

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

SAN DIEGO GAS & ELECTRIC COMPANY

Employer

and

Case 21-RC-341150

**LOCAL UNION 465 INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS**

Petitioner

DECISION AND DIRECTION OF ELECTION

On April 29, 2024, the Petitioner, Local Union 465 International Brotherhood of Electrical Workers, filed a representation petition seeking an *Armour-Globe*¹ self-determination election to add a unit of approximately seven Operations Shift Supervisors employed by the Employer, San Diego Gas & Electric Company, at the Employer's Mission Control Center in San Diego, California, to an existing unit. The Employer maintains that the petitioned-for unit is not appropriate because the Operations Shift Supervisors are: (1) statutory supervisors under Section 2(11) of the Act; (2) managerial employees; (3) confidential employees; and/or (4) professional employees under Section 2(12) of the Act. The Employer further maintains that an *Armour-Globe* self-determination election is improper because the petitioned-for unit does not share a community of interest with the existing bargaining unit.

From May 9, 2024, to May 13, 2024, a hearing officer of the Board held a hearing in this matter by videoconference. The Employer and Petitioner appeared at the hearing, and both parties submitted legal arguments during the hearing, which were fully considered. As explained below, based on the record and relevant Board law, I find that the Employer has failed to meet its burden of establishing that the Operations Shift Supervisors are supervisory, managerial, confidential, and/or professional employees. I further find that the Operations Shift Supervisors share a sufficient community of interest with the existing bargaining unit. Therefore, I shall direct an *Armour-Globe* self-determination election, as proposed by the Petitioner.

I. THE EMPLOYER'S OPERATIONS

A. GENERAL OPERATIONS

The Employer is a California public utility with its principal offices located in San Diego, California. As a public utility, it generates and distributes natural gas and electricity to customers in the San Diego service territory. To ensure grid stability and reliability, the Employer is overseen by several entities, including the National American Electric Reliability Corporation (NERC), the Federal Energy Regulatory Commission (FERC), and the Western

¹ See *Armour & Co.*, 40 NLRB 1333 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

Electric Coordinating Council. In its daily work, the Employer continually updates the external group California Independent System Operator, which acts as the Employer's balancing authority, to ensure system stability.

The Employer operates a Mission Control building, which controls the flow of all electricity within the San Diego territory. The Mission Control building consists of the Control Room, the Training Center, and the Distribution Operations Department, where employees represented by the Petitioner also have their own control center. Multiple parking lots surround the Mission Control building and several layers of security, in the form of guards, escorts, and doors requiring key access and PIN numbers, must be passed through to access the Control Room within the building.

In the Control Room, Operations Shift Supervisors (OSSs) and Transmission System Operators (TSOs) monitor and balance the grid to prevent blackouts in the San Diego territory and in neighboring territories. Overall, the TSOs are responsible for ensuring that electrical equipment is isolated and the OSSs are responsible for the real-time operations of the electrical grid, which includes ensuring that the isolation of that electrical equipment does not affect the reliability of the grid. To do this, the Control Room can turn on or de-energize, i.e. turn off, equipment; shed or drop load, meaning dropping customers from receiving service; and redirect power. Due to the critical and sensitive nature of the work being done in the Control Room, it is a secure area that must be accessed with a badge and PIN number, along with permission from the OSS inside.

The Control Room is an open room that spans two stories within the Mission Control building. It contains the monitors on which the grid is observed with offices flanking the room, including the office belonging to Electric Grid Control Manager Ashley Llacuna, who oversees both the OSSs and TSOs. The offices have glass walls that can be fogged with the push of a button. Two rows of desks face the monitors with the TSOs sitting in the first row closest to the monitors and the OSS, usually one, sitting in the row behind the TSOs.

B. THE EMPLOYER AND THE PETITIONER

The Petitioner and the Employer currently have a collective-bargaining agreement (CBA), effective September 1, 2022, covering employees in the following departments: Electric Transmission and Distribution Department; Support Services Division; Gas Department; Customer Service Field Division; Facility Management Department; Stores Department; and Transportation & Shops Department. The TSOs are included in the Employer's Electric Transmission and Distribution Department. The CBA dictates represented employees' wages, hours, overtime, and seniority.

C. THE TRANSMISSION SHIFT OPERATORS AND THE OPERATIONS SHIFT SUPERVISORS: AN OVERVIEW

The Employer did not call any employees to testify who are currently TSOs or OSSs. The only witnesses who currently are employed as TSOs or OSSs testified as witnesses for the

Petitioner. The Employer called Electric Grid Control Manager Llacuna, Training Manager for Transmission and Distribution Jacob Digenan (a former TSO and OSS), Human Resources Business Partner Team Lead Alayne Kiralla, and Senior Labor Relations Adviser Jon McCratic.²

The OSSs and TSOs both possess the same Transmission Operator Certification from NERC in order to work for the Employer but are given different authorizations from the Employer's own policies and procedures. They largely undergo the same training, with the OSSs taking additional training in subjects like scheduled outages, managing represented employees, and sexual harassment. They work different shifts, with the TSOs working a rotating 8-hour shift while the OSSs work 12-hour day and night shifts. When OSSs work on project days, which is when they review Employer procedures to ensure compliance with various regulatory and outside agencies, they work 10-hour shifts rather than 12-hour shifts.

The OSSs oversee the planned outages that are operated daily out of the Control Room while the TSOs conduct the switching operations. The Outage Coordination Department receives daily requests for outages and generates the switching order for the daily planned outages. The day before the outage is to occur, the completed switching order then transfers from the Outage Coordination to the OSS in the Control Room. The switching order lists the steps required to properly isolate the piece of equipment in question. The switching orders are reviewed by the TSOs and the OSSs. If the TSOs identify any issues, they will raise them with the OSS.

In their review of the switching orders, the OSSs receive and process input from several sources when analyzing the impact of outages on the overall grid. Two sources of information are the Real-Time Contingency Analysis Program (RTCA) and the System Operating Limit Methodology. The RTCA is a study used by the Employer that runs various outage simulations, producing a result every 5 minutes automatically or sooner at the OSS's initiative. The System Operating Limit Methodology, a study used by the Employer and outside agencies that act as balancing authorities, informs the OSS what should be done to keep the system reliable. The night before a planned outage, the OSS will run a study and place all planned outages into the simulation, moving the various loads around to analyze the effect on the grid. If any weather events are expected, the OSSs will also rely on the Employer's Meteorology Department, including the fire index. If a planned outage is to be canceled, the OSSs are guided by internal procedures and their NERC training.

