with other Unit employees in the field on most workdays when they meet with field crews on jobsites to discuss the project, return to a jobsite to answer questions from the field crew or the member, and fill in for absent field crew employees. Thus, I find this factor weighs in favor of a community of interest among the notification specialists and undisputed Unit employees.

## **6. Interchange among employees**

Interchangeability refers to temporary work assignments or transfers between two groups of employees. Permanent, one-way, and voluntary interchange carries less weight than temporary, two-way, or mandatory interchange. *Overnite Transportation Co.*, 331 NLRB 662, 663 (200) (citing *Red Lobster*, 300 NLRB 908, 911 (1990); *Lipman's*, 227 NLRB 1436, 1438 (1977)). See also *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987) (“periodic temporary transfers or lateral, two-way transfers between departments [] may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills”). As a result, the Board has held that the type and frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. *Executive Resources Associates*, 301 NLRB at 401 (citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1991)).

The record shows some evidence of temporary and permanent interchange within the Vegetation Management Department between the notification specialists and the Unit classifications. Temporary interchange is generally one-way, with notification specialists filling in for field crew employees, as needed and when available, but field crew employees typically do not fill in for notification specialists;<sup>19</sup> however, one foreman has filled in for a notification specialist. The record was not entirely clear as to how often notification specialists fill in for

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<sup>18</sup> Two teams report to the Rogers Building and one team reports to the Morton Avenue facility. The notification specialists report to same respective location as the undisputed Unit employees on their team.

<sup>19</sup> Due to the nature of their work, notification specialists can work ahead or catchup later when they take time off.

absent field crew employees, but the evidence establishes that, in aggregate, each notification specialist operates machinery typically used by field crew employees an average of approximately five times per month, as well as regularly filling in to direct traffic for the field crews. Additionally, at least two of the current notification specialists were promoted into their positions from various field crew positions, which is evidence of permanent one-way interchange among the classifications.<sup>20</sup> Despite the evidence of this intra-departmental interchange being predominantly one-way, there is evidence of both temporary and permanent interchange. I find that this factor weighs slightly in favor of their inclusion.

## **7. Terms and conditions of employment**

Terms and conditions of employment include whether classifications have similar wage ranges and are paid in a similar fashion (e.g., hourly or salary, weekly or bimonthly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies and other terms that might be described in an employee handbook. However, the fact that employees share common wage ranges and benefits or are subject to common work rules does not warrant a conclusion that a community of interest exists where employees are separately supervised, do not interchange or work in a physically separate area. *Bradley Steel, Inc.*, 342 NLRB 215 (2004); *Overnite Transportation*, 322 NLRB 347 (1996). Similarly, sharing a common personnel system for hiring, background checks, and training, as well as the same package of benefits, does not warrant a conclusion that a community of interest exists where two classifications of employees have little else in common. *American Security Corp.*, 321 NLRB 1145 (1996).

Notification specialists are paid on the high end of the same wage scale as the other Unit employees, having the same wage rate as the Foremen A classification. Undisputed Unit employees and notification specialists, along with all other employees of the Employer, receive the same fringe benefits, same amount of PTO and other leave, and are subject to the same employee handbook and policies. Notification specialists and undisputed Unit employees also record their time in the same manner and are paid the same way.

Additionally, notification specialists and undisputed Unit employees have the same schedule—7:00 a.m. to 3:00 p.m., Monday through Friday. They all take two 15-minute breaks and one 30-minute lunch throughout the day wherever they happen to be working, which is generally out in the field or on the jobsite, though notification specialists have greater flexibility with the timing of their breaks. Both the notification specialists and Unit employees are transported into the field to perform their duties in Employer-provided vehicles.

On the other hand, the undisputed Unit employees perform much more physical labor, regularly work with very heavy machinery, and consequently wear different clothing and more personal protective equipment (“PPE”) than the notification specialists. In contrast, notification

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<sup>20</sup> The 3-year notification specialist testified that he progressed from ground specialist to B-climber, to A-climber, to bucket truck operator, to A-trimmer, and A-foreman before becoming a notification specialist. The 7-year notification specialist progressed from mower operator to mower foreman before becoming a notification specialist. The record does not indicate the progression of the third notification specialist.



specialists work with iPads, cell phones, and laptop computers, as well as various apps and programs on the iPads and laptops. They regularly visit members' homes, and as such wear "business casual" attire with fewer PPE requirements.<sup>21</sup> However, like notification specialists, foremen in the Unit also use iPads and certain apps on a daily basis.

