

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

VISTRA NUCLEAR OPERATIONS COMPANY

Employer

and

Case 08-RC-361044

**UTILITY WORKERS UNION OF AMERICA,
AFL-CIO, LOCAL 270**

Petitioner

DECISION AND DIRECTION OF ELECTION

Vistra Nuclear Operations Company (“Employer” or “Vistra”) is in the business of retail electricity and power generation at facilities throughout the country, including the Perry Nuclear Power Plant, located at 10 Center Road in Perry, Ohio (“Perry Plant”). Utility Workers Union of America, AFL-CIO, Local 270 (“Petitioner” or “Union”) filed the petition in the instant case seeking to add, through an *Armour-Globe* self-determination election¹ all full-time and regular part-time Reactor Operators (“ROs”) employed at the Perry Plant to its existing bargaining unit composed of all operating, maintenance, and construction employees.

The Employer maintains that “RO” is not a specific job classification at the Perry Plant, rather, it is a license that certain employees hold. Employees in the classifications of Supervisor Nuclear Unit, M&R Tech Lead Nuclear, Consulting Nuclear Instructor, and Initial License Training Supervisor all maintain a RO license. Notwithstanding their formal job titles, employees performing RO functions at the Perry Plant are often referred to as “ROs.”

The parties disagree on several issues. First, the Employer argues that the unit is inappropriate because the petitioned-for employees are supervisors under Section 2(11) of the National Labor Relations Act (Act). Second, the Employer maintains that if there is no 2(11) finding, the Consulting Nuclear Instructors and the Initial License Training Supervisor should be included in the unit as dual function employees. The Employer argues that while the employees in the Consulting Nuclear Instructor and Initial License Training Supervisor positions spend the majority of their time performing training functions rather than RO duties, they meet Board’s “sufficient interest” test for dual function status.² Lastly, the Employer argues that the ROs are an identifiable and distinct segment of the workforce *only* if the voting group includes the Consulting Nuclear Instructors and the Initial License Training Supervisor. The Employer does not dispute that the ROs share a community of interest with the employees in the existing bargaining unit.

The Petitioner argues that the ROs are not supervisors as defined in Section 2(11) of the Act, except for the individual in the Initial License Training Supervisor position. Second, while

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

² See *Berea Publishing Co.*, 140 NLRB 516 (1963) (Board adopted a “sufficient interest” test to determine whether a dual-function employee should be included in the unit).

the Petitioner agrees that the Consulting Nuclear Instructors should be included in the unit as dual function employees, it argues that the Initial License Training Supervisor — assuming not a 2(11) supervisor — does not meet the “sufficient interest” test for dual function status. Lastly, the Petitioner argues that the petitioned-for employees constitute an identifiable and distinct segment of the Employer’s workforce and share a community of interest with the existing unit.

A hearing officer of the National Labor Relations Board held a hearing in this matter and the parties were afforded the opportunity to present evidence and to state their respective positions on the record. The parties submitted post-hearing briefs, which I have duly considered. Having considered the parties’ positions, evidence, and the entire record, I find that the Employer failed to meet its burden to establish that employees in the classifications of Supervisor Nuclear Unit, M&R Tech Lead Nuclear, Consulting Nuclear Instructor, and the Initial Training Supervisor are Section 2(11) supervisors. In addition, I find that the employees in the job classifications of Supervisor Nuclear Unit and M&R Tech Lead Nuclear (also known as ROs) constitute an identifiable, distinct segment of the Employer’s workforce and share a community of interest with the employees in the existing unit. Accordingly, I am directing an *Armour-Globe* self-determination election among the employees in the job classifications of Supervisor Nuclear Unit and M&R Tech Lead Nuclear (also known as ROs) to determine if they wish to join the existing unit. Finally, regarding the dual function status of the individuals in the classifications of Consulting Nuclear Instructor and the Initial Training Supervisor, I am directing that they vote subject to challenge because the record is inconclusive as to whether they meet the “sufficient interest” test.

OVERVIEW OF OPERATIONS

The Employer operates energy-producing facilities for the production of electricity and nuclear energy throughout the country, including the Perry Plant. The Employer assumed ownership and operations at the Perry Plant from its predecessor, Energy Harbor Nuclear Corporation, on March 1, 2024. The Perry Plant operates a boiling water reactor that generates power supplied throughout the Northeastern United States. The Perry Plant is located on 1,220 acres of land, which is split between an owner-controlled area and a protected area. The training building, administration building, warehouse, and in-processing center are located in the owner-controlled area. The operating portion of the plant containing various buildings is located inside the protected area, which contains various buildings.

The Perry Plant is divided into departments, some of which include training, maintenance, operations, chemistry, radiation protection, in-processing, security, oversight, supply chain, projects, engineering, outage, and performance improvements. There are approximately 534 individuals employed at this facility. The Petitioner represents approximately 150 of these employees, who are employed as operating, maintenance, and construction employees.

To obtain a RO license, an individual must complete an 18-month full-time training course and pass a comprehensive examination administrated by the Nuclear Regulatory Commission. RO license holders must complete a minimum of five 12-hour shifts per quarter to maintain their license. Currently, there are 21 employees at the Perry Plant who are licensed ROs, in the following

classifications: Supervisor Nuclear Unit, M&R Tech Lead Nuclear, Consulting Nuclear Instructor, and Initial License Training Supervisor. Of the 21 employees, 14 hold the position of Supervisor Nuclear Unit, 3 hold the position of M&R Tech Lead Nuclear, 3 hold the position of Consulting Nuclear Instructor, and 1 holds the position of Initial License Training Supervisor. The 17 ROs that hold the positions of Supervisor Nuclear Unit and M&R Tech Lead Nuclear are part of the Employer's Operations Department. The four ROs who hold the positions of Consulting Nuclear Instructor and Initial License Training Supervisor are part of the Employer's Training Department.

A. ROs in Operations Department – Supervisor Nuclear Unit and M&R Tech Lead Nuclear

The Operations Department consists of approximately 110 employees in various bargaining unit and non-bargaining unit jobs, and operates in the Control Complex, which is a building located within the protected area of the Perry Plant. Kevin Clark, the Director of Nuclear Operations, leads the department. Reporting to Clark are two Senior Operations Managers, David Duesing and Shaun Kozlowski. Below them, the Operations Department is organized into five crews. Each crew is staffed with around five to seven Non-Licensed Operators ("NLOs"), three licensed ROs, and three licensed Senior Reactor Operators ("SROs"). The three SROs on each crew hold the position of Shift Manager, Unit Supervisor, or Shift Engineer. The Shift Manager and the Unit Supervisor positions have the overall responsibility for the crew and the shift.

Below the SROs are the petitioned-for ROs, in the Supervisor Nuclear Unit and M&R Tech Lead Nuclear job classifications.³ During each shift, the ROs on a crew fill one of three job assignments – Field Supervisor,⁴ Balance of Plant ("BOP") Operator, or At-The-Controls ("ATC"). The ROs primarily work in the Control Room, located within the Control Complex. The Control Room is divided into two units: Control Room Unit 1 and Control Room Unit 2. Control Room Unit 1 is a functional control room and is the primary work location for the ROs functioning as BOP Operator and ATC. The RO functioning in the ATC position is required to physically remain in Control Room Unit 1 throughout the shift to monitor the power, pressure, and level of the reactor, making adjustments as needed. The RO functioning in the BOP Operator position performs other monitoring and reporting activities and relieves the ATC for breaks. The SROs who function as Shift Manager, Unit Supervisor, and Shift Engineer also work in Control Room 1. Control Room Unit 2 was never completed as a functioning control room; it serves as the work location for the RO functioning as Field Supervisor and the NLOs. The RO serving as the Field Supervisor hands out work orders to NLOs, performs clerical work, and acts as an interface between the NLOs and the control room. The ROs are not always assigned the same role and may serve as Field Supervisor one week, BOP the next week., etc.