As part of the OSSs' internal processes, the night shift OSS will also complete the Daily Operational Shift Supervisor Scratch Sheet, which contains all pertinent information for the proceeding OSS on the day shift, who is responsible for initiating the planned outages. Using the scratch sheet and the daily report, which lists the work for that day, the morning OSS will run

² Incumbent petitioned-for employees have direct firsthand knowledge of their job duties, functions, responsibilities, and authority. Generally, the record is replete with certain contradictions regarding the OSSs' duties. The Employer's witnesses' testimony concerning the OSSs' job duties would later be denied or clarified by the Petitioner's witnesses. Therefore, the testimony of employees who are currently working as TSOs or OSSs must be given more weight when compared to that of the Employer's witnesses, even if those witnesses were employed in these roles in the past, especially when that testimony is in conflict.

any studies that are needed, put in requests for outages that have not yet been approved by outside agencies, and inform the TSOs about which outages are ready to implement. The TSOs then begin taking the equipment offline. For the rest of the shift, the OSS will run the RTCA studies and listen and watch for when outages start. The OSSs will also fill out the daily reports for outside agencies and communicate with them about the outages as the outside agencies have the ability to redispatch the generation to alleviate any potential overload of the grid. If it is determined that a planned outage cannot continue as planned, the OSS will discuss the issue with the TSOs before canceling it or the TSO will call the field crew to cancel the outage if it has already commenced.

An unplanned outage is an outage that occurs outside of the outage control process previously described. The Employer has automated protection systems in place for almost all equipment, including the equipment's ability to reclose, which results in placing the equipment back into the system automatically. If the equipment does not have the ability to reclose on its own, the OSS follows specific policies and procedures to place that piece of equipment back online. The OSSs will also follow fire index procedures and discuss the proper methodology with the TSOs before the TSO places the piece of equipment back into service. If the equipment cannot be reclosed by the Control Center, the Field Crew will take over. The Control Center also receives requests to take a piece of equipment out of service. The TSOs will receive the call and immediately take the equipment offline. The Employer maintains an Emergency Operations Center, which consists of a committee of the Employer's various department representatives, that has authority to direct the Control Center in the case of an emergency. In an emergency, the OSS does have the authority to request an electric troubleshooter to evaluate the circumstances in the field.

II. THE EMPLOYEE STATUS OF THE PETITIONED-FOR EMPLOYEES

A. SUPERVISORY STATUS OF THE PETITIONED-FOR EMPLOYEES

1. Board Law

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

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

29 U.S.C. § 152(11). The statutory criteria or "primary indicia" for supervisory status set forth in Section 2(11) are read in the disjunctive, making possession of any one of the indicia sufficient to establish an individual as a supervisor.

Therefore, individuals are statutory supervisors if: 1) they hold the authority to engage in any one of the 12 primary indicia listed in Section 2(11); 2) their exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment; and 3) their authority is held in the interest of the employer. See *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 712-713 (2001); *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-574 (1994); *Shaw, Inc.*, 350 NLRB 354, 355 (2007).

The Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions; between effective recommendation and forceful suggestions; and between the appearance of supervision and supervision in fact. The exercise of some supervisory authority in a merely routine, clerical, or perfunctory manner does not confer supervisory status on an employee. See *Oakwood Healthcare, Inc.*, 348 NLRB 686, 693 (2006); *J. C. Brock Corp.*, 314 NLRB 157, 158 (1994).

The authority effectively to recommend an action means that the recommended action is taken without independent investigation by supervisors, not simply that the recommendation is ultimately followed. See *DirecTV U.S. DirecTV Holdings LLC*, 357 NLRB 1747, 1748-1749 (2011); *Children's Farm Home*, 324 NLRB 61 (1997); see also *Veolia Transportation Services, Inc.*, 363 NLRB 902, 905-906 (2016); *Ryder Truck Rental, Inc.*, 326 NLRB 1386 (1998). The Board has an obligation not to construe the statutory language too broadly because the individual found to be a supervisor is denied the employee rights protected by the Act. *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006); *Oakwood Healthcare*, 348 NLRB at 687.

Nonstatutory indicia or "secondary indicia" can be used as background evidence to support a finding of supervisory status, but are not dispositive without evidence demonstrating the existence of one of the primary or statutory indications of supervisory status. See *Training School at Vineland*, 332 NLRB 1412, 1412 fn. 3 (2000); *Chrome Deposit Corp.*, 323 NLRB 961, 963 fn. 9 (1997). Compare *K.G. Knitting Mills, Inc.*, 320 NLRB 374 (1995) (Board found no primary indicia were present, where individual opened facility in the morning, "watche[d] everything" before the manager arrived, and processed trucks arriving at plant). Four types of secondary indicia commonly mentioned by the Board are the ratio of putative supervisors to employees, differences in terms and conditions of employment, attending management meetings, and how the individual in question is held out to (or perceived by) other employees.

Burden and Evidence

The burden of establishing supervisory status rests on the party asserting that such status exists. *NLRB v. Kentucky River*, 532 U.S. 706, 711; *Shaw, Inc.*, 350 NLRB at 355; *Croft Metals, Inc.*, 348 NLRB 717, 721 (2006). The party seeking to prove supervisory status must establish it by a preponderance of the evidence. *Croft Metals*, above; *Oakwood Healthcare*, above. As the Board stated in *Veolia Transportation*, cited above, "Purely conclusory evidence does not satisfy that burden. Lack of evidence is construed against the party asserting supervisory status." 363 NLRB at 908 (citing *Lynwood Manor*, 350 NLRB 489, 490 (2007); *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1048 (2003)).

It is an individual's duties—not job title—that determines status. *Dole Fresh Vegetables*, 339 NLRB 785 (2003). Where the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, the Board will find that supervisory status has not been established, at least on the basis of those indicia. *Ibid.* (citing *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989)). See also *G4S Regulated Security Solutions*, 362 NLRB 1072, 1072-1073 (2014); *Dole Fresh Vegetables, Inc.*, 339 NLRB 785, 792 (2003). Finally, the sporadic exercise of supervisory authority is not sufficient to transform an employee into a supervisor. See *Shaw, Inc.*, 350 NLRB at 357 fn. 21; *Oakwood Healthcare*, 348 NLRB at 693; *Kanawha Stone Co., Inc.*, 334 NLRB 235, 237 (2001).

2. Application of Board Law to this Case

The record overwhelmingly supports the assertion that OSSs do not have the power to hire, transfer, suspend, lay off, recall, promote, discharge, or adjust the grievances of other employees, or to effectively recommend such actions. The remaining primary indicia of supervisory status are discussed below.

