

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 27**

**TSG SKI AND GOLF, LLC**

**Employer**

**and**

**Case 27-RC-362455**

**COMMUNICATIONS WORKERS OF AMERICA,  
LOCAL 7781, AFL-CIO**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

**I. INTRODUCTION**

Communications Workers of America, Local 7781, AFL-CIO (Petitioner) filed the instant petition on March 24, 2025,<sup>1</sup> seeking an election in a unit of Ski Patrol Supervisors and Assistant Snow Safety Supervisors employed by TSG Ski & Golf, LLC (Employer) at its facility in Telluride, Colorado. The petition further asserted that the Petitioner seeks to add employees in these job classifications to its existing unit of employees at the same facility.<sup>2</sup> The Employer asserts that its Ski Patrol Supervisors and its Assistant Snow Safety Supervisor<sup>3</sup> are supervisors within the meaning of Section 2(11) of the Act. The Employer further contends that the Assistant Snow Safety Supervisor is a managerial employee exempt from inclusion in the bargaining unit. Finally, the Employer claims that the individuals in the petitioned-for unit do not share a sufficient community of interest to warrant a self-determination election.

On April 1, 2025, a hearing was held before a hearing officer of the Board. As explained below, based on the record and relevant Board law, I conclude that the Employer has not met its burden of demonstrating that the Ski Patrol Supervisors are supervisors within the meaning of Section 2(11). However, I conclude that the Employer has demonstrated that the Assistant Snow Safety Supervisor possesses the authority to assign employees and responsibly direct them, thus rendering the position unsuitable for inclusion in this voting group. Finally, the record demonstrates that the Ski Patrol Supervisors share a sufficient community of interest with the existing bargaining unit such that a self-determination election is appropriate.

---

<sup>1</sup> All dates are in 2025 unless otherwise stated.

<sup>2</sup> See *Armour, & Co.*, 40 NLRB 1333 (1942); and *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937). I use the terms “self-determination election” and “*Armour-Globe* election” interchangeably in this decision, while recognizing that *Armour-Globe* elections are not the only type of self-determination election. See, e.g., *Eaton Yale & Towne, Inc.*, 191 NLRB 217 (1971) (self-determination election directed to ascertain whether employees in a craft wished to sever from an existing unit); and *Sonotone, Inc.*, 90 NLRB 1236 (1950) (self-determination election required under Sec. 9(b)(1) to determine whether professional employees wished to be represented in a unit with non-professional employees).

<sup>3</sup> At the time of the hearing, there was only one individual employed as an Assistant Snow Safety Supervisor.

## II. THE APPROPRIATE STANDARDS

### A. Supervisory Status

Section 2(11) of the Act defines a supervisor thusly:

[A]ny individual having the 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.

“Possession of the authority to engage in (or effectively recommend) any one of the 12 supervisory functions listed in Section 2(11) is necessary to establish supervisory status.” *Oakwood Healthcare, Inc.*, 348 NLRB 686, 688 (2006). However, “[t]he Board has exercised caution not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied rights which the Act is intend to protect.” *Oakwood Healthcare, Inc.*, *supra*, quoting *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995).

“The party seeking to prove supervisory status must establish it by a preponderance of the evidence.” *Croft Metals, Inc.*, 348 NLRB 717, 721 (2006), citing *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1047 (2003) and *Bethany Medical Center*, 328 NLRB 1094, 1103 (1999). A party will fail to demonstrate sufficient evidence of supervisory status where “the record evidence is inconclusive or otherwise in conflict.” *G4S Regulated Security Solutions*, 362 NLRB 1072, 1072 (2015), *enfd.* 670 Fed. Appx. 697 (11th Cir. 2016), citing *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

### B. Managerial Employees

The Board considers employees to be “managerial” when they are responsible for “formulat[ing] and effectuat[ing] high-level employer policies or...have discretion in the performance of their jobs independent of their employer’s established policy.” *Wolf Creek Nuclear Operating Corp.*, 364 NLRB 1619, 1621 (2016), citing *The Republican Co.*, 361 NLRB 93, 95 (2014). See also *NLRB v. Yeshiva University*, 444 U.S. 672, 682 (1980). There is no set criteria that an employee must meet to be considered managerial; however, “an employee will not ordinarily be excluded as managerial unless he represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy.” *The Republican Co.*, 361 NLRB at 96, citing *Allstate Insurance Co.*, 332 NLRB 759, 762 (2000). Managerial employees are “‘much higher in the managerial structure’ than those explicitly mentioned by Congress [in the Act], which ‘regarded them as so clearly outside the Act that no specific exclusionary provision was thought necessary.’” *Allstate Insurance Co.*, 332 NLRB at 762, quoting *NLRB v. Yeshiva*, 444 U.S. at 682-683. As with supervisory status, the party seeking to exclude an employee as managerial bears the burden of proof. *LeMoyne-Owen College*, 345 NLRB 1123, 1128 (2005).

### **C. Self-Determination Elections**

“A self-determination election is the proper method by which a union may add unrepresented employees to the contractual unit.” *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990). Before directing such an election, the Board must determine “the extent to which the employees to be included share a community of interest with unit employees, as well as whether the employees to be added constitute an identifiable, distinct segment so as to constitute an appropriate voting group.” *Id.*, citing *Capital Cities Broadcasting Corp.*, 194 NLRB 1063 (1972).

## **III. FACTS**

### **A. The Employer’s Operations and the Parties’ Collective-Bargaining History:**

The Employer operates a ski and golf resort in Telluride, Colorado (the Employer’s facility).<sup>4</sup> The Petitioner currently represents employees at the Employer’s facility in the following bargaining unit:<sup>5</sup>

All regular full time seasonal, regular part time seasonal and tenured part time Ski Patrollers, Dispatch, Snowmobilers, and international exchange patroller [*sic*] employed by the Company, excluding visiting domestic exchange program patrollers and supervisors.

The Union was originally certified as bargaining representative on March 9, 2015.<sup>6</sup> The most recent collective-bargaining agreement between the parties was effective from November 7, 2022 through August 31, 2025.

The Ski Patrol Department is helmed by Ski Patrol Director Ian Kirkwood. Reporting directly to Kirkwood are Assistant Ski Patrol Director Eric Tanguay and Snow Safety Manager John Tukman. During the 2024-2025 ski season, the Employer employed six or seven Ski Patrol Supervisors and one Assistant Snow Safety Supervisor, as well as between 30-60 ski patrollers. Per the job description for the Ski Patrol Supervisors, the Ski Patrol Department’s primary function is “to provide safe and efficient rescue and evacuation of injured guests from the mountain,” with a plethora of secondary functions ranging from avalanche risk mitigation to crowd control.

### **B. The Ski Patrol Supervisors**

Ski Patrol Supervisors are employed seasonally in conjunction with the rest of the Employer’s ski patrollers and snowmobilers. The Ski Patrol Supervisors, like employees in the

---

<sup>4</sup> The record reflects that Ski Patroller Supervisors and the Assistant Snow Safety Supervisor have no responsibilities with respect to the Employer’s non-winter operations, though some subset of these individuals work for the Employer in different capacities during the summer months.