³ Employees in the job classification of M&R Tech Lead Nuclear are individuals who are in training to receive their RO license or have recently received their licenses and have not yet been reclassified as Supervisor Nuclear Unit. The Employer presented evidence that the three employees currently in the position of M&R Tech Lead Nuclear all received their RO licenses in January 2025, and the Employer is working to reclassify them as Supervisor Nuclear Unit.

⁴ The record also refers to this assignment as the Operations Foreman.

Finally, the NLOs on the crew hold the job classifications of Radwaste Attendant, Plant Attendant, or Plant Operator. The NLOs do not hold a particular license and are members of the bargaining unit. The NLOs perform rounds each day to get readings on equipment to determine if anything is abnormal. They also perform fire protection testing, surveillance, and hang clearances, which they perform with other NLOs or ROs. Their time is evenly split between Control Room Unit 1 and Control Room Unit 2.

The crews work a five-week rotating twelve-hour shift schedule, switching from day shift (6:00 a.m. to 6:00 p.m.) to night shift (6:00 p.m. to 6:00 a.m.) every week. Every fifth week is typically a training week. At various times throughout the year, the Perry Plant undergoes an outage or a full-plant shutdown. During outages, the crews work a “supercrew” schedule where half the department works days and the other half works nights. Some outages are scheduled in advance and other outages are initiated in response to specific conditions, such as equipment maintenance needs.

B. ROs in the Training Department –Consulting Nuclear Instructor and Initial License Training Supervisor

Michael McFarland is the Superintendent of the Training Department and has four direct reports. Reporting to McFarland is Initial License Training Supervisor Timothy Smith, who holds an RO license and oversees the training program that individuals complete to obtain their RO license. Under Smith are three Consulting Nuclear Instructors: Geoffery Graham, Kevin Marsh, and Jason Weeks. The three Consulting Nuclear Instructors are licensed ROs and provide training to SROs, ROs, and NLOs during their training weeks. All employees in the Training Department work in the training building within the owner-controlled area of the Perry Plant located approximately a quarter mile from the Control Complex. When the Initial License Training Supervisor and the Consulting Nuclear Instructors are performing their training functions, they normally work four 10-hour day shifts per week.

In order to maintain their RO licenses, the Initial License Training Supervisor and the Consulting Nuclear Instructors must work at least sixty hours a quarter in the Control Room. Additionally, they also work in the Control Room during outages. Director of Nuclear Operations Kevin Clark testified that when functioning as ROs, the Initial License Training Supervisor and the Consulting Nuclear Instructors perform the same functions as the other ROs. However, the NLO and the RO who testified at the hearing⁵ indicated that the Initial License Training Supervisor and the Consulting Nuclear Instructors do not perform the Field Supervisor functions. When the Initial License Training Supervisor and the Consulting Nuclear Instructors are working as ROs in the Control Room, they work a 12-hour shift.

SUPERVISORY STATUS OF ROs

⁵ One NLO and one RO testified at the hearing. The NLO has served as a NLO since 2011 and the RO became a RO in 2023. The RO worked as an NLO for twelve years before obtaining his license.

Supervisors are excluded from the definition of “employee” set forth in the Act. NLRA, 29 U.S.C. §152 (2). The Act defines a “supervisor” as

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

An individual is a supervisor if he or she holds authority to engage in any one of the listed supervisory functions or to effectively recommend action related to one of those functions. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006). The individual’s exercise of authority must require the use of independent judgment and must be held in the employer’s interest. *Id.* To effectively recommend action, the recommendation must be followed without independent investigation by a superior. *DirecTV*, 357 NLRB 1747, 1748-49 (2011). The party asserting supervisory status has the burden of proving it. *NLRB v. Ky. River Cmty. Care, Inc.*, 532 U.S. 706, 710-12 (2001).

A. Supervisor Nuclear Unit and M&R Tech Lead Nuclear Are Not Supervisors

As noted above, the Employer asserts that all ROs in the job classifications of Supervisor Nuclear Unit, M&R Tech Lead Nuclear, Consulting Nuclear Instructor, and Initial License Training Supervisor are statutory supervisors. Looking first at the ROs in the job classification of Supervisor Nuclear Unit and M&R Tech Lead Nuclear, there was no evidence presented that they play any role in transferring, laying off, recalling, or promoting NLOs. Thus, those factors are not at issue here. Rather, the Employer focused on the Supervisor Nuclear Unit and M&R Tech Lead Nuclear’s role in assigning, responsibly directing, issuing discipline, hiring, evaluating, and adjusting grievances as part of their responsibilities in overseeing the NLOs.

The Employer introduced a job posting for a RO, arguing that the following responsibilities support 2(11) status:

- “[R]esponsible for the safe and reliable operation of the Perry Nuclear Power Plant and supervises and directs both licensed and non-licensed operators in the routine activities of operating the plant and surveillance testing various components and equipment in accordance with approved procedures.”
- “Providing direct supervisory oversight for on-shift field activities and major Control Room plant testing and configuration changes.”
- “Leading testing evolutions of Safety Related Plant equipment and ensuring that field personnel are knowledgeable of and perform their duties in accordance with department standards.”
- “Performing On the Job Training (JT) and Task Performance Evaluation (TPE) to operations personnel in training.”

- “Supervising multi-discipline activities between other work groups as part of a coordinated work management process.”
- “Functioning as the leader of the station’s fire brigade and serving as the incident commander for any spill, hazard, fire or toxic situation.”

The Employer also introduced the Job Familiarization Guide (“JFG”) that delineates work-related proficiencies for ROs serving as Field Supervisors, including, among other things, functions concerning the assignment of work and rounds observations.

To demonstrate supervisory status, the Employer also relies on the ROs’ attendance at a mandatory four-day “new supervisor” training. The curriculum for the training covers, among other things, leadership skills, bias awareness, coaching, documentation and discipline, performance improvement, and managing employees in collective bargaining and personnel matters. The RO who testified at the hearing acknowledged that when he became a RO, Energy Harbor required that he attend a supervisory training program that addressed topics such as collective bargaining issues, coaching, leadership, and performance improvement.

The Union argues that the Employer uses the word “supervisor” loosely in its job titles and job descriptions. The Union relies on the job specifications for the NLOs which use terms such as “supervision” and “supervising” even though the NLOs have no supervisory authority. For example, the specifications state that NLOs are responsible for: “Performing work involving the occasional supervision of a small group.” The specification for the NLO working as the Plant Operator also includes: “Supervising other employees engaged in the work of a hazardous nature.” In addition, the Union argues that the JFG reflects that ROs’ functions are constrained by procedures and Unit Supervisor approval.

Theoretical power does not establish supervisory status. *Chevron U.S.*, 309 NLRB 59, 62 (1992). Job descriptions, job titles, employee handbooks, and similar items that constitute “paper authority” do not, without more, demonstrate actual supervisory authority. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006); *Chi Lake-Wood Health*, 365 NLRB 51 fn. 1 (2016); *Peacock Productions of NBC Universal Media*, 364 NLRB 1523, 1525 fn. 6 (2016). The statute requires evidence of actual supervisory authority visibly translated into tangible examples demonstrating the existence of such authority, rather than unsupported assertions that supervisory authority has been conferred on a particular person. *Golden Crest Healthcare Center*, at 731. Thus, there must be an examination of whether the putative supervisors actually possess the 2(11) authority.

Upon careful review of the record, and cognizant that the burden of proving supervisory status is on the party alleging that such status exists, I find that the ROs in the job classifications of Supervisor Nuclear Unit and M&R Tech Lead Nuclear are not supervisors as defined in the Act.

Assign

The Board interprets the term “assign” to be “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.” *Oakwood Healthcare, Inc.*, 348 NLRB 686, 689 (2006). It is well-settled law that merely having the authority to assign work or tasks does not confer supervisory status and “not every act of assignment constitutes statutory supervisory authority.” *King Broadcasting Co.*, 329 NLRB 378, 382 (1999).