Authority to Responsibly Direct

In *Oakwood Healthcare*, the Board defined the term “responsibly to direct” to mean that a person is a supervisor when the person decides what job will be undertaken next by the employees “under” that person and who should do it, provided that the direction is both “responsible” and carried out with independent judgment. 348 NLRB at 691. In determining whether the direction is “responsible,” the person directing and performing the oversight of the employees must be accountable for the performance of the task by the other, such that the person may face some adverse consequence if the tasks performed by the employee are not performed properly. *Id.* at 691-692. To establish accountability for the purposes of responsible direction, it must be shown that the employer delegated to the putative supervisor the authority to take corrective action, if necessary, and that there is a prospect of adverse consequences for the putative supervisor for not taking these steps. *Id.* at 692.

In this matter, the Employer emphasized the level of independent discretion utilized by the OSSs in their duties. The Employer's witnesses testified that the OSSs have complete power and authority to make any and all decisions when it comes to balancing the grid to maintain reliability. This includes assigning the work to and overseeing the work of TSOs. Electric Grid Control Manager Llacuna stated that she relies on and expects the OSSs to manage the TSOs as the Employer's work is a 24-hour operation and she is only present for 8 hours a day. Training Manager Digenan's testimony supported Electric Grid Control Manager Llacuna's statements when he described his duties when he was an OSS for several years sometime before July 2023.

The Board has held that the mere issuance of a directive to alleged supervisors setting forth alleged supervisory authority, including their purported ability to make effective recommendations, is not determinative of their supervisory status. *Connecticut Light & Power Co.*, 121 NLRB 768, 770-771 (1958). The Petitioner's witnesses in this matter described their

working terms and conditions as current TSOs and OSSs.³ The one TSO who testified for the Petitioner stated that TSOs do not take directions from OSSs blindly and those directions can be grieved if they contradict the negotiated and agreed-upon terms contained in the CBA. The second OSS, OSS Witness 2, who testified for the Petitioner, confirmed the TSO's testimony when, in 2023, he recalled telling a TSO to test a line that had gone out after completing a checklist of procedures. However, the line was not tested when the TSOs disagreed with the OSS's direction after running their own processes and identifying an issue with the line. The first OSS, OSS Witness 1, who testified for the Petitioner, also maintained in his testimony that he does not direct the TSOs to isolate equipment. He merely informs them when the outage is ready to commence. No specific evidence was presented regarding how or whether OSSs assign tasks to individual TSOs, such as determining whether one TSO is better qualified to perform a function over another TSO.

The Employer emphasized that OSSs can also direct the operation of the Control Center to the backup location, citing a recent incident where the fire alarm and fire suppression went off after an employee burned food in the kitchen area and it was impossible to perform work in the Control Center. However, this does not establish that the OSSs can responsibly direct employees as independent judgment will not be found where there is only one obvious and self-evident choice. *Brusco Tug & Barge Co.*, 359 NLRB 486, 491 (2013) (recess Board decision), incorporated by reference at 362 NLRB 257 (2015).

While the Petitioner's witnesses testified that they have no discretion in many aspects of their duties, such as their ability to exert authority over field crew, Qualified Electrical Workers, the Fire Coordinator, or the Emergency Operations Center, the OSS witnesses revealed that they do have some discretion when exercising authority in emergency situations, for unscheduled work, and when determining who is allowed to enter and remain in the Control Center. However, any ability of the OSSs to direct the TSOs or any other employees does not rise to the level of "responsibly direct" as the Employer has not shown that the OSSs themselves are accountable for the TSOs' actions or that the OSSs have been imbued with the power to take corrective action should any employees ignore or countermand them. Most notably, in 2022, a TSO made a grave switching error that could have resulted in a fatality when OSS Witness 1 was on shift. OSS Witness 1 comforted the TSO when the TSO was visibly shaken by the incident. OSS Witness 1 was not disciplined for the TSO's actions nor did he take any corrective action against the TSO. Instead, OSS Witness 1 was praised for how he handled the TSO, further highlighting that the OSSs "are accountable for their *own* performance . . . not the performance of *others*." *Oakwood Healthcare*, above at 695.

Accordingly, the Employer has not met its burden to establish that the OSSs have the authority to responsibly direct employees.

³ In this decision, to the greatest extent possible, individual employees will be referred to by their job classifications or titles instead of by their names.

Authority to Assign

In order to clarify the differences between the terms “assign” and “responsibly to direct,” the Board construes 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 a significant overall duties, i.e. tasks, to an employee.” *Oakwood Healthcare*, 348 NLRB at 688-689. While the assignment of an employee to a certain department on a certain shift or to significant overall tasks generally qualify as “assign” within the Board’s construction, choosing the order in which an employee will perform discrete tasks or ad hoc instructions do not constitute an assignment. *Id.* at 689. As with the other indicia of supervisory status, the Board requires that the putative supervisor exercise “independent judgment” with respect to the authority to assign. *Id.* at 692. Assignments that are made on a rotational basis or are otherwise controlled by detailed instructions also do not involve independent judgment. *Shaw, Inc.*, 350 NLRB 354, 355–356 (2007) (no independent judgment where assigned tasks were recurrent and predictable and involved rotating unskilled and routine duties among available crew to vary work and equalize burdens); *Pacific Coast M.S. Industries*, 355 NLRB 1422, 1424 (2010) (no independent judgment where assignments were controlled by detailed instructions and putative supervisors did not take into account the relative skills of team members when making assignments); *CNN America, Inc.*, 361 NLRB No. 47, slip op. at 22 (2014) (no independent judgment where assignments followed an established pattern); *Modesto Radiology Imaging, Inc.*, 361 NLRB No. 84, slip op. at 2 (2014) (no independent judgment where assignments were made using rotational system); *Brusco Tug & Barge Co.*, 359 NLRB 486, 491 (2012), incorporated by reference at 362 NLRB No. 28 (2015) (assignments specified by station bill, and testimony putative supervisors could deviate from bill “fail[ed] to explain with the requisite specificity” the purported exercise of independent judgment).

While the Employer argues that the OSSs assign the TSOs to shifts and overtime, the record indicates that this process is regulated by the CBA. Per Section III.75 of the CBA, “Overtime shall be divided as equally as it is practicable among those qualified and available in the classification in the area.” According to the record, the TSOs’ schedules must be set in October of the preceding year. Any change in the schedule must be negotiated with the Union. Scheduling is based on two factors: 1) minimal staffing; and 2) workload process. The Electric Grid Control Manager determines the minimal staffing level, which can require TSOs to work overtime. Workload process also determines the schedule through a point system: points are assigned to each job and the tallied points for all jobs are used to determine staffing levels. Jobs such as planned outages require additional staffing and shifts can be added to meet these levels. Start programs, which are when new equipment is added to the electrical grid, also generate points to be included in the tallied point total. Using established processes, OSSs perform the point evaluation of the start programs and assign them to the TSO with the lowest amount of points in a nondiscretionary manner.