<sup>5</sup> In this decision, the term “the existing bargaining unit” refers to this bargaining unit. Similarly, “unit employees” in this decision refers to employees within this bargaining unit.

<sup>6</sup> I take administrative notice of the Certification of Representative issued in case 27-RC-143768 on March 9, 2015 regarding this unit of employees. See, e.g., *International Longshore and Warehouse Union*, 372 NLRB No. 66, slip op. at 1 fn. 1 (2023) (Board may take administrative notice of its own proceedings); and *Reno Hilton Resorts Corp.*, 319 NLRB 1154, 1157 fn. 16 (1995) (“[t]he Board need not await the motion by a party to take administrative notice of its own documents”).

existing bargaining unit, are hourly employees. The schedules worked by these two groups are largely similar, and policies in the Employer's handbook apply equally to Ski Patrollers and Ski Patrol Supervisors. The record reflects that, as seasonal employees, neither Ski Patrol Supervisors nor unit employees are eligible for health insurance or retirement benefits.

The wage rate of the highest-paid Ski Patrol Supervisor at the Employer's facility is \$42 an hour, while the wage rates for Ski Patrollers range from \$34 - \$41 an hour. However, Ski Patrol Supervisors are eligible for a season-end bonus, based on the individual's performance, historical practice, and the Employer's largesse.<sup>7</sup> Unit employees were previously eligible for similar bonuses, but do not currently receive bonuses as an outcome of the bargaining process between the Employer and the Union.

Ski Patrol Supervisors and unit employees are generally released from employment at the conclusion of each winter season. As the following winter season approaches, all members of the Ski Patrol Department receive similar emails from Kirkwood soliciting interest in returning for that season. If interested in returning, both groups complete the same rehire paperwork. At the beginning of the winter season, all Ski Patrol Department members, regardless of title, attend the same trainings and refreshers in preparation for the coming season. Moreover, the record reflects that, at a minimum, 80 percent of the Ski Patrol Supervisors' workdays are spent performing tasks identical to ski patrollers in the existing unit.<sup>8</sup>

#### **a. The Ski Patrol Supervisors' Job Description**

The job description for Ski Patrol Supervisors asserts that the "major function" of the position requires that the incumbent be "responsible for assisting the ski patrol department in planning, managing and organizing daily activities in accordance with the department functions. The job description asserts that the Ski Patrol Supervisor "directs the work of other employees, both daily and in special projects or teams, at assigned duty station."

A separate section of the job description, titled "Supervision," states as follows:

Directly supervises 30-60 Patrollers in the Ski Patrol. Carries out supervisory responsibilities in accordance with the organization's policies and applicable laws. Responsibilities include interviewing, hiring, and training employees; planning, assigning and directing work; appraising performance; rewarding and disciplining employees; addressing complaints and resolving problems.

#### **b. Hire<sup>9</sup>**

In order to be hired as a ski patroller, an applicant must demonstrate their fitness to perform the various tasks of the physically demanding position. The applicant is evaluated over the course

---

<sup>7</sup> The record does not reflect the size of these bonuses.

<sup>8</sup> There was some testimonial disagreement in this regard – the Employer's witness asserted that the proper percentage was 80%, while one of the Petitioner's witnesses pegged this number as high as 95%.

<sup>9</sup> The only record evidence regarding the authority of Ski Patrol Supervisors to hire employees or effectively recommend hire relates to applicants for ski patroller positions.

of two days in multiple areas, including the ability to ski well on different types of terrain as well as the ability to perform lifesaving tasks such as first aid.

Each applicant is evaluated by approximately eight individuals in the Employer's employ, though these evaluators are split by task and supply individual grades for the task they are assigned to evaluate.<sup>10</sup> There are approximately eight evaluators for each applicant. Two or three of these evaluators are Ski Patrol Supervisors, but the remainder are senior ski patrollers from the existing bargaining unit.<sup>11</sup> At the conclusion of the applicant's evaluation, each of the eight evaluators separately submit their individual scores to the Ski Patrol Director. The applicants are graded on a scale of 1-5 for each task. Applicants who do not achieve an average overall score of at least three are automatically deemed unfit for hire, but those whose scores average at or above three are hired, pending a successful background check.

### **c. Discipline, Discharge, and Suspension**

Ski Patrol Director Ian Kirkwood testified that any termination decision is made by him, though he relies on input from Ski Patrol Supervisors in making those decisions. With respect to discipline and suspension, Kirkwood attested that the Ski Patrol Supervisors were important in disciplining employees, including issuing them coachings or correcting behavior. However, the record contains only one instance in which a Ski Patrol Supervisor allegedly suspended an employee. Kirkwood testified that a ski patroller reported to work unfit for duty insofar as it was suspected the patroller was intoxicated. Kirkwood asserted that Ski Patrol Supervisor James Greene encountered the ski patroller in this compromised state and instructed the ski patroller to go home for the day. Kirkwood conceded, however, that he was not present for this encounter between Greene and the Ski Patroller.

Greene also testified in this matter and relayed a different version of events. According to Greene, he encountered the ski patroller and noticed that the employee's speech was slurred. He also noted that the patroller seemed argumentative as well. In response to Greene asking him whether he was ok, the ski patroller replied that that he wasn't feeling well and wished to go home for the day. Greene agreed with the employee, who departed the facility. Greene then relayed the interaction to Kirkwood and Tanguay via a group text message. The patroller subsequently attended a disciplinary meeting with Kirkwood and Tanguay and was ultimately terminated.<sup>12</sup>

### **d. Recall**

Although the Employer represented that its Ski Patrol Supervisors had authority to recall employees, there was no record evidence presented to support this assertion. As discussed above, workers in the Ski Patrol Department, including Ski Patrol Supervisors, are rehired each fall. There is no record evidence to indicate that the Ski Patrol Supervisors make recommendations or otherwise provide input as to which ski patrollers should be rehired for a subsequent season.

---

<sup>10</sup> In other words, several of these evaluators provide input based on the applicant's ability to perform first aid, while other groups provide input on the applicant's skiing prowess in various areas.

<sup>11</sup> The Employer utilizes a rotating set of evaluators for each applicant, meaning that a variety of Ski Patrol Supervisors and Senior Ski Patrol employees are used to grade applicants.

<sup>12</sup> The exact contents of this meeting are not in the record. It is undisputed that Greene was not present.

**e. Promote**

The record testimony establishes that promotions within the Ski Patrol Department are handled by the Ski Patrol Director. Upon being informed by an employee that they wish to be promoted to a higher-ranking position, Kirkwood solicits the opinion of all Ski Patrol Supervisors, as well as the Snow Safety Manager and Assistant Snow Safety Supervisor, as to the suitability of the employee for the requested promotion. Though disagreement among this group is uncommon, Kirkwood takes an amalgamation of all the opinions solicited to make a final determination regarding whether the employee should be promoted.

