

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

SAFEWAY INC.

Employer

and

Case 19-RC-365310

**THE PHARMACY GUILD, AFFILIATED WITH THE
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer, Safeway Inc., operates grocery stores with imbedded pharmacies across the country. The Petitioner, the Pharmacy Guild, seeks to represent a unit of all full-time and regular part-time pharmacists, pharmacy technicians, lead pharmacy technicians, pharmacy technicians special, pharmacy assistants, pharmacy technicians B, and inventory specialists, approximately six employees, employed by the Employer at its facility located at 17023 SE 272nd Street, Covington, WA 98042 (Store #0792).

In its Statement of Position, the Employer contended that the National Labor Relations Board's lack of a quorum precluded the holding of a hearing or processing of the instant petition. The Hearing Officer addressed this concern by directing the parties to 29 CFR 102.178 and applicable case law which prescribes that during any period when the Board lacks a quorum, all representation cases can be processed, and appropriate certification can be issued by the Regional Director. The Employer, on brief, again raised its argument that the Regional Director lacked authority to investigate, determine, and certify results of an election because the Board lacked a quorum.

The Employer's argument is without merit for the reasons set forth below. By way of background, President Donald J. Trump removed Board Member Gwynne A. Wilcox from her position on January 27, 2025, leaving Chairman Marvin E. Kaplan and Member David A. Prouty as the only two members of the Board. On March 6, the District Court for the District of Columbia held that the removal of Member Wilcox violated the removal protections for Board members set forth in § 3(a) of the Act and enjoined the removal of Member Wilcox in *Wilcox v. Trump*, Case 1:25-cv-00334-BAH. On March 28, a panel of the United States Court of Appeals for the D.C. Circuit granted an emergency motion to stay the District Court's order, once again leaving the Board without a quorum. On April 7, the D.C. Circuit granted motions for en banc reconsideration of the matter, vacated the March 28 order granting a stay pending appeal, and denied the government's motions for a stay pending appeal, thus renewing the District Court's reinstatement of Member Wilcox. On April 9, 2025, Chief Justice John G. Roberts, Jr. of the United States

Supreme Court stayed the District Court's order "pending further order of the undersigned or of the Court." *Trump v. Wilcox*, — S.Ct. —, 2025 WL 1063917 (Mem). Most recently, on May 22, 2025, the United States Supreme Court granted the government's application for a stay of orders from the District Court for the District of Columbia. *Trump v. Wilcox*, 605 U.S. — (2025). In summary, during the time since the petition herein was filed on May 7, 2025, the Board has not had a quorum.

Section 3(b) of the Act authorizes the Board to delegate its powers in representation cases under § 9 of the Act to regional directors, including its powers to determine appropriate units for collective bargaining, determine whether a question concerning representation exists, direct an election, take a secret ballot, and certify the results thereof, subject to review by the Board if a request for review is filed. The Board delegated that authority to regional directors effective on May 15, 1961, and has never withdrawn it. 26 FR 3885, 3889, 3911 (May 4, 1961).

In addition, the Board's Rules and Regulations at "Subpart X — Special Procedures When the Board Lacks a Quorum" include the following relevant provisions:

- 29 CFR § 102.178 (76 FR 77700, December 14, 2011) states, "The policy of the National Labor Relations Board is that during any period when the Board lacks a quorum normal Agency operations should continue to the greatest extent permitted by law."
- 29 CFR § 102.182 (82 FR 11786, February 24, 2017) provides that when the Board lacks a quorum "to the extent practicable, all representation cases may continue to be processed and the appropriate certification should be issued by the Regional Director notwithstanding the pendency of a request for review, subject to revision or revocation by the Board pursuant to a request for review filed in accordance with this subpart."

The Board has rejected the arguments raised by the Employer. Regarding the lack of a Board quorum, see *Brentwood Assisted Living Community*, 355 NLRB No. 149, slip op. at 1, fn.2 (2010), enf'd. 675 F.3d 999 (6th Cir. 2012) (finding that the Regional Director properly processed a representation case pursuant to the authority delegated to him notwithstanding the fact that the Board lacked a quorum); see also, *UC Health v. NLRB*, 803 F.3d 669 (DC Cir. 2015); *NLRB v. Bluefield Hospital Co., LLC*, 821 F.3d 534 (4th Cir. 2016); *Overstreet v. El Paso Disposal LP*, 625 F.3d 844, 853 (5th Cir. 2010); *Osthus v. Whitesell Corp.*, 639 F.3d 841, 844 (8th Cir. 2011); *Frankl v. HTH Corp.*, 650 F.3d 1334, 1354 (9th Cir. 2011). In *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010), the Supreme Court found that the Board's loss of a 3-member quorum did not cast doubt on Board delegations of authority to nongroup members, such as the regional directors or the general counsel, that preceded the loss of a Board quorum, and the Court did not address that question. 560 U.S. at 684, fn. 4. As such, the Employer's argument is without merit, and the processing of the instant petition is lawful under my authority as the Regional Director for Region 19.