ROs do not set the NLOs’ work schedules. The NLOs’ hours and schedule are determined by the collective bargaining agreement. The overall schedule for the Operations Department is created annually by an Operations Secretary or an administrator.

The Employer argues that ROs’ authority to assign work is established by the evidence that ROs fill vacancies in the schedule when a NLO calls off or is on vacation. The Nuclear Reactor Commission requires seven NLOs on site at all times. As such, if a NLO’s absence creates a gap in coverage for the minimum manning requirements, overtime will be assigned, and a RO will make calls to NLOs to fill the vacancy. When deciding which NLO to call, the RO relies on the Overtime Agreement in the NLOs’ collective bargaining agreement. The Employer maintains an ask list and a force list, in which each NLO has points assigned based on whether they were previously offered overtime, whether they refused or accepted the overtime, and whether they were asked or forced to work overtime. ROs use the steps outlined in the Overtime Agreement to first call NLOs on the ask list, and if the vacancy still exists, the force list will be used to assign overtime. Based on this, there is insufficient evidence to establish that ROs exercise independent judgment with respect to filling vacancies because the record reflects the process of assigning overtime to NLOs is largely proceduralized and governed by the collective bargaining agreement. *See WSI Savannah River Site*, 363 NLRB 977, 979 (2016) (assignment of overtime does not require independent judgment where it is controlled by detailed procedure in collective bargaining agreement).

Second, the ability to approve leave is a secondary indicia of supervisory authority. *WSI Savannah River Site*, 363 NLRB at 979. However, I note that the Employer has not met its burden to establish that ROs have authority to approve or deny vacation requests. There is conflicting evidence on this issue. Director of Nuclear Operations Clark testified that NLOs submit their vacation requests to the RO on their shift, and the RO can approve it once the vacancy in the schedule is filled by another NLO. The NLO and the RO both testified that when requesting vacation, they submit an electronic time off request through Workforce that goes directly to their Shift Manager for approval. They also testified that ROs are not involved in the process of approving or denying vacation requests for NLOs. As the Employer has the burden of establishing the ROs’ supervisory status, this conflict in the evidence is construed against it. *Phelps Cmty. Med. Ctr.*, 295 NLRB 486, 490 (1989). Thus, I find the Employer has not met its burden to establish that ROs have authority to use independent judgment in approving vacation requests.

Finally, the evidence does not support that ROs assign NLOs their overall duties. The overall scope of work is set by the Scheduling and Planning Department. The SROs review the work schedule from the Scheduling and Planning Department to ensure that the scheduled work can be completed within the timeframe. Then, work orders are created for specific job tasks requiring completion. Sometimes the work orders can be completed within a day and other times, the work orders take the entire week. Some assignments require one NLO while others may

demand multiple NLOs. Neither the ROs nor SROs create the work orders. The Shift Managers and Unit Supervisors review the work orders to determine the priority of work. After a discussion with the Shift Manager and Unit Supervisor on what the priorities for the shift are based on manning and staffing, ROs hand out the work orders to the NLOs.

The evidence fails to establish that ROs exercise independent judgment in handing out work orders to NLOs. *Oakwood Healthcare*, 348 NLRB 686, 689 (2006) (“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.”); *Springfield Terrace LTD*, 355 NLRB 937, 943 (2010) (assignments based on employee availability do not involve independent judgment); *Cook Inlet Tug & Barge, Inc.*, 362 NLRB 1153, 1154 (2015) (citing *Croft Metals, Inc.*, 348 NLRB 717, 722 (2006)) (basing an assignment on whether an individual is capable of performing the job does not involve independent judgment); *KGW-TV*, 329 NLRB 378, 381–382 (1999) (assignments that are based on well-known employee skills do not involve independent judgment).

Each shift begins with a shift turnover meeting attended by the entire crew where the Shift Manager addresses the jobs and the priority of work to be completed on the shift. Following the turnover meeting and a crew briefing, the ROs functioning in the Field Supervisor position hand out the daily work assignments to NLOs.

The RO explained to distribute the work orders, ROs consider the priorities from the Shift Manager and Unit Supervisor, what physical area of the plant the NLOs are assigned to, the qualifications of the NLOs, dose levels of the NLOs,⁶ and where the work is located. ROs do not assign NLOs to a physical area of the plant. Rather, the NLO testified that the most senior NLOs develop a weekly “rounds schedule” which is posted in the Control Room. The rounds schedule determines what position the NLOs will be working for the week. A RO looks to the Employer’s policies and the standard operating procedures to determine if a NLO is qualified to work on an assignment. For the qualifications of the NLOs, a RO looks at a NLO’s “qual card” in the Employer’s LMS system, which contains the training qualifications for every employee. For example, some NLOs are qualified to “hang a clearance on a breaker” or handle “fuel handling” while others are not. The RO testified that they are obligated to adhere to the “qual card” when distributing work orders. The RO further testified that if there is excessive work on the shift, the Unit Supervisor or Shift Manager may instruct ROs to “double up” NLOs on rounds. In some instances, such as a special project, the Unit Supervisors instruct ROs to assign work orders to specific NLOs.

Based on the above, the evidence does not establish that ROs use independent judgment in assigning work to NLOs. The ROs’ actions are dictated by the priorities established by the Shift Manager and Unit Supervisor, the NLOs’ assigned work areas (which are determined by the NLOs), their qualifications set forth on the “qual card,” and other Employer policies and

⁶ The Perry Plant measures the level of radioactive “dose” for individuals at the plant, attempting to minimize radiation exposure to employees. Certain areas of the plant contain higher levels of potential exposure.

procedures such as dose levels. The record contains no examples of ROs exercising independent judgment in distributing the work orders to NLOs.

The Board's decision in *Entergy Mississippi, Inc.*, 367 NLRB No. 109 (2019), cited by the Employer, is distinguishable. There, the Board found that dispatchers exercised independent judgment in assigning employees to places by prioritizing outages, determining how many employees should be sent to address a given outage, and deciding to reassign field employees or hold them over from their regular shift or to summon additional on-call employees to work. The Board noted that the dispatchers made complex decisions regarding prioritization of outages and the number of employees to dispatch "based on their own judgment, guided by a wide range of discretionary factors." *Id.* slip at 4. Here, there is no evidence that ROs exercise such discretion.

In its brief, the Employer also cites *The Arc of South Norfolk*, 368 NLRB No. 32 (2019). There, the Board concluded that the Employer's program coordinators, in assigning clients to case managers, considered factors such as experience of the case manager, which case manager might have the best relationship with that client going forward, or whether the client and case manager were having difficulty working together. *Id.*, slip op. at 4. In addressing how program coordinators exercise independent judgment, the Board emphasized how clients were not simply assigned to the next case manager available or the case manager with the smallest caseload, but instead the program coordinators made an evaluation of the best fit. *Id.*, slip op at 4. Here, there is no evidence that this type of assessment takes place. Rather, the ROs' considerations addressed above are analogous to the considerations that the Board has found insufficient to establish exercise of independent judgment. Notably, in *The Arc of South Norfolk*, the Board explained that a judgment is not independent if: "it is dictated or controlled by detailed instructions"; "there is only one obvious and self-evident choice"; "made on the basis of well-known employee skills"; or "[made] solely with respect to whether the employee is capable of doing the job." *Id.*, slip op. at 4. (internal citations omitted).

For the reasons explained above, I find that the Employer failed to establish that the ROs possess the authority to assign within the meaning of Section 2(11).

Responsibly Direct

To direct another's work generally involves overseeing the work being performed and deciding matters such as what will be done next and who will do it. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 690-91 (2006). However, to establish that one with this authority is a supervisor under the Act, the person must use independent judgment when making these determinations and must "be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly." *Id.* at 692. Being accountable for one's own performance does not establish responsible direction. *Id.* at 695.