This comports with the parties' collective-bargaining agreement covering ski patrollers. In that regard, Section 15.3 of the parties' agreement states as follows, in pertinent part:

A Trainee or Basic patroller wishing to be considered for promotion may make a request in writing to the patrol Director. Such request may be made at any time during the season. The Patrol Director will make the decision based upon business need and employee qualification. If granted, the promotion will be effective immediately. If not granted, the Patrol Director will discuss the reasons and document what the Employee must do in order to qualify for promotion.

**f. Reward/Evaluate**

The record reflects that employees in the existing bargaining unit are evaluated on their performance once per season. The record is similarly clear that the Employer follows the collectively-bargained process for conducting employee evaluations. The relevant portions of the parties' contract states as follows, in relevant part, regarding evaluation of bargaining unit employees:

**Article 6 – Performance Appraisal**

6.1 The purpose of performance appraisals is to improve communication between management and bargaining unit employees and to manage employee performance in accordance with departmental and Company goals. Performance appraisals may also be used as a tool to [sic] when awarding posted positions within the Bargaining Unit as well as determining eligibility for rehire.

6.2 Employees will receive an end of season performance appraisal each ski season. The Performance Appraisal forms will be formulated with input from the Union and the whole supervisory team. An employee who receives less than a "Satisfactory" evaluation may be placed on probation for a 90 day period after the start of the next ski season, or 90 days after the employee is back on the schedule or whichever comes later. At the end of the probationary period, each employee will be told if he/she will be eligible for rehire.

6.3 Performance appraisals will be administered by the Patrol Director and Assistant Patrol Director with the assistance of the Patrol Supervisors. The Patrol Director may solicit input from Advance and Specialist patrollers who regularly work with the employee.

The remainder of this section provides for a multi-step appeal process for unit employees who are dissatisfied with their appraisals; these appeals begin with the Ski Patrol Director and can be further appealed to the Employer's CEO and Human Resources Director.

The record is consistent with the above language, as all evaluations for the 2024-2025 winter season were conducted by the Ski Patrol Director and the Assistant Ski Patrol Director. Though Kirkwood noted in his testimony that he elicited opinions on ski patroller performance from the Ski Patrol Supervisors, the formal evaluations were completed by him and Tanguay.<sup>13</sup>

**g. Assign**

The Ski Patrol Department operates on a weekly basis via a schedule prepared by Kirkwood. This weekly schedule lists the days and hours of work for all Ski Patrol Department personnel, as well as the locations at which each worker can expect to be assigned. At the end of each workday, however, a work plan for the following day is finalized and distributed to Ski Patrol Department employees. For three days a week, the individual responsible for finalizing and issuing this daily work plan<sup>14</sup> is the Assistant Ski Patrol Director. On a fourth day, this task is handled by the Ski Patrol Director. Finalization and distribution of this list on the remaining three days falls to an individual Ski Patrol Supervisor.<sup>15</sup>

The work plan itself, in its original form, is a single-day recitation of the schedule as initially published by Kirkwood at the beginning of each week. The work plan lists the five different stations on the Employer's property and which departmental personnel are assigned to each of these locations. At the end of the shift of the previous day, the person responsible for the following day's work plan incorporates changes based on "mission" work, which is frequently related to safety and avalanche mitigation efforts.<sup>16</sup> The record reflects that the snow safety plans themselves are devised by the Employer's Snow Safety Team, a subset of the department, without input from a Ski Patrol Supervisor. When a Ski Patrol Supervisor is responsible for adjusting the work plan, that individual may be required to reallocate personnel based on the needs presented by the event in question. The record reflects that, particularly with respect to avalanche mitigation regarding the use of explosive devices, the skills of the ski patroller are taken into account when deciding which individuals are assigned to perform that task. The record indicates, however, that handling and use of explosives requires extensive training and permitting that not every ski

---

<sup>13</sup> The Employer presented an evaluation form of a ski patroller completed by a Ski Patrol Supervisor dated March 27, 2023, two years prior to the hearing in this matter.

<sup>14</sup> This work plan is emailed to all employees in the Ski Patrol Department each evening.

<sup>15</sup> For the 2024-2025 season, three Ski Patrol Supervisors were responsible for one day each: Ryan Mathis, James Greene, and Martinique Prohaska. The remaining four individuals only sporadically finalized work plans, and only if the primarily assigned Ski Patrol Supervisor was unavailable to do so.

<sup>16</sup> Other incidents that may require adjusting the work plan include large-scale public events on the Employer's property and replacement of employees who have called in sick.

patroller possesses. As for the reallocation of employees across the Employer's five stations, there are staffing guidelines regarding minimum employee complement at each station.<sup>17</sup>

In addition to the changes made by the individual responsible for distributing the work plan, specialist ski patrollers<sup>18</sup> are able to make their own changes to the work plan before distribution. For instance, a specialist may decide that a training for the following day is necessary, and update the work plan to reflect that certain employees should be assigned to that training.

Beyond interaction with the work plan, the Ski Patrol Supervisors spend the vast majority of their time on the Employer's property performing ski patroller duties.<sup>19</sup> The record demonstrates that although the Ski Patrol Supervisors are generally dispatched to one of the Employer's five stations, there are frequently stations at which no Ski Patrol Supervisor is present. While each station remains manned throughout the workday, depending on whether the terrain for which the station is designated is open, ski patrollers are nonetheless tasked with certain responsibilities or with responding to first aid or other emergency situations. Although Ski Patrol Supervisors are nominally the highest-ranking individuals at their station, responses to each situation are handled collaboratively or on a volunteer basis by the patrollers present at the station. Moreover, for situations involving a specific issue for which a bargaining unit employee is more qualified, that unit employee assumes control of the situation.<sup>20</sup> The record does reflect that, for larger-scale issues that require coordination between stations, a Ski Patrol Supervisor may be empowered to organize and marshal resources for response to the issue.

The record further reflects that Ski Patrol Supervisors can, under certain conditions, call off-duty ski patrollers and ask if those employees would be willing to come in to work. Similarly, if an employee needs to leave work early because of an illness or other reason, a Ski Patrol Supervisor is permitted to grant that request, though denial of such requests requires consultation with the Ski Patrol Director. There is no record evidence, however, to indicate that the Ski Patrol Supervisors are allowed to require employees to work overtime and record evidence suggests that authorization of overtime for employees who are already at work also requires permission from the Ski Patrol Director.

#### **h. Responsibly Direct**

Kirkwood asserted that if a ski patroller makes a mistake during the course of executing their duties, and a Ski Patrol Supervisor is nominally overseeing that employee during the course of this mistake, then the Ski Patrol Supervisor is ultimately held responsible for this error. The sole example provided was a verbal warning issued to a Ski Patrol Supervisor for acting

---

<sup>17</sup> The record indicates that the number of patrollers can range from a station with only two patrollers to a larger station that requires at least 12 employees to be considered fully staffed.

<sup>18</sup> Specialist ski patrollers are included in the existing bargaining unit.