I. THE BURDENS OF PROOF

The burden of establishing supervisory status rests on the party asserting that status. *Croft Metals, Inc.*, 348 NLRB 717, 721 (2006). Supervisory status cannot be established by record

evidence which is inconclusive or otherwise in conflict. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989). Mere inferences or conclusory statements, without detailed, specific evidence, are insufficient to establish supervisory authority. *Lynwood Manor*, 350 NLRB 489, 490 (2007); *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006). Any lack of evidence in the record on an element necessary to establish supervisory status is construed against the party asserting supervisory status. *Dean & DeLuca New York, Inc.*, 338 NLRB 1046, 1048 (2003). The Board looks to evidence of supervisory authority in practice, not simply paper authority; job descriptions or other documents suggesting the presence of supervisory authority are not given controlling weight. See *Golden Crest Healthcare Center*, 348 NLRB at 731, citing *Training School at Vineland*, 332 NLRB at 1416. Therefore, because the Employer has asserted supervisory status as the basis for excluding a voter, the Employer has the burden to establish supervisory status.

II. PHARMACY OPERATIONS

Four witnesses testified in this matter: Division Pharmacy Manager Alla Aldughli, Pharmacy Manager Michele Elder, Staff Pharmacist Diem Hong T. Nguyen, and Pharmacy Technician Sue Gratton.

The Employer operates its pharmacies through a division system. Division Pharmacy Manager Aldughli oversees the Seattle division, covering about 26 stores, including Store #0792, the Covington Store. The pharmacy is open from 9:00 AM to 9:00 PM on weekdays and 10:00 AM to 6:00 PM on weekends. Aldughli reports to Director of Pharmacy Operations David Green, and he is responsible for overseeing pharmacy operations, managing compliance, and caring for staffing. Working within the Covington Store are the pharmacy manager, staff pharmacist, three pharmacy technicians, and two pharmacy assistants. Pharmacy assistants are also called tech Bs, pharmacy cashiers, or pharmacy clerks. Pharmacists wear a white coat with their name tag and title. Technicians and assistants wear blue smocks with their name tag and title. Pharmacists are salaried and are able to participate in the Employer's executive deferred compensation plan. Technicians and assistants are paid hourly. The pharmacy manager is eligible for a bonus, but the staff pharmacist, technicians, and assistants are not.

The staff pharmacist reports to the pharmacy manager, who has all the duties of the staff pharmacist plus managing the pharmacy team, making the schedule, responding to requirements from district pharmacy managers, attending meetings, tracking sales, and improving pharmacy metrics. According to Division Pharmacy Manager Aldughli, pharmacy technicians and pharmacy assistants report to the pharmacy manager, head pharmacist, and staff pharmacist. In contrast, Staff Pharmacist Nguyen and Pharmacy Technician Gratton testified that technicians and assistants report to the pharmacy manager, not the staff pharmacist. The pharmacy manager has the responsibility of making the pharmacy schedule, but Pharmacy Manager Elder has partially delegated that task to one of the technicians. Elder testified that she takes everyone's input when making the schedule, and one of the technicians physically types it out. Nguyen does not approve nor schedule covers for time off taken by the pharmacy team. Elder testified that Nguyen has the power to move the schedules of technicians and assistants in order to cover a last-minute callout, but Nguyen testified that she always attempts to contact management, usually Elder, for permission to call a technician or assistant in. If Nguyen cannot reach someone from management, she contacts

the technicians and assistants directly, but she is not able to exceed the prearranged number of work hours set by management.

Staff Pharmacist Nguyen and Division Pharmacy Manager Aldughli communicate directly about wellness events, pharmacy initiatives, and completing urgent tasks, and occasionally, Nguyen contacts Aldughli about last-minute staffing concerns. According to Pharmacy Manager Elder, Nguyen is responsible to the Employer for the conduct of the technicians and assistants, but there was no evidence presented of times where Nguyen was held responsible for the conduct of the technicians and assistants. In fact, neither Nguyen nor Elder has been disciplined for the actions of a technician or assistant. Nguyen testified that she does not have the power to recommend training, discipline, fire, suspend, promote, give raises, give bonuses, give rewards, transfer, lay off, or hire. When writing annual performance reviews, Elder informally solicits Nguyen's input on technician and assistant performance, and Nguyen gives blanket opinions and feedback such as "everyone's doing good." Nguyen has never recommended that someone be formally disciplined nor recommended that someone be promoted or rewarded. Elder also receives feedback from the technicians and assistants when she writes performance reviews. Recently, someone in the pharmacy was having tardiness issues, and a technician spoke to Elder about it.