Overtime shifts are distributed to TSOs based on a list, which is also determined by the CBA. The TSO who has worked the least amount of overtime is at the top of the list. OSSs generate the overtime sheet and evaluate minimum staffing but straying from the overtime list will result in a grievance. On-deck overtime, forced overtime, and general emergency need for a

TSO is also determined by the CBA. Whichever TSO has the least amount of callout hours would be offered overtime. If no TSOs accept the overtime, the TSO with the least amount of hours, which could include the TSO who worked the preceding shift, is assigned to the overtime shift.

Callout processes also follow the CBA. If a TSO needs to leave their shift early, the TSO will notify the OSS on duty. OSSs can also direct TSOs to go home or stay after their shift. However, these actions are controlled by the CBA and grievances can be filed should the CBA's terms be breached. The OSSs can also call in TSOs in emergency situations, but, according to the testimonial evidence, if this happens, the Electric Grid Control Manager will unilaterally decide whether to call in TSOs after discussing the matter with the OSS.

The Employer presented evidence that OSSs have substantially reviewed TSOs' time sheets in the past, including making revisions that resulted in docking pay. However, the relevant evidence reflecting the current responsibilities of the OSSs relating to the TSOs' time sheets indicate that they are routine and clerical as the OSSs simply verify that the time sheets are accurate, which does not establish supervisory authority. *Golden Crest Healthcare Center*, 348 NLRB 727, 730 fn. 9 (2006) (citing *Los Angeles Water & Power Employees' Assn.*, 340 NLRB 1232 (2003)).

As for assigning tasks to employees, the record evidence does not support the Employer's assertion that the OSSs assign work in a way that could be construed as exerting supervisory authority over the TSOs. The Employer's witnesses testified that the OSSs assign the day's work to the TSO and exert unchecked discretion in emergency circumstances. The Employer's witnesses, however, lacked the specificity required to show that any assignment of work to the TSOs or any other employees are done with the required independent judgment, especially in light of the Petitioner's testimonial evidence.

Initially, the Petitioner's witnesses stated that OSSs do not assign tasks to field employees. Rather, they speak to and confer with supervisors in the field. As for the TSOs, both of the current OSSs that testified stated that they assign the TSOs ad hoc tasks, rather than significant overall duties. For example, start program assignments are designated to TSOs based on a point system. When executing the daily planned outages, OSS Witness 1 asserted that he announces when a planned outage is ready to start and the TSOs then take the equipment offline, emphasizing that his announcement is not a direction that the TSOs take the equipment offline. TSOs will also receive a list of planned outages from the Outage Coordinators and create their own switching orders. The OSSs will then initiate those planned outages after running studies to ensure the reliability of the grid and notifying outside agencies of the planned outages.

In emergency or unplanned situations, testimonial evidence revealed that the OSSs do have some discretion when exercising authorities, such as canceling planned work based on real-time conditions. This discretion appears to still be heavily regulated. OSS Witness 1 specifically testified that, even in these situations, there are procedures that he follows, such as the run studies, internal procedures, fire procedures based on the fire index, steps that are physically written down at his workstation, feedback from coordinating agencies, and his NERC

training. He also works at the direction of Qualified Electrical Workers, the Fire Coordinator, and the Emergency Operations Center committee. He does have the authority to request an electric troubleshooter to evaluate the circumstances in the field but contacting the troubleshooter is usually done by a TSO and he does not believe he has the authority to order a TSO to call the troubleshooter. OSS Witness 2 stated that he and the TSOs will generate an operating plan together based on the studies he runs but, overall, once he has run his studies, that information is handed over to the TSOs to start their switching process and to coordinate as needed.

Given the above, the Employer has failed to meet its burden to show that the OSSs possess the authority to assign or that they utilize independent judgment when assigning ad hoc tasks to employees.

Authority to Discipline and to Reward

While OSSs do not have the power to directly discipline or reward the TSOs, the Employer emphasized the OSSs' roles in evaluating the TSOs. Specifically, the OSSs generate comments regarding the TSOs' job performances, which are then essentially directly copied into the TSOs' performance reviews. In past years, OSSs would provide the TSOs with a copy of their job performances. However, for the TSOs' most recent performance reviews, Electric Grid Manager Llacuna assumed this role. The record evidence tends to support the Employer's assertion that the OSSs evaluate the TSOs' job performances. However, the authority to evaluate is not a supervisory indicium under Section 2(11). *Modesto Radiology Imaging, Inc.*, 361 NLRB 888, 889 (2014); *Elmhurst Extended Care Facilities*, 329 NLRB 535, 536 (1999). Even so, the Board analyzes the authority to evaluate to determine whether it is an "effective recommendation" of promotion, reward, or discipline. See *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989); see also *Empress Casino Joliet Corp. v. NLRB*, 204 F.3d 719, 723 (7th Cir. 2000). The authority to effectively recommend generally means 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); see also *Veolia Transportation Services, Inc.*, 363 NLRB 1879 (2016); *DirecTV U.S. DirecTV Holdings LLC*, 357 NLRB 1747, 1748–1749 (2011); *Ryder Truck Rental*, 326 NLRB 1386 (1998); *ITT Lighting Fixtures*, 265 NLRB 1480, 1481 (1982), enf. denied on other grounds 712 F.2d 40 (2d Cir. 1991).

The OSSs' evaluations of the TSOs' job performances do not rise to the level of "effective recommendation" as the Employer has not shown that these performance reviews directly affect the TSOs' in their jobs. The Board will find supervisory status if the evaluation leads directly to personnel actions but will not find supervisory status if the evaluation does not, by itself, directly affect other employees' job status. See *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1139–1140 (1999); see also *Hillhaven Rehabilitation Center*, 325 NLRB 202, 203 (1997) (evaluations must, by themselves, affect job status); *Passavant Health Center*, 284 NLRB 887, 891 (1987) (authority simply to evaluate without more is insufficient to find supervisory status). Training Manager Digenan testified that the TSOs' performance reviews can impact the TSO should the TSO wish to change jobs. Namely, the performance reviews can impact a TSO's chances when applying for an OSS position, a management position, or for a temporary

job change. The record is otherwise silent on how a negative or positive job performance directly affects a TSO in his or her position as a TSO.