<sup>19</sup> The actual amount of time spent in this regard was a matter of some dispute; Kirkwood asserted that supervisory duties accounted for 15-20 percent of a Ski Patrol Supervisor's workday. A Ski Patrol Supervisor who testified pegged these duties as accounting for no more than five percent of a workday.

<sup>20</sup> For instance, if a guest is suffering a medical event, a patroller certified as a paramedic might be responsible for assuming control of the event and directing personnel accordingly, notwithstanding the presence of a Ski Patrol Supervisor possessing less medical knowledge.



unprofessionally in addressing a shortcoming of a ski patroller. The record is clear, however, that this discipline was based on the manner in which this individual communicated with the employee.

### **i. Secondary Indicia**

In addition to the above, the Ski Patrol Supervisors attend supervisor meetings. During these meetings, which are not regularly scheduled, the Ski Patrol Director updates the Ski Patrol Supervisors on upcoming events and issues as well as other operational issues. During the 2024-2025 winter season, approximately four or five such meetings were held.<sup>21</sup>

## **C. The Assistant Snow Safety Supervisor**

### **a. The Snow Safety Team**

The Employer employs a single Assistant Snow Safety Supervisor at its facility. The incumbent in this role, Eric Larson, has held the position for approximately nine years. The Assistant Snow Safety Supervisor reports to the Snow Safety Manager. The record reflects that the chief responsibility of the Assistant Snow Safety Supervisor is to oversee the Employer's snow safety team, which is utilized to mitigate avalanche risk on the Employer's property. The Employer's property is categorized as a Class A resort in terms of avalanche risk, placing it among the country's most hazardous in that regard. As such, much of the work performed by the Employer's snow safety team is aimed toward preventing large-scale avalanche events.

The Employer's snow safety team consists of Tukman, Larson, and five ski patrollers, each of whom is either an advanced or specialist patroller.<sup>22</sup> Each workday, the Employer places two members of its snow safety team on each side of the Employer's property to report weather and trail conditions. This information is combined with weather forecasts and other meteorological information to devise the following day's snow safety plan. The execution of this plan occasionally extends beyond the snow safety team and can incorporate work from the entire Ski Patrol Department when necessary.

The actions taken via the day's snow plan can range from relatively simple measures such as using skis to cut slabs of snow to more extreme avalanche mitigation efforts. The latter includes the use of the aforementioned explosive devices, avalaunchers, and a military-grade howitzer used to shoot projectiles at potential avalanche sites. The use of each of these tactics is to avoid large avalanche events by creating many smaller, controlled avalanches.

### **b. The Assistant Snow Safety Supervisor's Job Description**

According to the job description for this position, the incumbent has the same job requirements as a Ski Patrol Supervisor, with added requirements and a certification regarding avalanche mitigation also necessary for the position. In addition, the job description contemplates that the Assistant Snow Safety Supervisor oversees training in snow safety, permitting and the handling and use of explosives, personal protective equipment, rescue equipment, and weather

---

<sup>21</sup> These meetings are distinct from "morning meetings," which are held every morning and are attended by all members of the Ski Patrol Department working that day.

<sup>22</sup> These ski patrollers are included in the existing bargaining unit.

forecasting equipment. The description of duties also states that “[u]nder normal operating conditions, the above snow safety duties will take precedence over the line duties of a supervisor.”

### **c. Assign and Responsibly Direct**

In addition to overlapping duties with Ski Patrol Supervisors, Larson has significant responsibilities related to oversight and implementation of the Employer’s snow safety plan. He and the other members of the snow safety team provide the aforementioned meteorological measurements on a rotating basis each day. Based on that data, as well as the Employer’s standard operating procedures and state and federal guidelines, the snow safety team determines what type of avalanche mitigation activity is required on a daily basis. Although Kirkwood asserted that these decisions were made by Larson and Tukman, Larson contended that these decisions were made collaboratively by taking into account the opinions of all the members of the snow safety team.

Regarding the howitzer, the record demonstrates that Larson is not on the team that is responsible for actually firing the howitzer; however, he has some ability to determine whether it is appropriate to utilize this weapon as an avalanche mitigation tool.<sup>23</sup> There was significantly more detailed record evidence regarding the deployment of a helicopter for snow safety reasons. Specifically, the Employer contracts with a third-party entity for use of a helicopter in exchange for housing the helicopter on its property. The Employer’s uses for this helicopter include the transport of ski patrollers to high-altitude locations on its property as well as the deployment of explosive devices from the helicopter itself. The record reflects that Larson possesses the authority to determine whether the use of a helicopter is warranted in certain situations, as well as whether the weather conditions on the Employer’s property are satisfactory for the helicopter to operate safely. The record further reflects that, though Larson is frequently utilized as the individual responsible for deploying explosives from the helicopter, other licensed members of the snow safety team can perform the same task.

### **d. Remaining Primary Indicia**

There is little record evidence regarding the remaining primary indicia of supervisory status as it relates to Larson. For instance, the record reflects that Larson, unlike the Ski Patrol Supervisors, has had no involvement in evaluating applicants for hire in any capacity for at least three years. Similarly, there is no record evidence to establish that the Assistant Snow Safety Supervisor has disciplined, suspended, or discharged employees. The only record evidence regarding Larson’s authority to promote or reward employees was an assertion by the Employer’s witness that he had “input” on the promotion and evaluation of employees on the snow safety team. Finally, there was a complete paucity of evidence to establish that the Assistant Snow Safety Supervisor has any involvement with the recall of employees from layoff.

### **e. Secondary Indicia**

As was the case with Ski Patrol Supervisors, the Assistant Snow Safety Supervisor is required to attend the supervisor meetings that are held approximately four or five times each season. In addition, the Employer includes the term “supervisor” within the job title at issue.

---

<sup>23</sup> The extent of Larson’s authority in this regard is unclear from the record.

Larson's wage rate is \$43.12 an hour, which is slightly higher than the most well-paid unit employee.

#### IV. ANALYSIS

##### D. The Ski Patrol Supervisors<sup>24</sup>

###### a. The Ski Patrol Supervisor Job Description

As discussed above, the Employer's job description for this position contains a paragraph-long summary asserting the incumbent in said position has various supervisory duties. However, "[i]t is well settled that employees cannot be transformed into statutory supervisors merely by vesting them with the title or job description of supervisor." *Heritage Hall*, 333 NLRB 458, 458-459 (2001), citing *Schnurmacher Nursing Home v. NLRB*, 214 F.3d 260, 266 (2d Cir. 2000); and *T.K. Harvin & Sons*, 316 NLRB 510, 530 (1995). As such, I give little weight to the job description's outlining of the purported responsibilities of the Ski Patrol Supervisors to the extent they are not corroborated by other record evidence.

###### b. Hire

The Board has long held that "recommendations regarding the hire of employees [that are] limited to the applicants' technical ability" are insufficient to imbue an individual with supervisory authority. *The Door*, 297 NLRB 601, 601 (1990). See also *The Republican Co.*, 361 NLRB at 98, and cases cited therein. In *UPS Ground Freight, Inc.*, 365 NLRB 1123, 1125 (2017), the Board declined to conclude that a dispatcher who performed driving tests to applicants was a supervisor within the meaning of Section 2(11). In so finding, the Board held that "the tests [the dispatcher] administered are designed to determine the competence of potential new hires, and after administering a test he simply reported to management whether a driver had passed or failed."