The pharmacy has a tech-in-training program where pharmacists train assistants on the job to become technicians. The assistant needs 500 hours operating in the pharmacy under a preceptor. The preceptors for the pharmacy are the pharmacists. The Covington store does not have anyone in the program currently, but in 2024, there was one assistant in the program who left the Employer after completing it. She completed her hours with both Pharmacy Manager Elder and Staff Pharmacist Nguyen, but Elder did the paperwork, prepared her for the exam, and wrote her recommendation.

The Board of Pharmacy creates regulations that pharmacies must abide by, and it conducts audits of pharmacies. If a discrepancy is caught in an audit, the Board of Pharmacy contacts the pharmacy manager, because, under the Board of Pharmacy's regulations, they are the person responsible for the entire pharmacy.

The pharmacy has six steps a prescription moves through beginning first when the patient drops off their prescription at the cashier window. Second, at the data entry workstation, the information about the patient and the prescription are entered into the pharmacy queue system. Third, the data entered is verified. Fourth, the prescription is filled at the fill station. Fifth, the fill is verified. Finally, sixth, the prescription is bagged and placed at will-call. Under the regulations of the Board of Pharmacy, technicians cannot verify the data entry and fill of the prescriptions, so the third and fifth verification steps are always performed by a pharmacist, whether that is the staff pharmacist or the pharmacy manager. Additionally, pharmacy assistants are restricted by the Board of Pharmacy from pulling medication, so they can only help with customer pickup and unpacking centrally filled prescriptions. A pharmacist can perform all steps that a prescription moves through; however, due to staffing constraints imposed by the Employer, which limit work hours, each employee performs the highest level of task that they are legally permitted to perform.

For example, the opening shift is typically staffed by one pharmacist and two technicians. Because of the Board of Pharmacy restrictions on who can do which tasks, the pharmacist works

on verification and consultation, the two tasks that only the pharmacist can perform, and the technicians staff the data entry station and customer pickup window to keep traffic and prescriptions flowing through the pharmacy.

At the verification stages, if there is a mistake, the pharmacist sends the prescription back to the previous step with a note of the mistake. If a prescription is released to a patient with an error, the Board of Pharmacy will contact the pharmacist who verified the data because under the Board of Pharmacy's regulations, they are the one responsible for it. The potential consequences range from continuing education requirements to license suspension. There was no evidence presented of a pharmacist employed by the Employer receiving consequences from the Board of Pharmacy for a prescription error.

Because tasks in the pharmacy are largely divided by who is legally able to do certain tasks, the technicians and assistants self-direct their work. Additionally, the pharmacy prescription queue flags prescriptions that are urgent, and anyone on staff can change the urgency of a prescription. Through Pharmacy Manager Elder, the Employer's corporate office relayed to the pharmacy staff that they are supposed to work in the priority order assigned by the prescription queue. Elder testified that if something urgent comes up, she occasionally asks a technician or assistant to work on the urgent task until it is resolved. Staff Pharmacist Nguyen testified that she does not tell the technicians or assistants what to work on throughout the day.

Sometimes, a technician or assistant will direct a pharmacist to the will-call window to perform a consultation with a patient. Under the regulations by the Board of Pharmacy, only pharmacists are allowed to do consultations. If Pharmacy Manager Elder or Staff Pharmacist Nguyen hear one of the technicians or assistants giving information that sounds like a consultation, they remind the technician or assistant that they are not allowed to do that under the Board of Pharmacy regulations. According to Elder, if the Board of Pharmacy investigated a consultation that occurred against their regulations, the person ultimately responsible would be the pharmacy manager. She was unsure whether the pharmacist in charge would also be responsible.

Hiring for technicians and assistants is done initially through a recruiter who posts the available position and does an initial interview. After the initial interview, the resumes of applicants are sent to Pharmacy Manager Elder who reviews them and decides who to call for an interview. Elder testified that she has shown the resumes to Staff Pharmacist Nguyen before and asked Nguyen who she should call, but Elder could not recall whether Nguyen gave a recommendation. Elder testified that, in theory, she would let the whole pharmacy team help her decide if she was stuck between hiring two people. According to Division Pharmacy Manager Aldughli, the pharmacy manager makes the final decision for hiring technicians and assistants.