As addressed earlier, after attending the turnover meeting, the ROs functioning in the Field Supervisor position hand out the daily work assignments to NLOs in their pre-assigned areas of the plant based on NLOs' qualifications. After NLOs complete their tasks, they return to the

Control Room, report any issues, and complete any required paperwork. The completed paperwork is given to the Field Supervisor and the ATC for review and ultimately goes to the Unit Supervisor.

There was evidence presented that if a NLO completes a task before the end of their shift, the RO in the Field Supervisor position will give the NLO additional tasks based on job priority and the NLO's qualifications, dose levels, and availability. Similarly, if there is an emergent issue (i.e., leak) needing attention, the ROs can select an NLO based on the above considerations. I find it unnecessary to determine whether any of the evidence shows that ROs use independent judgment to perform that direction of NLOs because the Employer ultimately failed to provide evidence that any ROs are held accountable for the actions of the NLOs that they supervise.

In order to establish supervisory status on the basis of responsible direction, *Oakwood Healthcare* requires the Employer to demonstrate that ROs are held accountable for the performance of the NLOs on their shifts. *Oakwood Healthcare*, 348 NLRB at 692. There is no record evidence that ROs have faced or been told they would face any material consequences to their own terms and conditions of employment based on the performance of NLOs. The only evidence concerning this factor was vague testimony from Director of Nuclear Operations Clark that NLOs' performance could be a piece considered when assessing ROs' performance. This does not suggest any particular consequence for the ROs, negative or positive, and is far too ephemeral to establish the requisite accountability. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006) (no evidence of material consequence, or that putative supervisors were informed such consequences might result from subordinates' performance, and although putative supervisors were evaluated based on direction, evidence did not show what action might be taken as a result of this rating); *Lynwood Manor*, 350 NLRB 489, 490-91 (2007) (no specific evidence introduced or proffered to show adverse consequences due to failures in subordinates' performance); *Buchanan Marine, L.P.*, 363 NLRB 523, 523-24 (2015) (simply stating putative supervisor is held accountable for errors of subordinates does not establish accountability in absence of evidence showing how or for what they are held accountable).

Accordingly, I find that the record does not support finding ROs responsibly direct the work of NLOs to the degree necessary to establish supervisory authority under Section 2(11) of the Act.⁷

Reward/Evaluate

The authority to evaluate is not a supervisory indicium under Section 2(11). *Harborside Healthcare, Inc.*, 330 NLRB 1334, 1334 (2000). Thus, 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, 1139-40 (1999); see also *Hillhaven Rehabilitation Center*, 325 NLRB 202, 203 (1997) (evaluations must, by themselves, affect job status); *Passavant Health Center*, 284 NLRB

⁷ To the extent the ROs' actions of giving additional tasks throughout the shift would fall under the supervisory indicia "assign," I find that the ROs do not use independent judgment in performing these functions. The ROs' actions are dictated by the Employer's policies and procedures, including qualifications, dose level, or availability. For the reasons addressed earlier, these considerations are insufficient to establish exercise of independent judgment.

887, 891 (1987) (authority simply to evaluate without more is insufficient to find supervisory status).

It is undisputed that NLOs do not receive performance evaluations. Rather, the Employer relies on the fact that ROs evaluate NLOs' work performance through their observations when serving as a Field Supervisor. The Employer requires ROs and SROs to conduct a minimum of four field observations per month and expects them to provide face-to-face coaching of the observed employee in real time. They utilize observation cards that contain specific attributes to observe. After completing the observation, ROs and SROs document their comments and attribute a rating, such as "satisfactory" or "needs improvement," in the Employer's DevonWay system. ROs are permitted to observe SROs, NLOs, or other ROs. Sometimes the Employer will instruct ROs to conduct observations on certain topics or provide certain directives about the observations. For example, last spring, the Employer issued a directive that observations need to include a "needs improvement" rating at least 25% of the time. After the observation forms are completed, the Shift Manager reviews them. At the end of the month, the Director of Nuclear Operations and the Senior Operations Managers review all observation forms to discern any trends or issues that need to be addressed in the department.

The Employer asserts that because the ROs provide coaching while performing these observations, they have the statutory authority to reward and evaluate NLOs within the meaning of Section 2(11) of the Act. However, both the Employer and the Union presented evidence that the observations are completed so the Employer can track and trend low-level issues and address them before they become a problem. Although the Employer presented evidence of ROs' completed observation forms documenting the real-time coaching of NLOs, the Employer failed to present evidence that these observation forms lead to any type of reward or discipline for the NLOs. *See Pacific Coast M.S. Industries Co.*, 355 NLRB 1422, 1425 (2010) (holding that individuals did not have supervisory authority where there was no evidence that any observation form affected an employee's "working conditions or job status or tenure.").

Next, the Employer argues that ROs effectively reward NLOs because ROs recommend step-level pay increases for NLOs. The NLOs' collective bargaining agreement provides that an NLO will receive a step-level increase in pay every six months until the maximum rate for the job is reached if the NLO's development, measured by performance and ability, has been satisfactory. Director of Nuclear Operations Clark testified that ROs make the ultimate decision whether a NLO receives a step-level increase in pay or not. However, the Employer provided no evidence in the form of testimony or documents of any RO actually approving or denying a NLO's step increase. In fact, the NLO, who also serves as Union Chairman, testified that he has not witnessed a RO give a real-time decision to deny a step increase for a NLO, but he has seen a Shift Manager deny a step increase for a NLO. Nowhere in the record is there a concrete example of a RO approving or denying a step increase for a NLO. Given the above, the evidence is insufficient to conclude that ROs reward NLOs by recommending step increases.

As such, the Employer has failed to meet its burden of proof regarding ROs rewarding and evaluating NLOs within the meaning of Section 2(11) of the Act.

Discipline, Discharge, and Suspension

The Employer asserts ROs have the statutory supervisory authority to issue or effectively recommend discipline, suspension, and discharge of NLOs. To establish supervisory status based on discipline, the evidence must not only show that the purported supervisor disciplined employees utilizing independent judgment, but also that the discipline issued “must lead to personnel action without independent investigation by upper management.” *Veolia Transp. Services, Inc.*, 363 NLRB 902, 908 (2016).

There is conflicting testimony regarding whether ROs can issue discipline to NLOs. Director of Nuclear Operations Clark testified that while ROs have the authority to issue discipline to NLOs without consulting any other supervisors, typically when any supervisor in the Operations Department is contemplating discipline of an employee, the supervisor works with his or her team and consults Human Resources to determine if there is any precedent for similar discipline. If it is determined that discipline is warranted, the supervisor issues the disciplinary action by filling out Form X2081, “Employee Disciplinary Record.” Clark clarified that the ROs’ authority to discipline NLOs is no different from the authority that any other level of management or supervision has. The RO and the NLO testified that the Shift Manager would issue any discipline to NLOs, not a RO. The RO further testified that he has never personally disciplined a NLO nor has he seen a RO discipline a NLO.

Further, the documentary evidence does not establish that ROs have supervisory authority to discipline, as the only alleged disciplines issued by ROs in the record are verbal reprimands. Generally, the authority to issue verbal reprimands is too minor to establish supervisory authority. *Veolia Transp. Services, Inc.*, 363 NLRB at 908; *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1139 (1999). However, if management considers verbal reprimands to constitute discipline under a progressive disciplinary process, the ability to issue the verbal reprimands could establish supervisory authority. *Luck Cab Co.*, 360 NLRB 271, 273 (2014). Here, in both instances, the NLOs were issued an “Employee Contact Record,” not the Employee Disciplinary Record that Clark testified is used for disciplinary actions. The NLO testified that one of the Employee Contact Records was signed by the Unit Supervisor, not a RO. Both Clark and the NLO testified that the Employee Contact Record is not considered formal discipline, rather it is used for informal warnings. Notably, the Employee Contact Record Form states “FOR DISCIPLINARY ACTION, USE FORM X2801, ‘EMPLOYEE DISCIPLINARY RECORD.’”