The same conclusion is warranted here. The record evidence demonstrates that Ski Patrol Supervisors perform technical assessments of applicants' ability to perform various tasks related to the position, grading the applicant on the task at issue. As "the Board has found that administering tests to an applicant and reporting the results to management does not constitute effective recommendation to hire,"<sup>25</sup> the Employer's reliance on the Ski Patrol Supervisors' participation in applicant skills assessments is misplaced. This is particularly true given that each applicant is evaluated by approximately eight individuals, with the Ski Patrol Supervisors constituting a minority of this group. In *The Door*, supra, the Board held that a purported supervisor did not possess the ability to effectively recommend the hire of applicants. In so finding, the Board noted that the individual was "only one of several individuals who interviewed [candidates]..." and that there was "no evidence that...[the purported supervisor]'s recommendation regarding a

---

<sup>24</sup> The parties stipulated that the Ski Patrol Supervisors do not have the authority to transfer employees, lay off employees, or adjust employees' grievances. Moreover, as discussed above, there is no record evidence regarding Ski Patrol Supervisors' ability to recall employees from layoff.

<sup>25</sup> *UPS Ground Freight*, supra, citing *Hogan Manufacturing*, 305 NLRB 806, 807 (1991); and *Pacific Beach Corp.*, 344 NLRB 1160, 1161-1162 (2005).

specific candidate carried greater weight than that of other interviewers or, indeed, any weight at all.” 297 NLRB at 601-602.

In light of the fact that Ski Patrol Supervisors’ grading of applicants constituted, at best, a minority of the rationale relied upon the Employer in making hiring decisions, I conclude that there is insufficient evidence to demonstrate that Ski Patrol Supervisors possess the ability to hire or to effectively recommend the hire of applicants.

### **c. Discipline, Suspend and Discharge**

The record contains no evidence, beyond a bare assertion from the Employer’s witness, that Ski Patrol Supervisors can effectively recommend that employees be discharged. This is the type of “purely conclusory testimony” that cannot serve to establish supervisory status. *G4S Regulated Security Solutions*, 362 NLRB at 1074. As such, I conclude that the Employer has failed to demonstrate that the Ski Patrol Supervisors have the authority to effectively recommend discharge.

I reach the same conclusion with respect to the Ski Patrol Supervisors’ ability to suspend or discipline employees. The sole example in this regard was an interaction between a Ski Patrol Supervisor and an employee which resulted in the employee leaving for the day. Although the Employer’s witness testified that the Ski Patrol Supervisor instructed the patroller to leave for the day, this assertion was contradicted by Greene, the Ski Patrol Supervisor in question. Greene’s testimony inherently carries more weight than that of the Employer’s witness, who could only provide a hearsay account of the interaction.<sup>26</sup> The extent of Greene’s actions that day were limited to agreeing that the ski patroller should leave for the day. It is well established that allowing an employee to leave work due to illness is insufficient to confer supervisory authority. See, e.g., *Bakersfield Californian*, 316 NLRB 1211, 1224 (1995) (authority to allow employees to leave early for illness or emergency insufficient to constitute supervisory authority under the Act).

Moreover, even assuming that Greene had sent the ski patroller home based on the employee’s apparent intoxication, this too would be insufficient to demonstrate that Ski Patrol Supervisors utilize independent judgment in suspending employees. While “it is well settled that the authority to send employees home for engaging in misconduct is typically considered evidence of supervisory authority,”<sup>27</sup> an exception exists for “situations involving egregious misconduct...[s]uch authority when limited to flagrant employee conduct is typically found by the Board not to constitute statutory supervisory authority.” *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1139 (1999), citing *Washington Nursing Home*, 321 NLRB 366 (1996). In *Loffland Bros. Co.*, the Board held that an employee’s ability to send another home for drunkenness did not confer supervisory authority on that basis. 243 NLRB 74, 75 fn. 4 (1979), citing *Greatlakes Towing Co.*, 168 NLRB 695, 700 (1967); and *Southern Industries Co., et al.*, 92 NLRB 998, 999-1000 (1950). Given the extreme nature and physically demanding requirements of ski patrollers, it is reasonable to conclude that potential intoxication is in the category of “egregious conduct” such that Greene’s

---

<sup>26</sup> The Board has long noted that “[a]dministrative agencies ordinarily do not invoke a technical rule of exclusion but admit hearsay evidence and give it such weight as its inherent quality justifies.” *Alvin J. Bart and Co., Inc.*, 236 NLRB 242, 242 (1978), enf. denied on other grounds 598 F.2d 1267 (2d Cir. 1979).

<sup>27</sup> *Bredero Shaw*, 345 NLRB 782, 783 (2005), citing *Silver Metal Products*, 244 NLRB 25, 28 (1979).

alleged conduct in sending the ski patroller home for the day did not involve independent judgment to cloak the Ski Patrol Supervisor with authority under Section 2(11) of the Act.

**d. Recall**

There is no record evidence to support the conclusion that the Ski Patrol Supervisors are responsible for recalling employees from layoff.

**e. Promote**

The Board has generally held that, unlike some other indicia found in Section 2(11) of the Act, “the authority to promote (or to effectively recommend [promotion] is invariably found to confer supervisory status.” *Northcrest Nursing Home*, 313 NLRB 491, 494 (1993). However, the Ski Patrol Supervisors’ involvement in the hiring process is limited to giving their opinions on whether an employee requesting a promotion was a good fit for the position. Thus, as was the case with the senior cooks at issue in *Consolidated Services, Inc.*, 321 NLRB 845 (1996), the fact that a higher-level manager “seeks oral input” from purported supervisors is insufficient to establish supervisory status. *Id.* Moreover, the fact that Kirkwood solicits the opinions of all Ski Patrol Supervisors, as well as the opinions of the Snow Safety Manager and Assistant Snow Safety Supervisor, before deciding whether an employee should be promoted, demonstrates that the Ski Patrol Supervisors cannot effectively recommend that employees be promoted.

**f. Assign**

In *Oakwood Healthcare*, the Board held that it “construe[s] the term ‘assign’ to refer to the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e., tasks, to an employee.” 348 NLRB at 689.

The Employer relies on several responsibilities of the Ski Patrol Supervisors in asserting that these individuals have the authority to assign employees, with significant attention devoted to finalization and alteration of the daily work plan. As an initial matter, the record reflects that only three Ski Patrol Supervisors were regularly assigned to this task, with the remaining Ski Patrol Supervisors filling in only as needed. As such, the latter group of Ski Patrol Supervisors perform this task too infrequently or sporadically to imbue them with supervisory status. Though the record does not reflect how often these four fill-ins were required to finalize the daily work plan, the Board has held that the lack of “an established pattern or predictable schedule for when and how often” supervisory duties are assumed defeats a showing that the individuals irregularly performing said duties are supervisors within the meaning of the Act. *Oakwood Healthcare*, 348 NLRB at 699.