III. SUPERVISORY STATUS

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

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly direct them, or to adjust their

grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The three requirements to establish supervisory status are that (1) the putative supervisor possesses one or more of the above supervisory functions, (2) the putative supervisor uses independent, rather than routine or clerical, judgment in exercising that authority, and (3) the putative supervisor holds that authority in the interest of the employer. *N.L.R.B. v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 712–13 (2001) (citing *N.L.R.B. v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573–74 (1994)).

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

If such authority is used sporadically, the putative supervisor will not be deemed a statutory supervisor. *Coral Harbor Rehabilitation and Nursing Center*, 366 NLRB No. 75, slip op. at 17 (2018) (citing *Gaines Electric*, 309 NLRB 1077, 1078 (1992)). The supervisor has to at least act or effectively recommend such action “without control of others and form an opinion or evaluation by discerning and comparing data.” *Oakwood Healthcare, Inc.*, 348 NLRB 686, 692–693 (2006). Judgment is not independent when the putative supervisor follows detailed instructions (e.g., policies, rules, collective-bargaining agreement requirements). *Id.* at 693. To be independent, “the judgment must involve a degree of discretion that rises above the ‘routine or clerical.’” *Id.* at 693 (citing *J.C. Brock Corp.*, 314 NLRB 157, 158 (1994) (quoting *Bowne of Houston*, 280 NLRB 1222, 1223 (1986)) (“[T]he exercise of some ‘supervisory authority’ in a routine, clerical, perfunctory, or sporadic manner does not confer supervisory status.”). If a choice is obvious, the judgment is not independent. *Oakwood Healthcare*, 348 NLRB at 693. Testimony that decisions are collaborative also is insufficient to show independent judgment free from the control of others. *CNN America, Inc.*, 361 NLRB No. 47 (2014) (citing *KGW-TV*, 329 NLRB 378, 381–382 (1999); *Veolia Transportation Services*, 363 NLRB No. 188, slip op. at 7–8 (2016). The Board has an obligation not to construe the statutory language too broadly because the individual found to be a supervisor is denied the employee rights that are protected under the Act. *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006); *Oakwood Healthcare*, 348 NLRB at 687.

Although the Employer mistakenly wrote in its brief on page 4, “Hong is not a Section 2(11) Supervisor,” the Employer otherwise argues that Staff Pharmacist Nguyen is a § 2(11) supervisor because she possesses the authority to assign, responsibly direct, hire, and discipline other employees or effectively recommends such action using her independent judgment.

a. Assign

The Board has held that the authority to assign refers to the act of designating an employee to a place (such as a location, department, or wing), assigning an employee to a time (such as a shift or overtime period), or assigning significant overall duties as opposed to discrete tasks. *Oakwood Healthcare*, 348 NLRB at 686, 689. The authority to make an assignment, by itself, does not confer supervisory status. Rather, the alleged supervisor must also use independent judgment when making such assignments. *Id.* at 692–93. Regarding independent judgment in relation to the authority to assign, “the Board has stated that the authority to effect an assignment must be independent [free of the control of others], it must involve a judgment [forming an opinion or evaluation by discerning and comparing data], and the judgment must involve a degree of discretion that rises above the “routine or clerical.” *Croft Metals*, 348 NLRB 717, 721 (2006). Assignments that are based on well-known employee skills also do not involve independent judgment. *KGW-TV*, 329 NLRB 378, 381–82 (1999). Additionally, basing an assignment on whether the employee is capable of performing the job does not show independent judgment. *Volair Contractors, Inc.*, 341 NLRB 673, 675 n.10 (2004); *Cook Inlet Tug & Barge, Inc.*, 362 NLRB 1153, 1154 (2015) (citing *Croft Metals*, 348 NLRB at 722). No independent judgment is involved when “there is only one obvious and self-evident choice,” and with specific reference to assignment authority, there is no independent judgment if an assignment is made “solely on the basis of equalizing workloads.” *Oakwood Healthcare, Inc.*, 348 NLRB at 693.

Here, the staff pharmacist does not make the work schedule, approve time off requests, or tell the technicians and assistants what to work on throughout the day. Even if Staff Pharmacist Nguyen did tell the technicians and assistants what stations to work on, the regulations from the Board of Pharmacy tightly control what they are permitted to do in the pharmacy. Any assignment to a job station would be based on whether the employee is capable of performing the job which would not show independent judgment.