Even assuming the Employee Contact Record constitutes discipline, there is no evidence that the ROs exercised independent judgment when issuing them. In *Oakwood Healthcare*, the Board stated that a “judgment is not independent if it is dictated or controlled by detailed instructions, whether set forth in company policies or rules, . . . or in the provisions of a collective-bargaining agreement.” 348 NLRB 686, 693 (2006). The two Employee Contact Records provided both reference a specific rule that the NLOs violated, the first referencing a specific section of the NLOs’ collective bargaining agreement and the second referring to a particular procedure in an operating manual. Further, Clark’s testimony that disciplines are issued after consultation with other department supervisors and Human Resources suggests that ROs do not exercise independent judgment. See *Veolia Transp. Services, Inc.*, 363 NLRB at 1885-86 (testimony that discipline may

be a collaborative effort, without specificity as to what collaboration entails or how often it occurs, may suggest that putative supervisors do not exercise independent judgment).

As for the ROs' ability to suspend and discharge NLOs, there is no evidence in the record of any RO involvement in the suspension or termination of a NLO. The only evidence provided by the Employer is Clark's unsubstantiated testimony that ROs have the ability to suspend NLOs. However, mere inferences or conclusory statements without specific supporting evidence do not establish supervisory authority. *See Volair Contractors, Inc.*, 341 NLRB 673, 675 (2004); *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).

Based on the foregoing, I conclude that the Employer has not met its burden to show the ROs have the statutory supervisory authority to issue or effectively recommend discipline, suspension, and discharge of NLOs.

Effectively Recommend Hire

Supervisory status can be established if an individual has the authority to hire or effectively recommend hiring. To effectively recommend means that the recommendation is not just ultimately followed, but that it is followed without independent investigation by superiors. *DirecTV*, 357 NLRB 1747, 1748-49 (2011). An individual will not be found to effectively recommend hiring if a higher-level supervisor also participates in interviews and the hiring process, indicating an independent investigation into the applicant's suitability. *See Republican Co.*, 361 NLRB 93, 97-98 (2014); *Peacock Productions of NBC Universal Media*, 364 NLRB 1523, 1526-27 (2016). This is so even if there is testimony that the putative supervisors' recommendations are given "significant" weight. *Ryder Truck Rental, Inc.*, 326 NLRB 1386, 1388 (1998).

At the outset, I note that it is clear from the record that all final hiring decisions for NLOs are made jointly by Human Resources, Senior Operations Manager Dave Duesing, and Director of Nuclear Operations Clark, with input from all interviewers.

Clark testified that the hiring process for NLOs is as follows: First, employees in Human Resources screen the applications to ensure the candidates meet certain requirements. The short list is sent to Senior Operations Manager Duesing, who reviews them and works with Human Resources to set up interviews. Interviews are conducted by a panel of three individuals, who are given a prepared list of questions which are the same for every interview. Members of the panel are also given scoring sheets to use in rating the candidate's responses. At the conclusion of the interview, the scoring sheets are collected by Duesing, who then meets with Clark and Human Resources to make a final hiring decision.

As far as ROs involvement in the hiring process, Clark testified that ROs are members of the interview panel, along with Duesing. However, the NLO testified that as a part of his duties as Union Chairman, he has sat in on about 50 percent of interviews for NLOs for the last several years, and a RO has never been in those interviews. The RO also testified that since he became a

RO in 2023, he has not participated in any interviews for NLOs, nor is he aware of any other ROs participating in interviews for NLOs, except for Initial License Training Supervisor Tim Smith.

Even crediting Clark's testimony that ROs participated in the panel interviews for NLOs, the Employer failed to establish that ROs used independent judgment. Clark testified that ROs do not have the ability to hire any individual on their own. Rather, ROs have the ability to weigh in on the hiring process. Although ROs may have participated in NLO interviews, the fact that at least one undisputed supervisor (Senior Operations Manager Duesing) also participated in the interview process demonstrates that ROs do not effectively recommend hiring. *See Republican Co.*, 361 NLRB at 97-98; *Peacock Productions*, 364 NLRB at 1526. *See also North General Hospital*, 314 NLRB 14, 16 (1994) ("[m]ere participation in the hiring process, absent the authority to effectively recommend hire, is insufficient to establish Section 2(11) supervisory authority"). The Employer has further failed to meet its burden to show that ROs' recommendations were followed and/or what weight the recommendations played in the process. A hiring recommendation is not "effective" where the influence of the recommendation on the ultimate decision is not known. *Pacific Coast M.S. Industries*, 355 NLRB 1422, 1425-26 (2010); *Third Coast Emergency Physicians, P.A.*, 330 NLRB 756, 759 (2000); *F.A. Bartlett Tree Expert Co.*, 325 NLRB 243, 245 (1997). Accordingly, the evidence fails to establish that ROs have the authority to hire or effectively recommend hiring within the meaning of Section 2(11) of the Act.

Adjust Grievances

The Employer asserts that ROs have authority to resolve employee grievances using independent judgment. In order to establish that ROs are supervisors because of their ability to adjust grievances, the Employer must establish that they have the authority to resolve workplace complaints beyond minor disputes and use independent judgment in doing so. *See Ken-Crest Services*, 335 NLRB 777, 778-79 (2001); *Riverchase Healthcare Ctr.*, 304 NLRB 861, 865 (1991).

The NLOs' collective bargaining agreement contains a grievance procedure at Article V, providing for supervisors involvement at Step One of the grievance procedure:

Step One

When the disagreement is presented by the employee or his Union representative to the employee's supervisor, the grievant or his Union representative may request a Step One meeting to discuss the matter. Within five (5) working days of such a request, a meeting will be held with the employee and his supervisor or with the employee and/or his Union representative and appropriate supervision designated by the Company.

If not settled through this meeting with supervision, a grievance may then be written by the authorized Union representative....

According to Clark, ROs represent the Employer in Step One grievance meetings and have the ability to resolve employee grievances at that level. The Employer maintains that the grievance process is addressed in the mandatory four-day new supervisor training. However, the Employer

presented no evidence of any specific grievances resolved by any RO or any specific grievance meetings attended by a RO. Rather, the record reflects that ROs have limited involvement in the grievance process. The RO testified that if presented with a grievance or a workplace complaint from another employee, he would relay it to his Shift Manager. He further testified that he has never attended a Step One grievance meeting as a RO.

The NLO explained that in the course of his duties as a Union officer, he has been involved in all Step One meetings in the Operations Department since 2014. The NLO testified that typically if a RO attends a Step One meeting, they are attending in the capacity as a witness. He further testified that every time he has been involved in a settlement at Step One, the Shift Manager has made the ultimate decision to resolve the grievance.

I find the record evidence is insufficient to establish that ROs have the authority to resolve employee grievances using independent judgment as there was no evidence presented of any specific workplace dispute that a RO resolved. *Ken-Crest Services*, 335 NLRB at 778-79 (supervisory status not established where evidence did not establish program managers actually resolved or adjusted grievances). Relaying, or offering assistance in relaying grievances to upper management, or simply offering advice or suggestions, does not constitute the authority to adjust grievances. *See Avante at Wilson, Inc.*, 348 NLRB 1056, 1058 (2006); *California Beverage Co.*, 283 NLRB 328, 330 (1987). Thus, the evidence does not establish that ROs have the authority to resolve grievances within the meaning of Section 2(11) of the Act.