Moreover, I conclude that the Ski Patrol Supervisors’ duties with respect to the daily work plan are not sufficient to establish that these individuals assign work to employees to the extent necessary under Section 2(11). The record is clear that the initial work plan for the day is invariably prepared by Kirkwood as part of the weekly schedule distributed to employees. Thus, the Ski Patrol Supervisors’ involvement with creating the work plan is limited to making changes to the existing template where necessary. Although the Employer contends that making these changes requires a significant amount of discretion and requires evaluation of employees’ skills and abilities, this does

not comport with the record evidence. The example provided by the Employer related to this issue involved assigning employees to utilize explosive devices for avalanche mitigation purposes. However, the record also indicates that only some of the Employer's ski patrollers have the proper certification to engage in this work. Additionally, the Employer's snow safety team is a set roster of employees who are utilized for this work. As such, the options for Ski Patrol Supervisors to reassign employees for avalanche mitigation operations are limited. The Board has also held that determining "whether...employees have the skill and knowledge to staff a particular post...do[es] not require the use of independent judgment sufficient to support a supervisory finding." *G4S Government Solutions, Inc.*, 363 NLRB 977, 979 (2016), citing *Volair Contractors, Inc.*, 341 NLRB 673, 675 fn. 10 (2004). The record evidence reflects that any assignments made by Ski Patrol Supervisors in finalizing the work plan are based on an assessment of ski patrollers' skills and thus do not require independent judgment.

In addition, the shifting of employees between stations while adjusting the work plan does not support a finding of supervisory authority. It is well established that "a judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, the verbal instructions of a higher authority, or in the provisions of a collective-bargaining agreement." *Oakwood Healthcare*, 348 NLRB at 693 (citations omitted). Here, the record reflects that the staffing levels at each station are pre-set by the Employer and the Ski Patrol Supervisors' actions in shifting employees between stations is in furtherance of meeting these standards. As such, these actions cannot establish that the Ski Patrol Supervisors are imbued with supervisory authority.<sup>28</sup>

With respect to the Ski Patrol Supervisors' responsibilities while working at a station or elsewhere on the Employer's property, the record is, at best, inconclusive regarding the level of authority utilized by these individuals. There is insufficient evidence in the record to demonstrate that the Ski Patrol Supervisors, while assigned to a particular station, are more than nominally in charge of the activity at said station. The record reflects that the vast majority of the work at work stations involve reporting to incidents on the Employer's property to which ski patrollers voluntarily report. In situations involving larger responses, the Ski Patrol Supervisors are responsible for organizing resources. There is no record evidence to demonstrate specific situations in which this organization is undertaken and the authority assumed by a Ski Patrol Supervisor in responding to this incident. Again, such lack of evidence is construed against the party urging a conclusion that a disputed classification is supervisory. *G4S Government Solutions*, supra.

For these reasons, I conclude that there is insufficient evidence that the Ski Patrol Supervisors assign work utilizing independent judgment.

#### **g. Evaluate/Reward**

It is self-evident that "Section 2(11) does not include 'evaluate' in its enumeration of supervisory functions." *Harborside Healthcare, Inc.*, 330 NLRB 1334, 1334 (2000). However,

---

<sup>28</sup> It is noteworthy that, in addition to the Ski Patrol Supervisors, specialist ski patrollers included in the existing bargaining unit are also empowered to make changes to the work plan to, for instance, provide training to ski patrollers on a certain topic. There is no contention that these employees are supervisors within the Act, and the Board has declined to find a disputed individual a supervisor if they have the same or less authority as employees. *United States Gypsum Co.*, 148 NLRB 1640, 1645 (1964).

“the Board has consistently found supervisory status when [disputed individuals] independently perform employee evaluations which lead directly to personnel actions.” *Vencor Hospital – Los Angeles*, 328 NLRB at 1139. Where, however, “an evaluation does not, by itself, affect the wages and/or job status of the employee being evaluated, the individual performing such an evaluation will not be found to be a statutory supervisory.” *Harborside Healthcare*, supra, citing *Elmhurst Extended Care Facilities*, 329 NLRB 535 (1999).

In the instant matter, the record establishes that, at the time of the hearing, none of the Ski Patrol Supervisors were responsible for completing evaluations for employees in the existing unit. Instead, the record demonstrates that, at most, the Ski Patrol Supervisors give input into the evaluations completed by the Ski Patrol Director and Assistant Ski Patrol Director. It is true that substantial input in employee evaluations has been found to demonstrate supervisory status. *Wal-Mart Stores, Inc.*, 335 NLRB 1310, 1310 (2001). However, there was little detail provided in the instant hearing regarding the level of input that Ski Patrol Supervisors are asked to provide with respect to employees in the existing unit, with Kirkwood’s testimony reflecting only that he solicited input from Ski Patrol Supervisors. It is well established that, in cases such as this, “any lack of evidence in the record is construed against the party asserting supervisory status.” *Michigan Masonic Home*, 332 NLRB 1409, 1409 (2000), citing *Elmhurst Extended Care Facilities*, 329 NLRB at 535 fn. 8. Thus, there is insufficient evidence to demonstrate that the Ski Patrol Supervisors’ involvement in the evaluation process is significant enough to imbue them with supervisory authority under Section 2(11).<sup>29</sup>

#### **h. Responsibly Direct**

As with the ability to assign, the Board used its decision in *Oakwood Healthcare* to set forth its interpretation of this indicium of supervisory authority. In so doing, the Board asserted that “to establish accountability for purposes of reasonable 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.” 348 NLRB at 692. The Board added that “[i]t must also be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps.” *Id.* In *Croft Metals, Inc.*, a companion case to *Oakwood Healthcare*, the Board held that lead persons responsibly directed underlings, relying on evidence that the employer “disciplined lead persons by issuing written warnings to them because of the failure of their crews to meet production goals or because of other shortcomings of their crews.” 348 NLRB at 722.

In the instant matter, there is insufficient evidence to demonstrate that the Ski Patrol Supervisors responsibly direct unit employees. The sole example provided by the Employer in this regard was the discipline of a Ski Patrol Supervisor for communicating unprofessionally with a ski patroller regarding the latter’s performance issue. However, implicit in this assertion is that the Ski Patrol Supervisor would not have been disciplined absent the unprofessional manner in which they

---

<sup>29</sup> The Employer’s reliance on a 2023 performance evaluation completed by a Ski Patrol Supervisor is equally unavailing. Even assuming that the Ski Patrol Supervisors were previously responsible for evaluating employees in a fashion that conferred supervisory status on these individuals, the record is clear that the Ski Patrol Supervisors were not responsible for conducting employee evaluations at the time of the hearing. Past exercise of supervisory authority is immaterial if the individual or classification in question was subsequently dispossessed of said authority. *Kleinberg, Kaplan, Wolff, Cohen & Burrows*, 253 NLRB 450, 457 fn. 14 (1980).

addressed the performance issue. Thus, like the purported supervisors at issue in *Entergy Mississippi, Inc.*, 357 NLRB 2150, 2155 (2011), the Ski Patrol Supervisor was held accountable “for their own work, i.e., their own failures and errors, and not those of the [purported supervisees].” As such, this incident cannot serve to establish that the Ski Patrol Supervisors have the authority to responsibly direct employees.