The staff pharmacist testified that she always contacts management for permission to call someone for last-minute callout coverage. Nguyen only directly contacts technicians and assistants when she is unable to reach any member of management. With respect to the times when Nguyen directly contacts technicians and assistants to cover a last-minute callout, the record lacks evidence establishing that she uses independent judgment in making the decision to contact them or who she contacts. In light of the above and the record as a whole, it has not been shown that staff pharmacists assign work to technicians and assistants.

b. Responsibly Direct

In *Oakwood Healthcare*, the Board held that “for direction to be ‘responsible,’ the person directing and performing the oversight of the employee must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly.” 348 NLRB at 691–92. “Thus, to establish accountability for purposes of responsible direction, it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. It also must be shown that there is a prospect of adverse

consequences for the putative supervisor if he/she does not take these steps.” *Croft Metals*, 348 NLRB at 721 (quoting *Oakwood Healthcare*, 348 NLRB at 700).

To establish responsible direction, the employer must show that the putative supervisors are held accountable for the performance and work of those who work in the department carrying out their recommendations. See *Transdev Services, Inc. v. NLRB*, 991 F.3d 889 (8th Cir. 2021) (upholding the Board’s finding that the employer had not alleged supervisors possessed the authority to responsibly direct employees, observing that the employer had failed to argue or explain how the alleged supervisors were held accountable for the performance of their subordinates, as opposed to their own performance); *Atlantic City Electric Co.*, 5 F.4th at 298 (upholding the Board’s finding that there was no evidence that the system operators were held accountable for the performance of their subordinates or suffered adverse consequences if their subordinates performed poorly). Thus, it is not enough to show that the putative supervisors are accountable for their own mistakes. *Oakwood Healthcare*, 348 NLRB at 695. Additionally, the criteria of responsible direction will not be met without evidence of the “factors weighed or balanced” in directing employees in order to establish the use of independent, nonroutine judgment. See *Croft Metals, Inc.*, 348 NLRB at 722.

Although here both the pharmacy manager and the staff pharmacist verify the data entry and prescription fills, the record does not contain any evidence of a staff pharmacist being accountable, to either the Employer or the Board of Pharmacy, for the mistake of a technician or assistant. Testimony clearly established that the pharmacy manager is responsible for pharmacy audits and unlawful consultations, but there is no definitive evidence on whether the staff pharmacist would be held accountable for unlawful consultations. Similarly, despite Pharmacy Manager Elder’s testimony that the staff pharmacist is responsible for the conduct of technicians and assistants, the record contains no evidence of either Elder or Staff Pharmacist Nguyen being held accountable for the conduct of technicians and assistants. The record does not establish that the staff pharmacist is held accountable for the actions of a technician or assistant. Therefore, it has not been shown that the staff pharmacist responsibly directs other employees.

c. Hire

An individual who is authorized to hire or to effectively recommend the hiring of bargaining unit employees using independent judgment is a supervisor. See, e.g., *Fred Meyer Alaska*, 334 NLRB 646, 649 (2001). Evidence demonstrating that an individual has this authority is sufficient to establish supervisory status even if the authority has not yet been exercised. *Id.* at 649 fn. 8. To establish that an individual is authorized to make effective recommendations, the evidence must show that “the recommended action is taken without independent investigation by superiors, not simply that the recommendation is ultimately followed.” *Children’s Farm Home*, 324 NLRB 61, 61 (1997). As found by the Board in *CNN America, Inc.*, 361 NLRB No. 47 (2014), testimony that decisions are collaborative is insufficient to show supervisory status.

According to Division Pharmacy Manager Aldughli, the pharmacy manager makes the hiring decision for technicians and assistants; however, Pharmacy Manager Elder testified that “in theory” she would let the entire pharmacy team help her decide if she was stuck between hiring two people. Elder recalled one time showing Staff Pharmacist Nguyen two resumes and asking

who to call for a second interview, but Elder could not recall whether Nguyen gave a recommendation. Testimony by the Employer's witnesses demonstrates that the power to hire technicians and assistants rests with the pharmacy manager, and Elder's attempt to transform that responsibility into a collaborative decision is insufficient to confer supervisory status onto the participants. It has not been shown that the staff pharmacist hires or has the authority to hire other employees.

d. Discipline

Supervisory ability to discipline under the Act means a putative supervisor can issue discipline without review or independent investigation by other members of management. *Beverly Health & Rehabilitation Services*, 335 NLRB 635, 669 (2001), *enfd. in pertinent part* 317 F.3d 316 (D.C. Cir. 2003).