The Employer also highlighted the role OSSs play in disciplinary investigations. When there is a switching error in the Control Room, the OSS will write an Operating Error Report, which summarizes what occurred during the incident in question. The Operating Error Reports submitted into the record include recommended actions to be taken. The evidence does not show, however, that an Operating Error Report constitutes discipline or confirms the OSSs' ability to effectively recommend discipline. While the information in an Operating Error Report can lead to discipline, an Operating Error Report does not in and of itself constitute a documented discipline as the lowest level of discipline is a documented verbal warning. Often, an Operating Error Report is submitted with no consequential discipline. Electric Grid Control Manager Llacuna further testified that OSSs give coachings to employees, but it has not been shown that coachings constitute discipline as they are not documented.

Finally, while OSSs can nominate non-represented employees for bonuses and promotions, the Board has long held that sporadic exercise of supervisory authority over nonunit personnel should not be a basis for "isolat[ing]" an individual with such authority from bargaining unit employees who otherwise share the same principal duties as in the individual in question. *Detroit College of Business*, 296 NLRB 318, 320 (1989). More significantly, the record is void of any evidence showing that the Employer unquestioningly accepted and acted upon any of the OSS' nominations.

Thus, the Employer has failed to meet its burden showing that the OSSs have the authority to effectively recommend discipline or reward.

Secondary Indicia

The Employer then contends that secondary indicia also support the assertion the OSSs are statutory supervisors. On every shift, there is usually only one OSS to multiple TSOs working in the control center. OSSs take additional training, which includes managing represented employees and sexual harassment training, receive a different pay than TSOs, are eligible for separate bonuses and compensation plans, and receive different benefits than the TSOs. Finally, the Employer asserts that the OSSs are perceived by the TSOs to be their supervisors.

As discussed above, the Employer has not met its burden in showing that the OSSs are supervisors based on the primary indicia of supervisory status enumerated in the Act. Moreover, the secondary indicia addressed by the Employer also are insufficient to show that the OSSs are statutory supervisors. Of the secondary indicia primarily cited by the Board, the most supportive of the Employer's claim is the ratio of putative supervisors to employees as it is undisputed that there is usually only one OSS to multiple TSOs in the Control Center during any given shift. However, the other primarily cited secondary indicia – differences in terms and conditions of employment, attending management meetings, and how the individual in question is held out to (or perceived by) other employees – indicate otherwise.

The evidence shows that any differences in terms and conditions between the OSSs and the TSOs can largely be attributed to the fact that the TSOs' working terms are dictated by the CBA with the Petitioner. Training that covers managerial subjects is not equivalent to attending managerial meetings and there is little other evidence to support this position. Finally, according to the TSO's testimony, it is not apparent that the TSOs view the OSSs as their supervisors, especially as he testified that the TSOs are imbued with many of the same authorities as the OSSs and that the OSSs' remarks in their performance reviews carry little weight with the TSOs.

Accordingly, the Employer has not met its burden in establishing that the secondary indicia overwhelmingly support the claim that the OSSs are supervisors within the meaning of the Act.

B. MANAGERIAL STATUS OF THE PETITIONED-FOR EMPLOYEES

1. Board Law

Although the Act makes no specific provision for "managerial employees," under Board policy, this category of personnel has been excluded from the protection of the Act. See *NLRB v. Yeshiva University*, 444 U.S. 672 (1980); *Republican Co.*, 361 NLRB 93 (2014); *Palace Laundry Dry Cleaning Corp.*, 75 NLRB 320 (1947). Managerial employees were defined by the Supreme Court in *Yeshiva*, above, as:

those who formulate and effectuate management policies by expressing and making operative the decisions of their employer.... These employees are much higher in the managerial structure than those explicitly mentioned by Congress, which regarded them as so clearly outside the Act that no specific exclusionary provision was thought necessary. ... Managerial employees must exercise discretion within, or even independently of, established employer policy and must be aligned with management.

Id. at 682-83 (internal quotations and citations omitted).

As the Supreme Court has explained, these employees are "much higher in the managerial structure" than those explicitly mentioned by Congress, which "regarded [them] as so clearly outside the Act that no specific exclusionary provision was thought necessary." *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 283 (1974). See *In Re S. Monterey Cnty. Hosp.*, 348 NLRB 327, 356 (2006) ("Usually a managerial individual holds an executive position and is closely aligned with management. Thus, placing such individuals in the bargaining unit would create a conflict of interest.").

The Board has no firm criteria for determining managerial status, but it finds managerial employees as those who formulate and effectuate high-level employer policies, or who have discretion in the performance of their jobs independent of their employer's established policy. *Republican Co.*, 361 NLRB at 95-96 (2014) (citing *General Dynamics Corp.*, 213 NLRB 851, 857 (1974)). 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. *Allstate Insurance Co.*, 332 NLRB 759, 762 (2000).

Burden and Evidence

The party seeking to exclude an individual as managerial bears the burden of proof, and the Board has emphasized the need for specific evidence or testimony showing actual—rather than mere paper—authority, particularly the nature and number of decisions or recommendations in a particular decision-making area. *LeMoyne-Owen College*, 345 NLRB 1123, 1128 (2005); *Waste Management de Puerto Rico*, 339 NLRB 262, 279 (2003).

2. Application of Board Law to this Case

The Employer maintains that the OSSs are managerial employees because they review policies and procedures as part of their job duties on behalf of the Employer. Specifically, the OSSs review standard operating procedures that are due for review to ensure that they align with regulatory requirements and policies. As part of that review, they provide input and suggestions to update the policies. When testifying on behalf of the Petitioner, OSS Witness 1 clarified that he will suggest revisions when the Electric Grid Control Manager directs him to review procedure, but he has never actually revised a policy himself.

The record evidence is insufficient to meet the Employer’s burden to show that the OSSs are managerial employees. The Employer did not present any specific policies formulated by OSSs, and the Petitioner’s evidence, which consists of a current OSS testifying about his duties, was unequivocal that OSSs do not formulate management policies. Moreover, there is no evidence that the OSSs have any discretion outside of the Employer’s established policy.

Accordingly, the Employer has not met its burden to show that the OSSs are managerial employees.

C. CONFIDENTIAL STATUS OF THE PETITIONED-FOR EMPLOYEES

1. Board Law

Under Board policy, confidential employees are excluded from the bargaining unit. The Board defines confidential as those employees who: (1) share a confidential relationship with managers who “formulate, determine, and effectuate management policies in the field of labor relations,” and (2) assist and act in a confidential capacity to such persons. *Waste Management de Puerto Rico*, 339 NLRB 262, 262 fn. 2 (2003) (citing *NLRB v. Hendricks County Rural Electric Membership Corp.*, 454 U.S. 170, 189 (1981); *Ford Motor Co.*, 66 NLRB 1317, 1322 (1946)). The labor-nexus test requires “formulate, determine, and effectuate” to be assessed in the conjunctive. *Weyerhaeuser Co.*, 173 NLRB 1170, 1172 (1968). The Board adheres “strictly” to this definition. *B. F. Goodrich Co.*, 115 NLRB 722, 724 (1956) (citing *Ford Motor Co.*, above)). As an alternative test, employees who have “regular” access to confidential information concerning anticipated changes that may result from collective-bargaining negotiations are

deemed confidential employees. *Crest Mark Packing Co.*, 283 NLRB 999, 999 (1987); *Pullman, Inc.*, 214 NLRB 762, 762–763 (1974). The Supreme Court approved of both the labor-nexus test and the alternative test in *NLRB v. Hendricks County Rural Electric Corp.*, 454 U.S. 170, 188–189 (1981).