Secondary Indicia

Alongside the statutory indicia listed in Section 2(11), the Board has considered several non-statutory secondary indicia as additional evidence of supervisory status. However, “it is well-settled that secondary indicia are not dispositive in the absence of evidence indicating the existence of any one of the primary indicia of such status.” *Chrome Deposit Corp.*, 323 NLRB 961, 963 fn. 9 (1997). Where “putative supervisors are not shown to possess any of the primary indicia of supervisory status enumerated in Section 2(11), secondary indicia are insufficient to establish supervisory status.” *Golden Crest Healthcare Center*, 348 NLRB 727, 730, fn. 10 (2006); *Ken-Crest Services*, 335 NLRB 777, 779 (2001).

Here, the Employer argues that the secondary indicia underscore the primary indicia of supervisory status. For example, the ROs are designated at a higher pay grade than the NLOs, participate in the Employer’s Annual Incentive Plan at a higher percentage than the NLOs, and receive a monthly license bonus. In addition, unlike the NLOs, the ROs participate in the long-term incentive profit sharing. The Union, on the other hand, maintains that certain secondary indicia support the conclusion that the ROs are not statutory supervisors. Specifically, the Union notes that the ROs, unlike undisputed supervisors, do not have direct reports listed on the organizational chart. The Union also argues that if the ROs are 2(11) supervisors, there would be a disproportionately high ratio of supervisors to employees, with nearly as many supervisors as NLOs on each crew. In addition, the Union notes that the RO who testified at the hearing earns just 30 cents more per hour than the highest paid NLO.

Given my findings above regarding the lack of evidence of primary supervisory indicia, the secondary indicia does not change the outcome. As explained in detail above, the Employer has not proven the existence of a single primary supervisory indicia under Section 2(11). Without any primary indicia being established, secondary indicia alone cannot prove supervisory status under the Act.

Based on the foregoing, I find that the Employer has failed to meet its burden of establishing that ROs in the job classifications of Supervisor Nuclear Unit and M&R Tech Lead Nuclear are supervisors within the meaning of Section 2(11) of the Act.

B. Consulting Nuclear Instructors Are Not Supervisors

Next looking at the ROs in the job classification of Consulting Nuclear Instructor, the Employer presented no evidence that the Consulting Nuclear Instructors play any role in assigning, responsibly directing, disciplining, discharging, hiring, adjusting grievances, rewarding, transferring, laying off, recalling, or promoting employees. As such, there was no evidence presented that Consulting Nuclear Instructors exercised any of the primary indicia of supervisory status as defined by Section 2(11) of the Act. Any lack of evidence is construed against the party asserting supervisory authority. *See Brusco Tug & Barge Co.*, 359 NLRB 486, 490 (2013); *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1048 (2003). In addition, while the Employer argues that all ROs (including the Consulting Nuclear Instructors when acting in the RO role) are 2(11) supervisors, I find, as addressed above, that the record does not support that conclusion. Accordingly, I find that the Employer has failed to meet its burden of establishing that ROs in the job classification of Consulting Nuclear Instructor are supervisors within the meaning of Section 2(11) of the Act.

C. Initial License Training Supervisor Is Not a Supervisor

Both parties argue that the RO in the job classification of Initial License Training Supervisor is a statutory supervisor. However, no stipulation was reached. The Employer maintains that the Initial License Training Supervisor's duties and responsibilities are no different than the other ROs and therefore they all must be found to be 2(11) supervisors. Even where parties agree on an issue, I must consider whether the parties' position is consistent with the record evidence. *See Primrose Super Market of Molden, Inc.*, 178 NLRB 566, 568-569 (1969). Notably, this is statutory issue which could cause the individual to lose the protection of the Act.

There was no evidence presented that Initial License Training Supervisor Tim Smith plays a role in assigning, responsibly directing, adjusting grievances, rewarding, transferring, laying off, recalling, or promoting employees in his capacity as the Initial License Training Supervisor. While the record contains evidence that Smith plays a role in some hiring, disciplining, and discharging employees, I find that that there is insufficient evidence to establish that the Initial License Training Supervisor is a supervisor within the meaning of 2(11) of the Act.⁸

⁸ Nor is Smith, while performing RO functions, a 2(11) supervisor, for the reasons addressed above.

The Employer failed to satisfy its burden of proving that Smith hires or effectively recommends the hiring of employees. The record evidence regarding Smith's role in hiring is slim. Neither Smith nor any employee in the Training Department testified at the hearing. Clark, the RO, and the NLO all testified that Smith has the ability to hire employees. The RO and the NLO also testified that they were aware that Smith participated in interviews for employees but were unable to offer any specific examples of Smith's role in hiring or provide any evidence that Smith effectively recommended hiring. *See Republican Co.*, 361 NLRB 93, 97-98 (2014) (without additional evidence, a putative supervisor does not effectively recommend hiring where acknowledged supervisors also interview candidates); *Alternate Concepts, Inc.*, 358 NLRB 292, 294-97 (2012) (employer failed to present specific evidence showing that crew dispatchers and line controllers were statutory supervisors); *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006) (employer failed to meet its burden of establishing supervisory authority where testimony was "utterly lacking in specificity").

There was also evidence presented that the Smith was listed as the "Hiring Manager" in a March 2025 job posting for a Nuclear Training Instructor, which was ultimately filled by a RO. However, there was no context provided by any witness to testify about Smith's involvement or role in the hiring process for this position. There was no evidence demonstrating what weight his recommendations played in the process. *See Third Coast Emergency Physicians, P.A.*, 330 NLRB 756, 759 (2000) (evidence of participation in the hiring process without evidence regarding what role, if any, alleged supervisors played in decision to hire or not hire is insufficient to establish supervisory authority); *Pacific Coast M.S. Industries*, 355 NLRB 1422, 1425-1426 (2010) (a hiring recommendation is not "effective" where the influence of the recommendation on the ultimate decision is not known). Thus, the evidence does not establish that the Initial License Training Supervisor has the authority to hire or effectively recommend hire.

Next, the record evidence does not satisfy the burden of proving that Smith disciplines and/or discharges employees. Clark testified generally that Smith has the ability to discipline and discharge employees but failed to particularize his testimony in any way. He provided no specific incidents, who was involved, what the alleged disciplinary action consisted of, whether higher-level managers had been consulted, or whether the situation was anything more than a one-time occurrence. Similarly, the RO testified that he believed Smith had the authority to fire employees, but he did not explain the basis for his belief (for example, that he had been told Smith had that authority by one of his superiors) or provide any examples of situations or details of circumstances where Smith terminated an employee. On this record, the Employer has not shown that Initial License Training Supervisor Smith has the authority to discipline or discharge employees, and even assuming that the evidence was sufficient to show that the authority exists, it is insufficient to show that it was exercised with independent judgment. The Board has an obligation not to construe the statutory language too broadly because the individual found to be a supervisor is denied the employee rights protected by the Act. *Avante at Wilson, Inc.*, 348 NLRB 1056, 1057 (2006); *Oakwood*, above at 687.

Secondary indicia of supervisory status are considered only if one of the primary indicia of supervisory status is established. *Training School at Vineland*, 332 NLRB 1412, fn. 3 (2000).

Given my findings above regarding the lack of evidence of primary supervisory indicia, the fact that Smith earns significantly higher wages than other employees, is viewed as management by employees, and attends management meetings does not change the outcome. As the record failed to establish the existence of a single primary supervisory indicia, the proposed secondary indicia cannot prove supervisory status under the Act.

For the reasons explained above, I find that the record does not establish that the RO in the job classification of Initial License Training Supervisor is a statutory supervisor under Section 2(11) of the Act.

DUAL-FUNCTION EMPLOYEES

The Employer asserts that if the ROs in the job classifications of Consulting Nuclear Instructor and Initial License Training Supervisor are found not to be statutory supervisors under Section 2(11) of the Act, then they must be included in the voting group because they are dual-function employees. While the Union agrees that the Consulting Nuclear Instructors are dual-function employees and should be included in the unit, it asserts that the Initial License Training Supervisor should not be included as a dual-function employee.