Staff Pharmacist Nguyen testified that she does not issue discipline and does not have discretion to do so. Similarly, Pharmacy Manager Elder testified that Nguyen has never recommended that someone be formally disciplined. On brief, the Employer argues that corrections on data entry or communications with customers qualify as discipline because (1) the putative supervisor has discretion to take different actions, including verbally counseling the misbehaving employee or taking more formal action; (2) the putative supervisor's actions "initiate" the disciplinary process; and (3) the putative supervisor's action functions like discipline because it increases the severity of the consequences of a future rule violation. See *NLRB v. New Vista Nursing & Rehabilitation*, 870 F.3d 113, 130-136 (3d Cir. 2017); see also *NLRB v. Attleboro Associates*, 176 F.3d 154, 164-166 (3d Cir. 1999). The record does not support the Employer's argument. There is no evidence that Nguyen has discretion to do anything besides inform the technician or assistant of the mistake. There is no evidence that informing the technician or assistant "initiates" the disciplinary process. Finally, there is no evidence that informing the technician or assistant of their mistake increases the consequences of a future rule violation.

The Employer mounts a second argument that Nguyen's contribution to the performance reviews serves as evidence of her authority to discipline. As a baseline, the record reflects that Nguyen only offers feedback for the performance reviews when Elder specifically solicits feedback through an informal conversation, and by Elder's testimony, Nguyen's gives blanket feedback such as "everyone's doing good." Furthermore, Elder testified that she also solicits feedback from the technicians and assistants themselves which undercuts the Employer's argument that Nguyen's participation evinces her supervisory status. As discussed previously, testimony that decisions are collaborative is insufficient to show supervisory status. It seems as though Elder has attempted to create a collaborate environment in the pharmacy, but this collaborative environment is insufficient to confer supervisory status unto the collaborators. It has not been shown that the staff pharmacist disciplines or has the authority to discipline other employees.

For the reasons discussed in this decision, the Employer has not established that the staff pharmacist possesses the authority to assign, responsibly direct, hire, or discipline other employees. Accordingly, it has not been shown that staff pharmacists are § 2(11) supervisors under the Act.

IV. METHOD OF ELECTION

Both the Petitioner and the Employer have requested a manual election hosted at the Employer's facility where all employees in the voting unit regularly report to work. There is no indication that the Board would be prevented from accessing the Employer's facilities for the purpose of conducting a manual election. Given these circumstances, I find that a manual election is appropriate.

V. CONCLUSION

Under § 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the Board. Based on the foregoing and the record as a whole, I conclude as follows:

1. The rulings at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is an employer engaged in commerce within the meaning of §§ 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.¹
3. The Petitioner is a labor organization within the meaning of § 2(5) of the Act.
4. The Employer has not met its burden of establishing that pharmacists have the authority to assign work to other employees, responsibly direct them, hire them, or issue discipline. The Employer has not met its burden of proving that the pharmacists are supervisors within the meaning of § 2(11) of the Act.
5. The following employees of the Employer constitute voting groups appropriate for the purposes of collective bargaining within the meaning of § 9(b) of the Act:

VOTING GROUP A (Professionals)

All full-time and regular part-time Pharmacists employed by the Employer at its facility located at 17023 SE 272nd Street, Covington, WA 98042 (Store #0792); excluding all other employees, non-professional employees, office clerical employees, confidential employees, guards, managers and supervisors as defined in the Act.

There is approximately 1 employee in voting group A.

VOTING GROUP B (Non-Professionals)

¹ The Employer, Safeway Inc., a State of Delaware corporation with a place of business in Covington, Washington, is engaged in the business of operating grocery stores and retail pharmacies, including at its facility located at 17023 SE 272nd St., Covington, WA 98042 ("Store #0792"). During the past 12 months, a representative period of time, the Employer derived gross revenue in excess of \$500,000 and purchased and received goods and materials valued in excess of \$50,000 directly from points located outside the State of Washington.

All full-time and regular part-time Pharmacy Technicians, Lead Pharmacy Technicians, Pharmacy Technicians Special, Pharmacy Assistants, Pharmacy Technicians B, and Inventory Specialists employed by the Employer at its facility located at 17023 SE 272nd Street, Covington, WA 98042 (Store #0792); excluding all other employees, professional employees, office clerical employees, confidential employees, guards, managers, and supervisors as defined in the Act.

There are approximately 5 employees in voting group B.

In order to ascertain the desires of the petitioned-for professional and non-professional employees with regard to representation by the Petitioner and, in order to ascertain the desires of the petitioned-for professional employees as to their inclusion in a unit with non-professional employees, I shall direct elections in voting group A and voting group B.