An employee’s access to personnel records and the fact that the employee can bring information to the attention of management, which may ultimately lead to disciplinary action by management, is not enough to qualify an employee as confidential. *Ladish Co.*, 178 NLRB 90 (1969). See *Hampton Roads Maritime Assn.*, 178 NLRB 263, 264 (1969); *RCA Communications, Inc.*, 154 NLRB 34, 37 (1965); see also *Lincoln Park Nursing Home*, 318 NLRB 1160, 1169 (1995); *S. S. Joachim and Anne Residence*, 314 NLRB 1191, 1196 (1994). Employees who handle material dealing only with the financial matters of the employer are not confidential. *Dinkler-St. Charles Hotel, Inc.*, 124 NLRB 1302, 1304 (1959); *Brodart, Inc.*, 257 NLRB 380, 384 fn. 10 (1981). Similarly, the fact that some employees may be entrusted with business information to be withheld from their employer’s competitors or that their work may affect employees’ pay scales does not render such employees either confidential or managerial. *Swift & Co.*, 119 NLRB 1556, 1565 (1958). The Board has not deemed “the mere possession of access to confidential business information by employees sufficient reason for denying such employees representation as part of any appropriate unit of work-related employees.” *Fairfax Family Fund, Inc.*, 195 NLRB 306, 307 (1972).

Burden and Evidence

The party asserting confidential status has the burden of providing evidence to support its assertion. *Crest Mark Packing Co.*, 283 NLRB 999 (1987).

2. Application of Board Law to this Case

The Employer asserts that the OSSs are confidential employees. In preparation for negotiations with the Petitioner on issues affecting represented employees, Electric Grid Control Manager Llacuna testified that she reaches out to the OSSs for their input. OSS Witness 1 contradicted this testimony, maintaining that he does not have any involvement as an OSS in these types of negotiations. The record evidence does not show that OSSs sit in during collective-bargaining negotiations between the Employer and the Petitioner or that the OSSs possess files or proposals containing confidential information. Overall, nothing in the record shows that the OSSs share a confidential relationship with managers or assist managers in a confidential way.

Given the above, the Employer has not met its burden of providing sufficient evidence to support its assertion that the OSSs are confidential employees.

C. PROFESSIONAL STATUS OF THE PETITIONED-FOR EMPLOYEES

1. Board Law

Section 2(12) of the Act defines a professional employee as:

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field or science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, physical processes; or (b) any employee, who (i) has completed courses of specialized instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

Section 2(12) defines a professional employee in terms of job content and responsibilities that the individual performs, rather than the individual's academic, or technical training, job title or compensation. See *Lincoln Park Zoological Society*, 322 NLRB 263 (1996). The fact that a group of employees is predominantly composed of individuals possessing a degree in the field to which the profession is devoted, may tend to show that the work they perform requires knowledge of an advanced type. *Western Electric Co.*, 126 NLRB 1346, 1348-349 (1960). However, this factor is not controlling, and all circumstances relevant to the inquiry must be examined. *Express News Corp.*, 23 NLRB 627 (1976).

Section 2(12)(b)'s alternative description of a professional employee—"any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a)"—makes qualifications a determinative factor.

2. Application of Board Law to this Case

The Employer contends that the OSSs are professional employees under Section 2(12) of the Act given the education and level of discretion required to perform their job. Electric Grid Control Manager Llacuna testified that she relies on the OSSs' experience and knowledge to determine whether the Employer can undertake and accommodate certain work. She also stated that the education levels of the OSSs range from bachelor's degrees to PhDs. The Employer further produced evidence that OSSs undergo additional training on the subjects of supervising represented employees, sexual harassment, and on-the-job training.

While the requirement to possess the NERC certification and the additional training are powerful indicia of professional status for duties that require it, this is not all-encompassing, and professional employee status is not dependent on licensure or other legally-required education for every task found to be professional, as otherwise this would be the start and end of the analysis of each case. The training and certifications required for TSOs and OSSs are more alike than different. Both TSOs and OSSs have the authority and training to be system operators under NERC, which provides the employee with the authority and responsibility to maintain the reliability of the grid. While the majority of OSSs have the higher level of license of “Reliability Coordinator,” the Employer’s witness testimony revealed that some TSOs have this same license. Additionally, the continuing education requirements for the OSSs are also applicable to the TSOs.

While the OSSs undeniably utilize discretion in certain situations, the evidence does not support the assertion that the OSSs exert a “consistent” exercise of discretion in their work as it appears to apply mostly in unplanned outage and emergency circumstances. The only “consistent” discretion exercised by an OSS is approving whether an outage can commence or whether it needs to be rescheduled. This discretion does render the character of the OSSs’ output unique; however, this is not exclusively due to the OSSs’ exercising their sole discretion. The OSSs that testified detailed how they are guided by multiple sources of information and processes before making a decision, such as NERC guidelines, the run studies, input from outside agencies, the meteorologist team, the emergency coordinating team, written processes on their workstations, the field supervisors, and the TSOs themselves. In fact, when testifying for the Employer, Training Manager Digenan specifically stated that the Employer has over 100 standard operating practices addressing the specificities of the Employer’s operations. TSOs also utilize the same discretion when they step in for the OSSs as needed. Finally, the OSS position does not require knowledge or academic training of an advanced type. While many of the OSSs may possess advanced degrees, that is not a controlling factor, especially as the position does not require anything above a high school education.

The record also does not show that the OSSs are professional employees under Section 2(12)(b)’s alternative description, as the record is silent on whether the OSSs are performing related work under the supervision of a professional person to qualify to become a professional employee. While the OSSs take some specialized training from Training Manager Digenan and work under Electric Grid Control Manager Llacuna, there was no evidence presented on their statuses as professional employees nor were there any specifics provided on the required continuing education training for OSSs.

Accordingly, the Employer has not met its burden to provide sufficient evidence to support its assertion that the OSSs are professional employees under Section 2(12) of the Act.