Under well-established Board law, “[t]he test for determining whether a dual-function employee should be included in a unit is ‘whether the employee [performs unit work] for sufficient periods of time to demonstrate that he ... has a substantial interest in the unit’s wages, hours, and conditions of employment.’” *Air Liquide America Corp.*, 324 NLRB 661, 662 (1997) (citing *Berea Publishing Co.*, 140 NLRB 516, 518-19 (1963)). The Board has no bright line rule as to the amount of time required to be spent performing unit work, rather it makes this determination according to the facts of each case. *Martin Enterprises, Inc.*, 325 NLRB 714, 715 (1998). See *WLVI Inc.*, 349 NLRB 683, 686 fn. 5 (2007) (dual function employees who spend 25 percent of their time performing bargaining unit work should be included in the unit); *Mc-Mor-Han Trucking Co.*, 166 NLRB 700, 702 (1967) (employee who spent 20 intermittent days driving a truck without any discernable pattern excluded from unit of drivers); *Continental Cablevision*, 298 NLRB 973, 974-75 (1990) (excluding employees spending approximately 17 percent of their time performing unit work).

In support of the Employer’s contention that the ROs in the job classifications of Consulting Nuclear Instructor and Initial License Training Supervisor perform sufficient unit work to warrant inclusion in the unit, Clark testified that, by his own estimation, Consulting Nuclear Instructors and the Initial License Training Supervisor spend approximately 70 percent of their time performing their duties for the Training Department and 30 percent of their time performing the duties of a RO in the Operations Department, functioning as the Field Supervisor, BOP Operator and/or ATC. However, Clark admitted that he does not look at the timesheets of the Consulting Nuclear Instructors or Initial Training Supervisor and his testimony was based on what he remembers from his time when he was a licensed operator in 2021. In contrast, the NLO and the RO testified that the Consulting Nuclear Instructors and the Initial License Training Supervisor spend about 10 percent of their time in the Control Room performing RO duties. They further testified that less than five percent of the work in the Control Room is performed by the Consulting

Nuclear Instructors and Initial License Training Supervisor. Notably, the Initial License Training Supervisor and Consulting Nuclear Instructors did not testify at the hearing.

The Employer provided a single month of weekly schedules in the Operations Department, showing the position each employee was assigned on any given day. These schedules show that during the month of July 2024, Consulting Nuclear Instructor Jason Weeks worked two shifts, Consulting Nuclear Instructor Geoffery Graham worked three shifts, Consulting Nuclear Instructor Kevin Marsh did not work any shifts, and Initial License Training Supervisor worked one shift. Assuming that June 2024 was a normal month, Consulting Nuclear Instructors spent on average 12.5 percent of their time performing RO duties, and the Initial License Training Supervisor spent 7.5 percent of his time performing RO duties.

The Employer also provided a supercrew schedule from an outage in February and March 2024. During outages, the crews in the Operations Department work a supercrew schedule in which half the department works days and the other half works nights. Some outages are scheduled in advance, such as the refueling outage that occurs every two years, and other outages are initiated in response to specific conditions. Clark testified that while the goal is to have no forced outages, there were three forced outages in both 2023 and 2024. The supercrew schedule provided shows that during a three-week period, Consulting Nuclear Instructor Weeks worked 11 shifts, Consulting Nuclear Instructor Graham worked nine shifts, Consulting Nuclear Instructor Marsh worked 10 shifts, and Initial License Training Supervisor Smith worked eight shifts.

While both parties agree that the Consulting Nuclear Instructors spend sufficient time performing unit work to warrant inclusion in the unit, I must examine whether their position is consistent with the record. *See Primrose Super Market of Molden, Inc.*, supra. I find that the record is inconclusive as to whether the Consulting Nuclear Instructors and the Initial License Training Supervisor meet the “sufficient interest” test. Therefore, I am directing that they vote subject to challenge.⁹

COMMUNITY OF INTEREST

An *Armour-Globe* self-determination election¹⁰ is the proper method by which a union may add unrepresented employees to an existing unit. *Walt Disney Parks and Resorts*, 373 NLRB No. 99, *slip op.* at 8 (Sept. 11, 2024). The Board will direct such an election where the petitioned-for employees share a community of interest with the unit employees and where the petitioned-for employees constitute an identifiable, distinct segment that is an appropriate voting group. *See Warner-Lambert Co.*, 298 NLRB 993, 995 (1990).

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*, 298 NLRB at 995). The distinct-and-identifiable analysis asks merely whether the voting group sought unduly fragments the workforce or constitutes an arbitrary

⁹ Unlike the 2(11) issue, there is no burden placed on the parties regarding the dual-function status of the Consulting Nuclear Instructors and the Initial License Training Supervisor.

¹⁰ *See Globe Machine and Stamping Co.*, 3 NLRB 294 (1937); *Armour and Company*, 40 NLRB 1333 (1942).

segment of unrepresented employees. *Capital Cities Broadcasting*, 194 NLRB 1063, 1064 (1972).

If the voting group sought is an identifiable and distinct segment of the workforce, the question then is whether the employees in that voting group share a community of interest with the existing unit. *See St. Vincent*, 357 NLRB at 855. This inquiry requires application of the Board's traditional community of interest test. *Walt Disney Parks and Resorts*, 373 NLRB No. 99, *slip op.* at 8 (citing *United Operations, Inc.*, 338 NLRB 123, 123 (2002)). The Board considers whether the employees sought 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 Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *Id.*

A certifiable unit, including the combined unit formed in an *Armour-Globe* case, 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 723, 723 (1996). In the *Armour-Globe* context, the Board has found that the petitioned-for voting group need only share a community of interest more generally with the employees in the existing unit rather than a shared community of interest with every classification in the unit. *St. Vincent*, 357 NLRB at 854; *Walt Disney Parks and Resorts*, 373 NLRB No. 99, *slip op.* at 11. In addition, the Board has held that while diversity of an existing unit is not itself a community-of-interest factor, such diversity "may be relevant to consider generally." *Walt Disney Parks and Resorts*, 373 NLRB No. 99, *slip op.* at 9 (citing *Public Service Co. of Colorado*, 365 NLRB 104, fn. 4 (2017)). Finally, differences in the employment terms of the petitioned-for and current unit employees do not mandate exclusion and may reasonably be expected in the *Armour-Globe* context, where the unit employees' terms are the result of collective bargaining. *Public Service Co. of Colorado*, 365 NLRB at fn. 4.

As explained below, I find that the petitioned-for ROs in the job classifications of Supervisor Nuclear Unit and M&R Tech Lead Nuclear constitute a distinct and identifiable segment of the Employer's workforce and share a community of interest with employees in the existing unit at the Employer's Perry Plant.

A. Identifiable and Distinct Segment

In *St. Vincent*, the Board concluded that a petitioned-for group of employees in a single classification constituted an identifiable and distinct group, appropriate for an *Armour-Globe* election, because the employees were employed in a single department, worked in the same physical location, and shared the same supervision. *St. Vincent Charity Medical Center*, 357 NLRB 854, 855-56 (2011). The Board reached the opposite conclusion in *Capital Cities Broadcasting Corp.*, finding the voting group sought was arbitrary and inappropriate for an *Armour-Globe* election because the employees in the voting group were scattered across various unrepresented departments and lacked such similarities. *Capital Cities Broadcasting*, 194 NLRB 1063, 1064 (1972).

The Petitioner argues that the ROs in the job classifications of Supervisor Nuclear Unit and M&R Tech Lead Nuclear constitute an identifiable and distinct segment of the Employer's workforce because they work in the Employer's Operations Department, are responsible for safe operation of the reactor, and are licensed to operate the Perry Plant, thus sharing a unique ability and skill set. On the other hand, the Employer argues that the ROs in the job classifications of Supervisor Nuclear Unit and M&R Tech Lead Nuclear are not an identifiable and distinct segment of the workforce unless the job classifications of Consulting Nuclear Instructor and Initial License Training Supervisor are included.