### **i. Secondary Indicia**

The Board uses “secondary indicia” to support conclusions that disputed individuals or classifications are supervisory. There is record evidence to support the conclusion that the Ski Patrol Supervisors possess certain of these indicia. Specifically, the Ski Patrol Supervisors’ attendance at supervisor meetings, as well as their title’s inclusion of the terms “supervisor,” have been held by the Board to constitute evidence of secondary indicia. See *Sheraton Universal Hotel*, 350 NLRB 1114, 1118 (2007). The Ski Patrol Supervisors are often the highest-ranking individuals at the stations to which they are assigned, which the Board considers a secondary indicium of supervisory authority. *Golden Crest Healthcare Center*, 348 NLRB 727, 730 fn. 10 (2006). Regarding Ski Patrol Supervisors’ ability to allow ski patrollers to leave early due to illness or another conflict, the Board has repeatedly held that permitting employees to leave before the end of a schedule shift constitutes “secondary indicium only...” *G4S Government Solutions*, 363 NLRB at 979.

However, the Board has also consistently held that, “[a]bsent evidence that an individual possesses any one of the statutory indicia, secondary indicia alone are insufficient to establish supervisory status.” *Modesto Radiology Imaging, Inc.*, 361 NLRB 888, 890 fn. 4 (2014), citing *Golden Crest Healthcare Center*, supra. As there is insufficient evidence that the Ski Patrol Supervisors possess any of the primary indicia to imbue supervisory status, reliance on secondary indicia regarding these employees is inappropriate.

## **E. The Assistant Snow Safety Supervisor**

### **a. Supervisory Status**

As with the Ski Patrol Supervisors, the parties stipulated that the Assistant Snow Safety Supervisor does not have the authority to transfer employees, to adjust employees’ grievances, or to lay off employees. The remainder of the indicia for supervisory status are discussed below:

### **i. Assign and Responsibly Direct**

The record reflects that Larson has nearly unfettered ability to authorize the use of a helicopter for a variety of avalanche mitigation tasks, tasks that include transporting ski patrollers to higher-elevation terrain and in-air deployment of explosive devices. This authority extends beyond merely determining whether a certain task requires the use of a helicopter; the Assistant Snow Safety Supervisor is empowered to determine whether weather conditions will permit safe operation of a helicopter. Given the precarious nature of high-elevation helicopter use and the handling of explosives while doing so, “[t]he consequences of an error in...judgment can be catastrophic, including a collision causing loss of life...” *American Commercial Barge Line Co.*,



337 NLRB 1070, 1071 (2002), citing *Sun Refining & Marketing Co.*, 301 NLRB 642, 649 (1991).<sup>30</sup> Thus, like the pilots at issue in this case, it is clear that Larson uses independent judgment in determining whether the use of a helicopter is warranted and safe, and therefore satisfies the “responsibly direct” criterion set forth in Section 2(11) of the Act.

I further conclude that Larson’s authority with respect to authorizing the use of the leased helicopter demonstrates that he possesses the authority to assign. As discussed above, the Board considers the ability to “assign” as encompassing the ability to “designat[e] an employee to a place...”<sup>31</sup> The record clearly establishes that Larson’s authority regarding use of the helicopter is not limited to performing his own duties; rather, he can authorize helicopter use to allow other members of the snow safety team to deploy explosive devices and to transport other members of the Ski Patrol Department to high-elevation areas. Implicit in such a decision, particularly regarding using the helicopter as a transportation method, is that the ski patrollers transported by helicopter are necessarily given a less demanding method of arriving at their designated assignment on the Employer’s property compared to non-helicopter transportation. Thus, Larson’s decisions regarding whether helicopter use is warranted is the type of differentiation between “‘plum assignments’ and ‘demanding assignments’ – assignments that are more difficult and demanding than others...” warranting a conclusion that a purported supervisor has the authority to assign employees. *Oakwood Healthcare*, supra. Thus, like the nurses at issue in *Oakwood*, Larson has the ability to give employees assignments “with less demanding needs [that] will make all the difference in the work day of that employee.” *Id.*

Thus, for the above reasons, I conclude that the Assistant Snow Safety Supervisor has the authority to assign and responsibly direct employees as contemplated in Section 2(11) of the Act.

## **ii. Remaining Primary Indicia**

There is insufficient record evidence to support the Employer’s assertions with respect to primary indicia other than the two discussed immediately above. Indeed, in virtually every respect, the record evidence in support of finding supervisory authority on these other indicia is weaker than that for the Ski Patrol Supervisors that I have already found lacking.<sup>32</sup> As such, I conclude the Employer has not met its burden to demonstrate that the Assistant Snow Safety Supervisor possesses the authority to hire, suspend, discharge, discipline, promote, reward, or recall employees, or to effectively recommend any of the foregoing actions.

---

<sup>30</sup> Although the Board’s decision in *American Commercial Barge* predated its elaboration of the term “responsibly to direct” in *Oakwood Healthcare*, supra, the Board in the latter case cited the former with approval in this regard. 348 NLRB at 692 fn. 37.

<sup>31</sup> *Oakwood Healthcare*, 348 NLRB at 689.

<sup>32</sup> For instance, with respect to the authority to effectively recommend hire, the Ski Patrol Supervisors participate in a skills evaluation of an applicant. While this is insufficient to convey supervisory status for the reasons discussed above, the record is clear that the Assistant Snow Safety Supervisor has not participated in any such skills evaluation for at least the last three years. Similarly, the record contains no examples of the Assistant Snow Safety Supervisor disciplining employees in any fashion.

### **iii. Secondary Indicia**

Given that the Employer has met its burden to demonstrate that the Assistant Snow Safety Supervisor possesses the authority to assign employees and to responsibly direct them, reliance on secondary indicia is appropriate. *Progressive Transportation Services, Inc.*, 340 NLRB 1044, 1047 (2003). Thus, the fact that Larson's title identifies him as a manager, as well as his attendance at supervisor meetings, buttresses the conclusion that the Assistant Snow Safety Supervisor is a supervisor within the meaning of the Act. However, given that Larson's wage rate is only marginally higher than the highest-paid ski patroller in the existing bargaining unit, I do not rely on his rate of pay as additional evidence of his supervisory authority.

#### **b. Managerial Status**

As I have concluded that the Assistant Snow Safety Supervisor is a supervisor within the meaning of the Act, it is unnecessary to reach the issue of whether the incumbent in this role is also a managerial employee.