The ballots for employees in voting group A will ask two questions.

1. Do you wish to be included with non-professional employees in a unit for purposes of collective bargaining?
2. Do you wish to be represented for purposes of collective bargaining by The Pharmacy Guild, affiliated with the International Association of Machinists and Aerospace Workers, AFL-CIO?

Votes on question 2 (representation) will be tallied only if a majority of professionals have voted yes on question 1 (inclusion). If a majority of the voters in group A vote no on question 1, they will be taken to have expressed their desire to remain unrepresented. If a majority of the voters in group A vote yes on question 1, their ballot will be tallied with voting group B on the representation question.

The ballots for employees in voting group B will ask one question.

1. Do you wish to be represented for purposes of collective bargaining by The Pharmacy Guild, affiliated with the International Association of Machinists and Aerospace Workers, AFL-CIO?

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting group found appropriate above. Employees will vote as described above on whether or not they wish to be represented for purposes of collective bargaining by The Pharmacy Guild, affiliated with the International Association of Machinists and Aerospace Workers, AFL-CIO. As the unit includes professionals, pursuant to *Sonotone*, the Pharmacists will be asked if they wish to be included in a single bargaining unit with the non-professionals.

A. Election Details

The election will be held on **Thursday, July 31, 2025**, from 1:00 PM to 2:30 PM in the pharmacy waiting room at Safeway Pharmacy Store #0792 located at 17023 SE 272nd Street, Covington, WA 98042.

The Petitioner waived its right to have the voter list for 10 days.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending Saturday, July 12, 2025, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

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

C. Voter List

As required by § 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 (that employees use at work), work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **July 18, 2025**. 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.nlr.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.nlr.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 § 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

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

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing

electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review. Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: July 16, 2025

A handwritten signature in black ink, reading "Ronald K. Hooks". The signature is written in a cursive, flowing style.

RONALD K. HOOKS, REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD,
REGION 19
915 2nd Ave Ste 2948
Seattle, WA 98174-1006



United States of America
National Labor Relations Board
NOTICE OF ELECTION



19-RC-365310

PURPOSE OF ELECTION: This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

SECRET BALLOT: The election will be by SECRET ballot under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling place. Violations of these rules should be reported immediately to an NLRB agent. Your attention is called to Section 12 of the National Labor Relations Act which provides: ANY PERSON WHO SHALL WILLFULLY RESIST, PREVENT, IMPEDE, OR INTERFERE WITH ANY MEMBER OF THE BOARD OR ANY OF ITS AGENTS OR AGENCIES IN THE PERFORMANCE OF DUTIES PURSUANT TO THIS ACT SHALL BE PUNISHED BY A FINE OF NOT MORE THAN \$5,000 OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BOTH.

ELIGIBILITY RULES: Employees eligible to vote are those described under the VOTING GROUPS on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off, and also include employees in the military service of the United States who appear in person at the polls. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are *not* eligible to vote.

SPECIAL ASSISTANCE: Any employee or other participant in this election who has a handicap or needs special assistance such as a sign language interpreter to participate in this election should notify an NLRB Office as soon as possible and request the necessary assistance.

PROCESS OF VOTING: Upon arrival at the voting place, voters should proceed to the Board agent and identify themselves by stating their name. The Board agent will hand a ballot to each eligible voter. Voters will enter the voting booth and mark their ballot in secret. **DO NOT SIGN YOUR BALLOT.** Fold the ballot before leaving the voting booth, then personally deposit it in a ballot box under the supervision of the Board agent and leave the polling area.

CHALLENGE OF VOTERS: If your eligibility to vote is challenged, you will be allowed to vote a challenged ballot. Although you may believe you are eligible to vote, the polling area is not the place to resolve the issue. Give the Board agent your name and any other information you are asked to provide. After you receive a ballot, go to the voting booth, mark your ballot and fold it so as to keep the mark secret. **DO NOT SIGN YOUR BALLOT.** Return to the Board agent who will ask you to place your ballot in a challenge envelope, seal the envelope, place it in the ballot box, and leave the polling area. Your eligibility will be resolved later, if necessary.

AUTHORIZED OBSERVERS: Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the voting place and at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.



United States of America
National Labor Relations Board
NOTICE OF ELECTION



VOTING GROUPS

VOTING GROUP A (Professionals)

Included: All full-time and regular part-time Pharmacists employed by the Employer at its facility located at 17023 SE 272nd Street, Covington, WA 98042 (Store #0792) during the payroll period ending July 12, 2025.