Given the above, I find that the Employer has not met its evidentiary burden to establish that the petitioned-for unit of OSSs are supervisors, managerial employees, confidential employees, or professional employees.

I now turn to the issue of whether an *Armour-Globe* self-determination election is appropriate.

III. THE APPROPRIATENESS OF AN *ARMOUR-GLOBE* ELECTION

I find that the record evidence indicates that the OSS employees at issue have a community of interest with the TSOs, who are included in the represented unit of employees, as they have similar skills and duties, terms and conditions of employment, functional integration, geographic proximity, centralized control of management and supervision, and bargaining history.

A. Board Law

Under the Board's *Armour-Globe* doctrine, employees sharing a community of interest with an already represented unit of employees may vote whether they wish to be included in the existing bargaining unit. *NLRB v. Raytheon Co.*, 918 F.2d 249, 251 (1st Cir. 1990). An incumbent union may add unrepresented employees to its existing unit through an *Armour-Globe* self-determination election under the two-part standard set forth in *Warner-Lambert Co.*, 298 NLRB 993 (1990): (1) the employees sought to be included share a community of interest with unit employees and (2) they "constitute an identifiable, distinct segment so as to constitute an appropriate voting group." *Id.* at 995 (citing *Capital Cities Broadcasting Corp.*, 194 NLRB 1063 (1972)). See also *Rush University Medical Center v. NLRB*, 833 F.3d 202, 209 (D.C. Cir. 2016). Whether a voting group is distinct and identifiable is not the same question as whether the voting group constitutes an appropriate unit. *St. Vincent Charity Medical Center*, 357 NLRB 854, 855 (2011) (citing *Warner-Lambert*, above at 995). A certifiable unit, including the combined unit formed in an *Armour-Globe* case,⁴ need only be an appropriate unit, not the ultimate or the only or even the most appropriate unit. *International Bedding Co.*, 356 NLRB 1336, 1337 (2011) (citing *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951)); see also *Overnite Transportation Co.*, 322 NLRB 347 (1996).

The Board considers the following factors in determining whether employees share a community of interest:

whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the [e]mployer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

⁴ Employees added to an existing bargaining unit through an *Armour-Globe* self-determination election do not automatically come under the terms of the existing agreement. *UMass Memorial Medical Center*, 349 NLRB 369, 370-71 (2007) (citing *Federal-Mogul Corp.*, 209 NLRB 343 (1974)); see also *Wells Fargo Armored Service Corp.*, 300 NLRB 1104 (1990).

Walt Disney Parks and Resorts, U.S., Inc., 372 NLRB No. 99, slip op at p. 5 (2024), citing *United Operations, Inc.*, 338 NLRB 123, 123 (2002).

The seven factors must be considered in their totality, although some factors may carry more weight depending on the degree to which they are exhibited. See, for example, *Executive Resources Associates*, 301 NLRB 400, 401 (1991).

Under the *Armour-Globe* community of interest test, differences in terms and conditions of employment that resulted from collective bargaining are afforded less weight. See, for example, *Public Service Co. of Colorado*, 365 NLRB 1017 (2017); *Frontier Telephone of Rochester, Inc.*, 344 NLRB 1270, 1273 fn. 12 (2005) (then-Member Liebman, concurring); *Oxford Chemicals, Inc.*, 286 NLRB 187, 188 fn. 5 (1987). See also *NLRB v. Klocko Equipment Rental Co.*, 657 Fed.Appx. 441, 448 (6th Cir. 2016) (stating, “[T]o deny [an employee’s] request to join the collective-bargaining unit based on differences that exist because [he] is not covered by the collective-bargaining agreement would defeat the purpose of the [Act]”).

B. Distinct and Identifiable Segment Analysis

The distinct and identifiable analysis asks merely whether the voting group sought unduly fragments the workforce or constitutes an arbitrary segment of unrepresented employees. *Capital Cities Broadcasting*, 194 NLRB at 1064 (citing *Solar Aircraft Co.*, 116 NLRB 200 (1956); *Minneapolis-Honeywell Regulator Co.*, 116 NLRB 1324 (1956); *Martin Co.*, 162 NLRB 319 (1966)).

I find that the record evidence indicates that the OSSs at issue are a distinct and identifiable segment because they constitute all the Employer’s OSS employees. The employees are easily identifiable and do not fragment the workforce. The grouping is not arbitrary because it includes all the Employer’s OSS employees.

C. Community of Interest Analysis

Employees’ Skills and Duties

This factor examines whether disputed employees can be distinguished from one another based on job functions, duties, or skills. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in the unit. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another’s work, or that disputed employees work together as a crew, support a finding of similarity of functions. Evidence that disputed employees have similar requirements to obtain employment; that they have similar job descriptions or licensure requirements; that they participate in the same employer training programs; and/or that they use similar equipment supports a finding of similarity of skills. *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penney*, 328 NLRB 766 (1999); *Brand Precision Services*, 313 NLRB 657 (1994); *Phoenician*, 308 NLRB 826 (1992). Where there is also evidence of similar terms and conditions of employment and some functional integration, evidence of similar skills and

functions can lead to a conclusion that disputed employees must be in the same unit, in spite of lack of common supervision or evidence of interchange. *Phoenician*, above.

OSSs and TSOs are both responsible and work in tandem on a daily basis to maintain the integrity and reliability of the electrical grid. To qualify for their positions, they must acquire the same basic certifications, which grants them the same or similar authorities. They also largely participate in the same trainings and even share some more advanced certifications. OSSs and TSOs work together in the Control Room utilizing the same monitors. While OSSs cannot perform the job duties of TSOs due to the CBA, TSOs can step in for the OSSs as needed.

Accordingly, I find this factor weighs in favor of a shared community of interest between the petitioned-for employees and the existing unit.

Terms and Conditions of Employment

While this is a factor to consider, the fact that employees share common wage ranges and benefits or are subject to common work rules does not warrant a conclusion that a community of interest exists where employees are separately supervised, do not interchange, and/or work in a physically separate area. *Bradley Steel*, 342 NLRB 215 (2004); *Overnite Transportation*, 322 NLRB. Similarly, sharing a common personnel system for hiring, background checks, and training, as well as the same package of benefits, does not warrant a conclusion that a community of interest exists where two classifications of employees have little else in common. *American Security*, 321 NLRB 1145 (1996). Further, as stated above, differences in terms and conditions of employment that resulted from collective bargaining are afforded less weight.

The differences in the OSSs' pay and the TSOs' pay, along with whether they qualify for additional compensation and bonuses, can be explained by collective bargaining. The same applies to any differences in benefits, although the health care benefits for the two groups of employees are more similar than dissimilar. The record is silent on whether a common personnel system is used for hiring and background checks. However, the evidence shows that the OSSs and TSOs chiefly undergo the majority of the same training.