### **F. The Propriety of a Self-Determination Election**

#### **a. The Ski Patrol Supervisors are an Identifiable, Distinct Segment of the Employer's Workforce**

As discussed above, the Board considers two factors in determining whether a self-determination is appropriate: whether the employees in the voting group "constitute an identifiable, distinct segment" and whether the voting group shares a community of interest with the existing unit. *St. Vincent Charity Medical Center*, 357 NLRB 854, 855 (2011). In the instant case, the parties stipulated that a voting group consisting of Ski Patrol Supervisors and the Assistant Snow Safety Supervisor is a distinct and identifiable segment of the Employer's operation.

As discussed above, I have concluded that Ski Patrol Supervisors are not supervisors within the meaning of Section 2(11) of the Act, but that there is sufficient evidence to demonstrate that the Assistant Snow Safety Supervisor cannot be included in the petitioned-for voting group. Nonetheless, I conclude that the Ski Patrol Supervisors, as a single classification of employees, constitutes a distinct segment of the Employer's workforce. See, e.g., *General Motors Corp.*, 71 NLRB 757, 759 (1946).

#### **b. The Ski Patrol Supervisors Share a Community of Interest with the Existing Bargaining Unit.**

I further conclude that the Ski Patrol Supervisors share a sufficient community of interest with the existing bargaining unit. "In determining whether unit employees possess a separate community of interest, the Board examines factors such as common functions and duties, shared skills, functional integration, temporary interchange, frequency of contact with other employees, commonality of wages, hours, and other working conditions, permanent transfers, and shared supervision." *Casino Aztar*, 349 NLRB 603, 605 (2007) (citations omitted).

The record clearly indicates that the duties of the Ski Patrol Supervisors and the employees in the existing unit overlap significantly; by the most conservative estimate, the same work is

performed by the Ski Patrol Supervisors and unit ski patrollers at least 80 percent of the time, including being assigned to duty stations with unit employees and attending the same morning meetings as the unit ski patrollers. This evidence of contact and interchange strongly support the finding that the Ski Patrol Supervisors share a community of interest with employees in the existing unit. See, e.g., *MV Transportation, Inc.*, 373 NLRB No. 8, slip op. at 7 (2023); and *Avis Rent-A-Car System, Inc.*, 132 NLRB 1136, 1136 fn. 2 (1961).

The record further indicates that the skills required for the positions of Ski Patrol Supervisors and the unit ski patrollers are largely identical; though there are variations in the level of experience of the Ski Patrol Supervisors, the same is true of the unit employees, as demonstrated by the wage enhancements for certain certifications codified in the parties' collective-bargaining agreement. This, too, supports a conclusion that the Ski Patrol Supervisors share a community of interest with unit employees. *Public Service Company of Colorado*, 365 NLRB 1017, 1017 fn. 4 (2017).

There is no meaningful distinction in the terms and conditions of employment of the Ski Patrol Supervisors and employees in the existing unit. As discussed above, there is significant overlap between the wage rates of the higher-paid unit ski patrollers and the Ski Patrol Supervisors. Additionally, as seasonal employees, neither unit employees nor the Ski Patrol Supervisors are entitled to health insurance or retirement benefits. Indeed, the only measurable difference regarding the Ski Patrol Supervisors' terms and conditions of employment are their eligibility for bonuses, which is insufficient to demonstrate that the two groups do not share a community of interest.<sup>33</sup> See *Columbia College*, 346 NLRB 726, 728 (2006) (commonality in wages, benefits, and schedules between groups, despite other variations, supports finding that the groups share a community of interest).

Finally, the record clearly supports the conclusion that the Ski Patrol Supervisors are functionally integrated with the employees in the existing unit and that the two groups share common supervision. As discussed above, all ski patrollers, including the Ski Patrol Supervisors, are housed in the Employer's Ski Patrol Department. Moreover, the hierarchy of the department clearly establishes that both the existing unit employees and the Ski Patrol Supervisors report to the Ski Patrol Director and the Assistant Ski Patrol Director.<sup>34</sup> This evidence is more than sufficient to support the conclusion that the two groups are functionally integrated. See, e.g., *Publix Super Markets, Inc.*, 343 NLRB 1023, 1024-1025 (2004).

In sum, there is overwhelming evidence to demonstrate that the Ski Patrol Supervisors share a sufficient community of interest with employees in the existing bargaining unit to warrant a self-determination election.

---

<sup>33</sup> This is particularly true given that the amounts of these bonuses are nebulous.

<sup>34</sup> Though the Employer argues that employees in the existing bargaining unit report to the Ski Patrol Supervisors, the above discussion demonstrates that the Ski Patrol Supervisors are not supervisors within the meaning of Section 2(11), and thus cannot be considered a step in the repertorial structure of the Ski Patrol Department.

## **V. SUMMARY**

For the foregoing reasons, I conclude that the Employer has not met its burden of demonstrating that the Ski Patrol Supervisors are supervisors within the meaning of Section 2(11) of the Act. I further conclude that there is sufficient evidence to support the Employer's contention that the Assistant Snow Safety Supervisor is a supervisor within the meaning of Section 2(11) of the Act. Finally, I conclude that the Ski Patrol Supervisors meet the criteria for a self-determination election to determine whether they wish to be included in the existing bargaining unit.

## **VI. CONCLUSION**

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>35</sup>
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time, regular part-time, and seasonal Ski Patrol Supervisors employed by the Employer at its Telluride, Colorado facility.

Excluded: Office clerical employees, guards, professional employees and supervisors as defined in the Act, and all other employees.

## **VII. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Communication Workers of America,

---

<sup>35</sup> The Employer, TSG Ski & Golf, LLC, a Delaware corporation with its principal offices and a facility located at 566 Mountain Village Blvd, Telluride, CO 81435, the sole facility involved, is engaged in the operation of a ski and hospitality resort. In the past 12 months, a representative period of time, the Employer derived gross revenues in excess of \$500,000, and purchased and received goods valued in excess of \$5,000, which goods were shipped directly to the Employer's Telluride, Colorado facility from points located outside the State of Colorado.

Local 7781, AFL-CIO. If a majority of valid ballots are cast for Communications Workers of America, Local 7781, AFL-CIO, they will be taken to have indicated the employees' desire to be included in the existing unit of dispatchers, ski patrollers, snowmobilers, and international exchange patrollers by the Employer at its Telluride, Colorado facility. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

#### **A. Election Details**

The election will be held on **Monday, November 24, 2025** from **7:00 a.m. – 8:00 a.m.** at the Lodge located at the Employer's Telluride, Colorado facility.

#### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed as of **Monday, November 10, 2025**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all employees in the unit who have worked an average of four (4) hours or more per week during the 13 weeks immediately preceding the eligibility date for the election. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board's designated office.

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

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

#### **C. Voter List**

As required by Section 102.67(1) 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 **Monday, November 17, 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](http://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](http://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 Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election that will issue after 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.

### **VIII. RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is 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](http://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 25, 2025



---

MATTHEW S. LOMAX  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 27  
Byron Rogers Federal Office Building  
1961 Stout Street, Suite 13-103  
Denver, CO 80294