Excluded: All other employees, non-professional employees, office clerical employees, confidential employees, guards, managers and supervisors as defined in the Act.

VOTING GROUP B (Non-Professionals)

Included: All full-time and regular part-time Pharmacy Technicians, Lead Pharmacy Technicians, Pharmacy Technicians Special, Pharmacy Assistants, Pharmacy Technicians B, and Inventory Specialists employed by the Employer at its facility located at 17023 SE 272nd Street, Covington, WA 98042 (Store #0792) during the payroll period ending July 12, 2025.

Excluded: All other employees, professional employees, office clerical employees, confidential employees, guards, managers, and supervisors as defined in the Act.

NOTE: If a majority of the professional employees voting in Group A vote “Yes” to the first question, indicating their desire to be included in a group with non-professional employees, they will be so included, and their votes on the second question will be counted together with the votes of the non-professional employees in Group B to decide the question concerning representation for the overall Group consisting of the employees in Group A and B. If on the other hand, a majority of the professional employees voting in Group A do not vote “Yes” to the first question, they will be taken to have expressed their desire to remain unrepresented.

DATE, TIME AND PLACE OF ELECTION

Thursday, July 31, 2025	1:00 PM to 2:30 PM	The pharmacy waiting room at Safeway Pharmacy Store #0792 located at 17023 SE 272nd Street, Covington, WA 98042.
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EMPLOYEES ARE FREE TO VOTE AT ANY TIME THE POLLS ARE OPEN.



United States of America
National Labor Relations Board
NOTICE OF ELECTION



Ballot for Voting Group - Unit A (Professional)

	<p>UNITED STATES OF AMERICA National Labor Relations Board 19-RC-365310</p> <p>OFFICIAL SECRET BALLOT For certain employees of SAFEWAY INC.</p>	
<p>Do you wish to be included with nonprofessional employees in a unit for the purposes of collective bargaining?</p>		
<p>MARK AN "X" IN THE SQUARE OF YOUR CHOICE</p>		
<p>YES</p> <p><input type="checkbox"/></p>	<p>SAMPLE</p>	<p>NO</p> <p><input type="checkbox"/></p>
<p>Do you wish to be represented for purposes of collective bargaining by THE PHARMACY GUILD, AFFILIATED WITH THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO?</p>		
<p>MARK AN "X" IN THE SQUARE OF YOUR CHOICE</p>		
<p>YES</p> <p><input type="checkbox"/></p>	<p>SAMPLE</p>	<p>NO</p> <p><input type="checkbox"/></p>
<p>DO NOT SIGN OR WRITE YOUR NAME OR INCLUDE OTHER MARKINGS THAT WOULD REVEAL YOUR IDENTITY. MARK AN "X" IN THE SQUARE OF YOUR CHOICE ONLY.</p> <p>If you make markings inside, or anywhere around, more than one square, return your ballot to the Board Agent and ask for a new ballot. If you submit a ballot with markings inside, or anywhere around, more than one square, your ballot will not be counted.</p> <p>The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.</p>		

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.



United States of America
National Labor Relations Board
NOTICE OF ELECTION



Ballot for Voting Group - Unit B (Non-Professional)



UNITED STATES OF AMERICA
National Labor Relations Board
19-RC-365310



OFFICIAL SECRET BALLOT

For certain employees of
SAFEWAY INC.

Do you wish to be represented for purposes of collective bargaining by
**THE PHARMACY GUILD, AFFILIATED WITH THE INTERNATIONAL
ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO?**

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

YES

☐

SAMPLE

NO

☐

**DO NOT SIGN OR WRITE YOUR NAME OR INCLUDE OTHER MARKINGS THAT WOULD
REVEAL YOUR IDENTITY. MARK AN "X" IN THE SQUARE OF YOUR CHOICE ONLY.**

**If you make markings inside, or anywhere around, more than one square, return your ballot to the Board Agent
and ask for a new ballot. If you submit a ballot with markings inside, or anywhere around, more than one
square, your ballot will not be counted.**

The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample
ballot have not been put there by the National Labor Relations Board.

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United States of America National Labor Relations Board **NOTICE OF ELECTION**



RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union
- Choose representatives to bargain with your employer on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities
- In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election. If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:

- Threatening loss of jobs or benefits by an Employer or a Union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time where attendance is mandatory, within the 24-hour period before the mail ballots are dispatched
- Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a Union or an Employer to influence their votes

The National Labor Relations Board protects your right to a free choice.

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law

Anyone with a question about the election may contact the NLRB Office at (206)220-6300 or visit the NLRB website www.nlr.gov for assistance.

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