Accordingly, I find this factor weighs in favor of a shared community of interest between the petitioned-for employees and the existing unit.

Employee Interchange

Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange "may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills." *Los Angeles Airport Hilton and Towers*, 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. *Executive Resource Associates*, 301 NLRB at 403 fn. 10 (1991) (citing *Spring City Knitting v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1081)).

According to the record, the TSOs have the ability to fill in for OSSs and assume responsibility for the Control Room floor and grid when an OSS leaves the room. While the evidence is not explicit on how often TSOs take over OSS duties, it apparently occurs when the OSS on duty needs to take a break from the Control Room or is otherwise unavailable. While the TSOs may assume the OSSs' job responsibilities for only a very short period of time, because it has the potential to occur on a daily basis at least a few times on a shift, the TSOs have frequent interchange with the OSSs. However, the record does not support the assertion that OSSs take over TSO responsibilities, especially as doing so would mean that a non-represented employee is performing the work of a represented employee and would be a violation of the TSOs' CBA.

Accordingly, I find this factor weighs against a shared community of interest between the petitioned-for employees and the existing unit.

Functional Integration

Functional integration refers to when employees' work constitutes integral elements of an employer's production process or business. Thus, for example, functional integration exists when employees in a unit sought by a union work on different phases of the same product or provide a service as a group. Another example of functional integration is when the Employer's workflow involves all employees in a unit sought by a union. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. *Transerv Systems*, 311 NLRB 766 (1993). On the other hand, if functional integration does not result in contact among employees in the unit sought by a union, the existence of functional integration has less weight.

It is undisputed that OSSs and TSOs work together on the same matter: ensuring the reliability and integrity of the grid with the TSOs isolating equipment and the OSSs ensuring that the isolation does not negatively affect the grid. In doing so, they have frequent contact with one another and perform separate, but similar and comingled, functions. Thus, there is functional integration between the OSSs and the TSOs.

Accordingly, I find this factor weighs in favor of a shared community of interest between the petitioned-for employees and the existing unit.

Geographic Proximity

The OSSs and the TSOs have immediate geographic proximity as they work together in the Employer's Mission Control Room. The OSSs and TSOs have the same access to spaces and work side-by-side with each other. Other represented employees, such as the Distribution Operators, also work in the same building. However, they do not work in the Control Room with the OSSs and TSOs.

Accordingly, I find this factor weighs in favor of a shared community of interest between the petitioned-for employees and the existing unit.

Centralized Control of Management and Supervision

In examining supervision, most important is the identity of employees' supervisors who have the authority to hire, to fire, or to discipline employees (or effectively recommend those actions) or to supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work, and providing guidance on a day-to-day basis. *Executive Resources Associates*, 301 NLRB at 402; *NCR*, 236 NLRB 215 (1978). Common supervision weighs in favor of placing the employees in dispute in one unit. However, the fact that two groups are commonly supervised does not mandate that they be included in the same unit, particularly where there is no evidence of interchange, contact, or functional integration. *United Operations, Inc.*, 338 NLRB 123, 125 (2002). Similarly, the fact that two groups of employees are separately supervised weighs against their inclusion in the same unit. However, separate supervision does not mandate separate units. *Casino Aztar*, 349 NLRB at 607 fn. 11. Rather, the degree of interchange, contact, and functional integration is more important. *Id.* at 607.

The OSSs and the TSOs are both supervised by Electric Grid Control Manager Llacuna. While Llacuna testified that she depends on the OSSs to supervise and monitor the TSOs, the record shows that both the OSSs and the TSOs report directly to Llacuna. Training Manager for Transmission and Distribution Digenan oversees the training for both the OSSs and the TSOs. Human Resources Business Partner Team Lead Kiralla oversees all employee relations for management and non-represented employees but acts as a representative for the Employer when negotiating with Petitioner for the represented employees' collective-bargaining agreement.

Accordingly, I find this factor weighs in favor of a shared community of interest between the petitioned-for employees and the existing unit.

Bargaining History

The Petitioner and the Employer already include employees, including the TSOs, who work at the Mission Control Center with the OSSs in the current collective-bargaining agreement.

Accordingly, I find this factor weighs in favor of a shared community of interest between the petitioned-for employees and the existing unit.

D. *Armour-Globe* Determination

After examining the record as a whole and weighing the factors above, I find that the OSSs share a sufficient community of interest to warrant their inclusion in the existing unit, and I determine that it is appropriate to hold an *Armour-Globe* self-determination election among the petitioned-for unit to determine whether they wish to join the existing bargaining unit.

VI. CONCLUSION

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

1. The rulings 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.⁵
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. There is no collective-bargaining agreement covering any of the employees in the unit, and there is no contract bar or other bar to an election in this matter.
5. 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.
6. 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 and regular part-time Operations Shift Supervisors employed by the Employer at its facility currently located at 9060 Friars Road, San Diego, California.

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

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 **Local Union 465 International Brotherhood of Electrical Workers**.

⁵ The parties stipulated to the following commerce facts: The Employer, San Diego Gas & Electric Company, a California public utility, with its principal offices located in San Diego, California, is engaged as a public utility in the generation and distribution of natural gas and electricity. During the past 12 month, a representative period, in conducting its operations, the Employer derived gross revenues in excess of \$250,000 and purchased and received at its California facilities materials valued in excess of \$5,000 directly from points outside the State of California.

If a majority of valid ballots are cast for the Petitioner, Local Union 465 International Brotherhood of Electrical Workers, they will be taken to have indicated the employees' desire to be included in the existing unit currently represented by the Petitioner as described in the collective-bargaining agreement between the Employer and the Petitioner effective September 1, 2022. 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 **Tuesday, October 21, 2025, from 4:00 p.m. to 6:00 p.m., in the Conference Room at the Employer's facility located 9060 Friars Road, San Diego, California.**

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending, **Friday, September 12, 2025**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board's designated office.

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

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

C. Voter List

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

To be timely filed and served, the list must be *received* by the regional director and the parties by **September 26, 2025**.⁶ The list must be accompanied by a certificate of service showing service on all parties.

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.

The list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list must 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 Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted.⁷ 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

⁶ The Petitioner agreed to waive all of its 10 calendar days with the voter list.

⁷ The Notice of Election will be transmitted separately from this Decision and Direction of Election.

posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is 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: September 24, 2025

A handwritten signature in blue ink, appearing to read "D. Selder", is positioned above the typed name and title.

David Selder, Acting Regional Director
National Labor Relations Board, Region 21
US Court House, Spring Street
312 North Spring Street, 10th Floor
Los Angeles, CA 90012