I find that the ROs in the job classifications of Supervisor Nuclear Unit and M&R Tech Lead Nuclear are an identifiable and distinct segment of the Employer's workforce. Employees in the job classification of M&R Tech Lead Nuclear are individuals who are in training to receive their RO license or have recently received their licenses and have yet to be reclassified as Supervisor Nuclear Unit. The three employees currently in the position of M&R Tech Lead Nuclear all received their RO licenses in January 2025, and the Employer is working to reclassify them as Supervisor Nuclear Unit. Thus, the Supervisor Nuclear Units and M&R Tech Lead Nuclears have the same skills, job functions, and training within their job classifications. They all use the same equipment to perform their jobs in the same physical location and often work side-by-side performing their daily work duties. In addition, they report to the Shift Manager, who in turn reports to one of the two Senior Operations Managers, who both report to Director of Nuclear Operations Clark. Clark has overall responsibility for the Operations Department.

The Employer argues that the ROs are an identifiable and distinct segment of the workforce *only* if the voting group includes the Consulting Nuclear Instructors and the Initial License Training Supervisor. I agree that if the Consulting Nuclear Instructors and the Initial License Training Supervisor perform unit work for sufficient periods of time, they should be included in the unit as dual function employees. However, as noted above, the record is inconclusive on this issue so I am ordering that they vote subject to challenge.

Accordingly, I find that the ROs in the job classifications of Supervisor Nuclear Unit and M&R Tech Lead Nuclear constitute a distinct-and-identifiable segment of employees.

B. Community of Interest with the Existing Unit

Once it has been determined that the employees in the voting group are an identifiable and distinct group, then the question is whether they share a community of interest with employees in the existing unit. *St. Vincent Charity Medical Center*, 357 NLRB 854, 855-56 (2011). As noted above, this inquiry requires application of the Board's traditional community of interest test.

The Employer does not dispute that the ROs share a community of interest with the NLOs in the existing unit represented by the Petitioner. The record evidence also supports this conclusion. The ROs and NLOs work in the same department and they have common supervision. They share many terms and conditions of employment with the NLOs. They have the same work hours, work in the same location (Control Complex), are subject to common safety policies and operating procedures, and share common facilities within the Perry Plant. They have a high degree of contact, working together on crews in the performance of their job duties. The fact that they

work together as a crew supports a finding of functional integration. In addition, the record reflects that the majority of ROs previously held positions as NLOs.

Any differences in benefits or terms and conditions of employment between the ROs and the NLOs are the result of collective bargaining and are afforded minimal weight in a self-determination analysis. *Public Service Company of Colorado*, 365 NLRB 1017, fn. 4 (2017) (“[a]lthough there are certain differences in the employment terms of the petitioned-for and current unit employees, they do not mandate exclusion and may reasonably be expected in the *Armour-Globe* context, where the unit employees’ terms are the result of collective bargaining”).

In sum, I find that the ROs in the job classifications of Supervisor Nuclear Unit and M&R Tech Lead Nuclear are a distinct-and-identifiable segment of employees, and share a community of interest with employees in the existing unit.

CONCLUSION

Based upon the record 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.¹¹
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 an appropriate unit for a self-determination election for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time employees in the Supervisor Nuclear Unit and M&R Tech Lead Nuclear job classifications (also known as ROs) employed by the Employer at its facility located at 10 Center Road, Perry, Ohio 44081.

¹¹ The parties stipulated to the following commerce facts: The Employer, Vistra Nuclear Operations Company, a State of Delaware corporation and a subsidiary of its parent Vistra Corp. with its principal place of business in Irving, Texas, is engaged in the business of retail electricity and power generation at facilities throughout the country, including the Perry Nuclear Power Plant located at 10 Center Road, Perry, Ohio. During the most recent calendar year, a representative period of time, the Employer purchased and received at its Perry Nuclear Power Plant goods or services valued in excess of \$50,000 directly from points located outside the State of Ohio.

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

Others permitted to vote: At this time, no decision has been made regarding whether individuals in the classifications of Consulting Nuclear Instructor and Initial License Training Supervisor are included in the unit as dual function employees, or excluded from the bargaining unit, and those individuals may vote in the election, but their ballots shall be challenged since their eligibility has not been resolved. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the voting group found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Utility Workers Union of America, AFL-CIO, Local 270. If a majority of valid votes are cast for Utility Workers Union of America, AFL-CIO, Local 270, they will be taken to have indicated the employees' desire to be included in the existing bargaining unit represented by Utility Workers Union of America, AFL-CIO. 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 7, 2025 from 5:00 p.m. to 7:00 p.m. in the Tec 110 room in the TEC building at the Employer's facility located at 10 Center Road, Perry, Ohio 44081.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the weekly payroll period ending September 14, 2025 including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, employees engaged in an economic strike that commenced less than 12 months before the election date, 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 service of the United States may vote by mail in the same manner and pursuant to the same voting schedule as established herein for all other Unit employee voting.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period for eligibility; (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 **Tuesday, September 23, 2025**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

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

Failure to comply with these 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 Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found

appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to 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 19, 2025



NORA F. MCGINLEY
ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 08
1240 E 9TH ST
STE 1695
CLEVELAND, OH 44199-2086



United States of America
National Labor Relations Board
NOTICE OF ELECTION



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

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

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

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

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

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

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

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



United States of America
National Labor Relations Board
NOTICE OF ELECTION



VOTING UNIT

EMPLOYEES ELIGIBLE TO VOTE:

Those eligible to vote are: All full-time and regular part-time employees in the Supervisor Nuclear Unit and M&R Tech Lead Nuclear job classifications (also known as ROs) employed by the Employer at its facility located at 10 Center Road, Perry, Ohio 44081, who were employed by the Employer during the payroll period ending Sunday, September 14, 2025.

EMPLOYEES NOT ELIGIBLE TO VOTE:

Those not eligible to vote are: All confidential employees, professional employees, office clerical employees, managers and guards and supervisors as defined by the Act.

OTHERS PERMITTED TO VOTE:

At this time, no decision has been made regarding whether individuals in the classifications of Consulting Nuclear Instructor and Initial License Training Supervisor are included in the unit as dual function employees, or excluded from, the bargaining unit. The individuals in these classifications may vote in the election, but their ballots shall be challenged since their eligibility has not been resolved. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

NOTE:

If a majority of valid ballots are cast for Utility Workers Union of America, AFL-CIO, Local 270, they will be taken to have indicated the employees' desire to be included in the existing bargaining unit currently represented by Utility Workers Union of America, AFL-CIO, Local 270. If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

DATE, TIME AND PLACE OF ELECTION

DATE	TIME	PLACE
Tuesday, October 7, 2025	5:00 p.m. to 7:00 p.m.	TEC Building at the Employer's facility located at 10 Center Road, Perry, Ohio 44081

EMPLOYEES ARE FREE TO VOTE AT ANY TIME THE POLLS ARE OPEN.

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



United States of America
National Labor Relations Board
NOTICE OF ELECTION



UNITED STATES OF AMERICA
National Labor Relations Board
08-RC-361044



OFFICIAL SECRET BALLOT

For certain employees of
VISTRA NUCLEAR OPERATIONS COMPANY

Do you wish to be represented for purposes of collective bargaining by
UTILITY WORKERS UNION OF AMERICA, AFL-CIO, LOCAL 270?

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

YES

☐

NO

☐

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

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

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



United States of America
National Labor Relations Board
NOTICE OF ELECTION



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

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

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

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.

If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

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

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

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

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

Anyone with a question about the election may contact the NLRB Office at (216)522-3715 or visit the NLRB website www.nlr.gov for assistance.

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