Thus, I find the terms and conditions of notification specialists and undisputed Unit employees to have more in common than not and this factor weighs slightly in favor of their inclusion in the unit.

#### IV. CONCLUSION

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 matter and in accordance with the discussion above, the Employer has failed to meet its burden to establish that notification specialists are supervisors under Section 2(11) of the Act. The evidence establishes that the notification specialists share a sufficient community of interest with the other Unit employees to be included in the Unit. Accordingly, I am clarifying the Unit to include Notification Specialists and conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>22</sup>
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. The Petitioner is the exclusive collective bargaining representative of the following unit, as certified in 25-RC-351108:

**Included:** All full-time and regular part-time Groundmen; Operators A, B, and C; Foremen A, B, and C; and Trimmers A, B, and C employed by the Employer at its 300 Morton Avenue, Martinsville, Indiana facility.

**Excluded:** All office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act, and all other employees.

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<sup>21</sup> Though not stated explicitly on the record, one assumes the notification specialists are subject to the same PPE requirements when operating machinery (i.e. when filling in for or assisting field crew employees).

<sup>22</sup> The parties stipulated: "South Central Indiana Rural Electric Membership Corporation, an Indiana corporation with a principal place of business located at 300 Morton Avenue, Martinsville, Indiana, is engaged in providing electricity and broadband internet services to its member-owners. During the past 12 months, a representative period, the Employer derived gross revenues in excess of \$1,000,000 from all sales and services and also purchased and received at its Martinsville, Indiana, facility goods valued in excess of \$50,000 directly from suppliers located outside the state of Indiana."

5. The classification of Notification Specialist are not supervisors within the meaning of Section 2(11) of the Act.

6. The classification of Notification Specialist shares a community of interest with the Unit represented by Petitioner and their inclusion with the represented employees is an appropriate unit. As such, the bargaining unit shall be clarified as ordered below.

### **ORDER CLARIFYING UNIT**

IT IS HEREBY ORDERED that the bargaining unit certified in Case 25-RC-351108 is clarified to include the classification of Notification Specialist as follows:

**Included:** All full-time and regular part-time Groundmen; Operators A, B, and C; Foremen A, B, and C; Trimmers A, B, and C; and Notification Specialists employed by the Employer at its 300 Morton Avenue, Martinsville, Indiana facility.

**Excluded:** All office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act, and all other employees.

### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.63(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A copy of the request for review must be served on each of the other parties as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must contain a complete statement of the facts and reasons on which it is based.

**Procedures for Filing Request for Review: Pursuant to Section 102.5 of the Board's Rules and Regulations, a request for review must be filed by electronically submitting (E-Filing) it through the Agency's web site ([www.nlr.gov](http://www.nlr.gov)), unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden.** A request for review filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations. The request for review must comply with the formatting requirements set forth in Section 102.67(i)(1) of the Board's Rules and Regulations. Detailed instructions for using the NLRB's E-Filing system can be found in the [E-Filing System User Guide](#).

A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (**5:00 p.m. Eastern Time**) on **January 30, 2026**, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the

entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time on January 30, 2026.**

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was offline or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which must also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Any party may, within 5 business days after the last day on which the request for review must be filed, file with the Board a statement in opposition to the request for review. An opposition must be filed with the Board in Washington, DC, and a copy filed with the Regional Director and copies served on all the other parties. The opposition must comply with the formatting requirements set forth in Section 102.67(i)(1). Requests for an extension of time within which to file the opposition shall be filed pursuant to Section 102.2(c) with the Board in Washington, DC, and a certificate of service shall accompany the requests. The Board may grant or deny the request for review without awaiting a statement in opposition. No reply to the opposition may be filed except upon special leave of the Board.

Dated: January 15, 2026



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Colleen M. Maples, Regional Director  
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